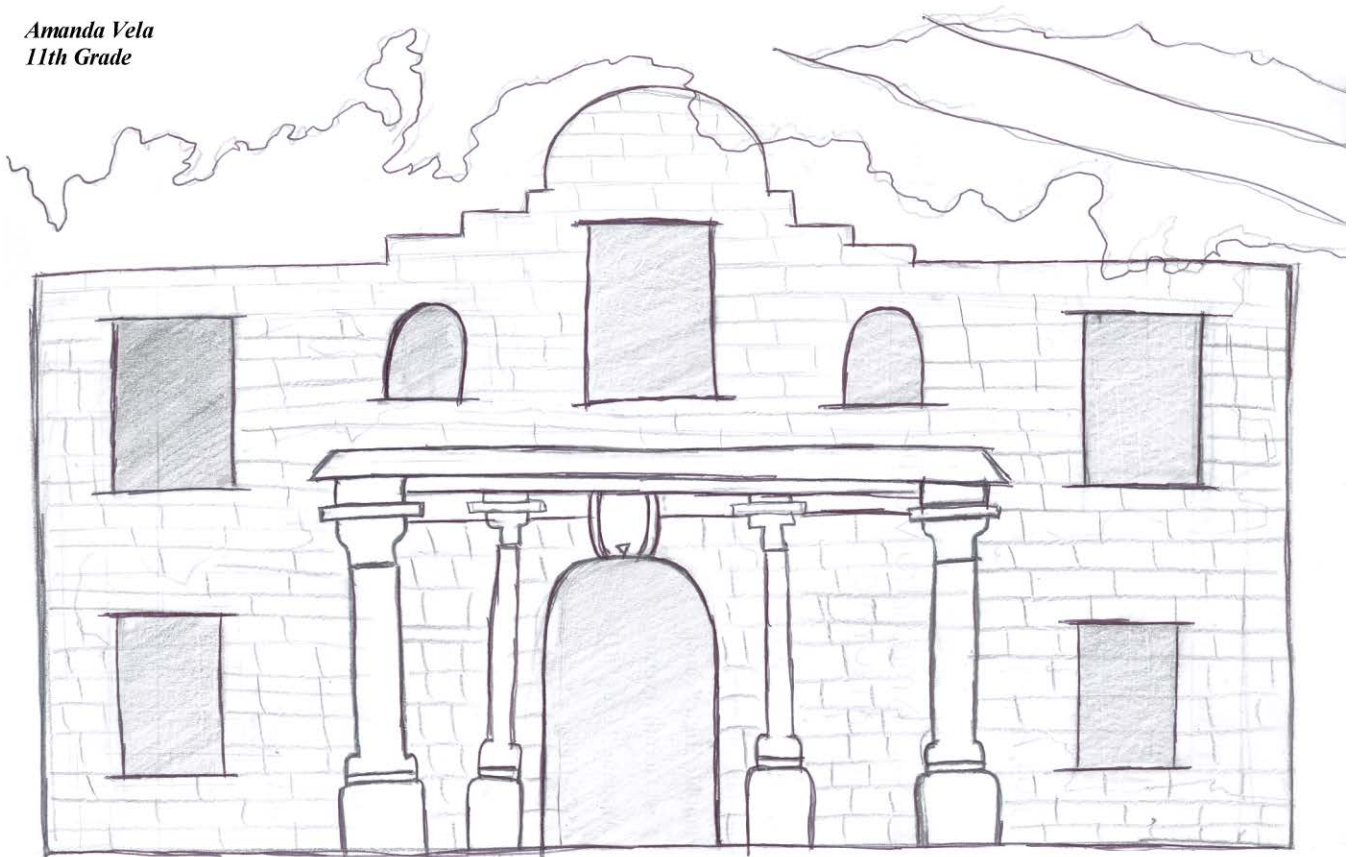

TEXAS REGISTER

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*Amanda Vela
11th Grade*



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THE ATTORNEY GENERAL

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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>.)

Opinions

Opinion No. KP-0107

Mr. J. Winston Krause

Chairman

Texas Lottery Commission

Post Office Box 16630

Austin, Texas 78761-6630

Re: Authority of the Texas Lottery Commission to deny, suspend, or revoke a lottery ticket sales agent license in specific instances (RQ-0096-KP)

SUMMARY

The language the Legislature utilized in section 53.021 of the Occupations Code does not authorize the Lottery Commission to deny, suspend, or revoke a sales agent license due to deferred adjudication for the offense of gambling. The Commission may comply with applicable statutes and consider deferred adjudication on a gambling-related offense to be a conviction if the circumstances meet the requirements of subsection 53.021(d), thereby authorizing it to deny, suspend, or revoke a license.

Whether the Commission may consider the presence of illegal gambling activity at an applicant's retail location in examining an applicant's character and fitness under subsection 466.151(e) of the State Lottery Act would depend on the facts. To the extent the Commission may consider the presence of illegal gambling activity, a court would likely conclude that the Commission's express authority to make findings under subsection 466.151(e) implies the authority to determine whether a particular activity would constitute illegal gambling, or a particular item would constitute an illegal gambling machine, under the Penal Code.

A court would likely conclude that a rule broadening the scope of the term "professional gambler" to include a person who conducts or allows illegal gambling activity at a proposed or existing lottery retail location would exceed the authority the Legislature has granted to the Commission.

A court is not likely to infer authority from sections 466.351 and 466.355 of the Act for the Commission to consider the presence of illegal activity at a retail location in deciding whether to deny, suspend, or revoke a sales agent license.

Opinion No. KP-0108

The Honorable Lisa Pence

Erath County Attorney

100 West Washington

Stephenville, Texas 76401

Re: Whether a nonprofit entity that has offices on land owned by a municipality may restrict the licensed carrying of handguns on the property (RQ-0097-KP)

SUMMARY

Section 411.209 of the Government Code creates a civil penalty for a state agency or a political subdivision that provides notice that a license holder carrying a handgun is prohibited on property owned by the governmental entity unless carrying a handgun in such locations is expressly prohibited under the Penal Code. Section 411.209 applies only to a state agency or political subdivision of the State and does not address whether a private entity, including an independent nonprofit entity, may provide notice to license holders that the carrying of handguns is prohibited in the private entity's offices. As long as the state agency or political subdivision leasing the property to the private entity has no control over the decision to post such notice, the state agency or political subdivision lessor would not be the entity responsible for the posting and would therefore not be subject to a civil penalty under section 411.209.

A court would likely conclude that a license holder who carries a handgun on property that is owned by a governmental entity but leased to a private entity and that is not a premises or other place from which the license holder is prohibited from carrying a handgun under sections 46.03 or 46.035 of the Penal Code is excepted from the offenses in subsections 30.06(a) and 30.07(a) of the Penal Code.

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

TRD-201604187

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: August 15, 2016

◆ ◆ ◆

Angel Banda
6th Grade



TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Ethics Advisory Opinion

EAO-540. Whether a political advertising disclosure statement is required to be included in political advertising broadcast by radio. **(AOR-613).**

SUMMARY

Based on section 26.1 of the Texas Ethics Commission's rules, political advertising that is broadcast by radio is not required to include a disclosure statement. Such a result is an unintended consequence of the rule, and the commission will amend rule 26.1 to clarify the manner in which a disclosure statement, when required by §255.001 of the Election Code, must appear in political advertising that is broadcast by radio.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Gov-

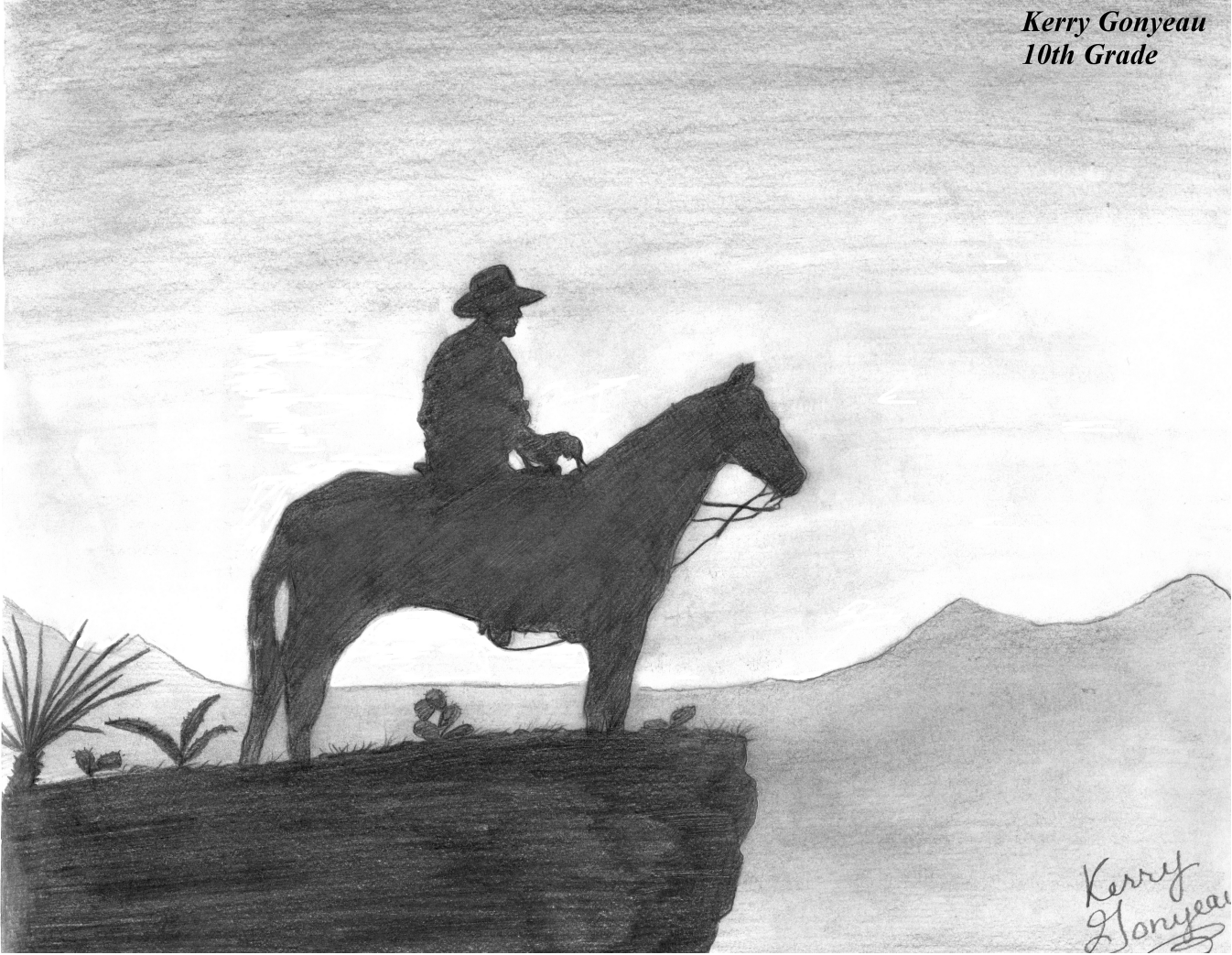
ernment Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

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

TRD-201604214
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: August 17, 2016



*Kerry Gonyeau
10th Grade*



*Kerry
Gonyeau*

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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B. ADVISORY COMMITTEES

DIVISION 2. OMBUDSMAN FOR CHILDREN AND YOUTH IN FOSTER CARE

1 TAC §§351.861, 351.863, 351.865, 351.867, 351.869, 351.871, 351.873, 351.875, 351.877, 351.879, 351.881, 351.883

The Texas Health and Human Services Commission (HHSC) proposes new rules in Subchapter B, new Division 2, Ombudsman for Children and Youth in Foster Care. Within the new division, HHSC proposes new §351.861, concerning Definitions; §351.863, concerning Creation of Program and Population Served; §351.865, concerning Contact Information; §351.867, concerning Confidentiality; §351.869, concerning Data and Reports; §351.871, concerning Contacts Outside FCO Scope and Referral to Other Offices; §351.873, concerning Telephone Communications; §351.875, concerning Allegations of Abuse or Neglect; §351.877, concerning Research Using DFPS Systems and Policies; §351.879, concerning Follow-up Communication with Youth; §351.881, concerning Substantiating and Closing Cases; and §351.883, concerning Retaliation.

BACKGROUND AND JUSTIFICATION

The Health and Human Services Commission (HHSC) proposes new rules in new Division 2, Subchapter B, of Chapter 351 of the Texas Administrative Code, Title 1.

In 2015, the Texas Legislature adopted S.B. 830, which, among other things, enacts Government Code Chapter 531, Subchapter Y, to create a new program for Ombudsman for Children and Youth in Foster Care, which is administratively attached to HHSC Office of Ombudsman.

The Office of Consumer Affairs (OCA), the ombudsman office for the Department of Family and Protective Services (DFPS), has been responsible for taking complaints and providing an independent investigation to ensure that policy and procedure is being followed. However, the Legislature concluded that the office is not independent in terms of budget, policy, or personnel, that it needs its authority and function strengthened, and that it

must ensure that youth in state custody are aware of the protections the office is intended to provide.

S.B. 830 creates the Ombudsman for Children and Youth in Foster Care under the purview of the Health and Human Services Commission. An ombudsman's office is responsible for protecting the rights of consumers and must be independent of the agency over which it has oversight in order to ensure that it can most effectively serve the children and adults who depend on its protections. The changes set out in S.B. 830 are intended to meet this goal.

S.B. 830 amends current law relating to the creation of an independent ombudsman for children and youth in foster care, which will reside with the HHSC Office of Ombudsman.

SECTION-BY-SECTION SUMMARY

New proposed §351.861, Definitions, clarifies words and terms used throughout the new division related to the new Ombudsman for Children and Youth program.

New proposed §351.863, concerning Creation of Program and Population Served, creates the program and provides that the Foster Care Ombudsman (FCO) assists children and youth in the conservatorship of DFPS with complaints regarding issues within the authority of DFPS and other HHS agencies.

New proposed §351.865, concerning Contact Information, sets out the contact information of the FCO to ensure that children and foster youth can contact the ombudsman's office, whether by telephone, fax, mail, or online submission.

New proposed §351.867, concerning Confidentiality, provides that the FCO will maintain the confidentiality of its communications and records involving children and foster youth, including records the FCO receives from others and provides that the disclosure of confidential information does not constitute a waiver of confidentiality.

New proposed §351.869, concerning Data and Reports, provides that the FCO will maintain records of all inquiries and complaints in the HHS Enterprise Administrative Report and Tracking System and that FCO staff will be granted access to any and all DFPS data and systems necessary to complete their investigations of DFPS cases; FCO is required to submit an annual report describing all FCO activities and a list of HHS agency changes made in response to substantiated complaints to the Executive Commissioner and DFPS by December 1st, which will be posted on the HHSC and DFPS websites.

New proposed §351.871, concerning Contacts Outside FCO Scope and Referral to Other Offices, provides the following:

- If someone other than a youth contacts FCO and wishes to provide information about a DSPS case, they will be transferred to DFPS's Office of Consumer Affairs;

- if youth contacts FCO with a complaint that does not allege a violation of an HHS policy or procedure, FCO staff will explain to the youth that it is outside the scope of FCO's ability to assist them and offer resources for working on the issue;
- if an adjudicated youth that is not in foster care contacts FCO, they will be referred to the Independent Ombudsman for the Texas Juvenile Justice System;
- if someone other than a youth contacts FCO seeking information about HHS programs, or indicating they wish to complain about an HHS program, they will be transferred to OO staff that handle complaints regarding those programs;
- any case that contain allegations of discrimination regarding the delivery of HHS services, including those concerning lack of access to benefits and services due to language or disability, will be forwarded to the Civil Rights Office; and
- any cases that contain allegations of fraud, waste, or abuse regarding HHS programs or services will be forwarded to the Office of the Inspector General.

New proposed §351.873, concerning Telephone Communications, provides that, when FCO staff receive a call, they will immediately begin entry of the case record and will explain FCO's process to the youth, including matters relating to confidentiality and follow-up communications; to overcome communications barriers, the Office of Ombudsman will use HHS Language Line Services when an interpreter is necessary to gather information.

New proposed §351.875, concerning Allegations of Abuse or Neglect, provides the following:

- calls that include information that give FCO staff reason to suspect abuse or neglect will be transferred to the Texas Abuse Hotline operated by DFPS Statewide Intake (SWI); FCO staff will assist the youth in making a report; online reports can be made when hold times warrant.
- in the case of written submissions that include information that give FCO reason to suspect abuse or neglect, FCO staff will attempt to communicate with the youth by phone; if FCO staff are not able to speak with the youth by phone within one business day, FCO staff will report the suspected abuse or neglect by calling SWI; online reports can be made when hold times warrant.

New proposed §351.877, concerning Research Using DFPS Systems and Policies, provides the following:

- FCO staff will review any and all available information about a foster care case through inquiry into DFPS systems, including IMPACT and CLASS;
- each case will be reviewed to determine if DFPS policy was followed. Applicable policies will include federal and state law, administrative rules, and program handbooks;
- if FCO staff discovers a violation of DFPS policy during the course of their research that was not outlined in the original submission from the youth, an additional complaint will be entered in the existing case record;
- if FCO staff determine a youth is adjudicated, they will note this in the case record and outreach to the Independent Ombudsman for the Texas Juvenile Justice System to determine if coordination would be helpful on the case;
- when FCO research of a case through available systems is not sufficient to make a finding on a complaint, FCO staff will request a response to the complaint from appropriate DFPS pro-

gram staff, if the youth has authorized discussion of their case with HHS staff.

New proposed §351.879, concerning Follow-up Communication with Youth, provides that FCO staff will follow-up with the youth within one business day of the date of receipt of the case, and then at least every five business days thereafter, until the case is Closed; all follow-up communication will be in a secure format, unless FCO has received the youth's written consent to provide case information in an unsecure format.

New proposed §351.881, concerning Substantiating and Closing Cases, provides that, once FCO staff have determined all pertinent information has been gathered and their investigation of a case is complete, they will enter a Resolution in the case record, choosing one of three options: Substantiate, Unable to Substantiate, or Unsubstantiated.

- For Substantiated complaints, FCO staff will also enter a Program Corrective Action based on the response provided by program staff.
- An FCO complaint cannot be Closed without a Resolution and Program Corrective Action. Additionally, the case record must document informing program staff and the youth of the Resolution.
- A written response to program staff will include additional recommended corrective actions, when applicable. Regardless of which HHS agency was the subject of the youth's complaint, DFPS will be provided a copy of the written response to program staff.
- A written response may be provided to the youth, if requested, and will include:
 - (1) a description of the steps taken to investigate the complaint;
 - (2) a general description of what FCO found as a result of their investigation;
 - (3) if a complaint is Substantiated, a description of the actions taken by the HHS agency in response to that finding; and
 - (4) if a complaint is not Substantiated, a description of additional steps the youth can take to have someone review their concern (e.g., speak to their court-appointed advocate or to the judge assigned to their case).

New proposed §351.883, concerning Retaliation, provides that, if FCO staff believe a youth has been retaliated against because of a complaint submitted to FCO, the FCO will Open a new complaint within the case record; FCO staff will collaborate with DFPS staff to identify consequences for any retaliatory action taken against a youth by any person in response to a complaint filed with FCO.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the proposed rules are in effect, there is no anticipated impact to costs and revenues to state or local governments.

Ms. Rymal has also determined that there are no probable economic costs to persons required to comply with the proposed rules.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of adoption of the proposed rules, because implementation activities are internal to HHSC.

HHSC has determined that the proposed rules will not affect a local economy. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT AND COST

Elisa Manor Hendricks, Director, HHSC Office of Ombudsman, has determined that for each year of the first five years the proposed rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit of enforcing the proposed rules will be ensuring that complaints and concerns made by children and youth in conservatorship of DFPS will be properly investigated and the youth protected.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Jimmy Charney, Office of Ombudsman, Health and Human Services Commission, P.O. Box 13247, Austin, Texas 78711-3247; or by e-mail to Jimmy.Charney@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

STATUTORY AUTHORITY

The new rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §40.0041, which directs the Executive Commissioner to adopt rules regarding the process whereby children and foster youth in the conservatorship of DFPS may file a complaint with the Ombudsman.

The proposed new rules affect Texas Human Resources Code Chapter 40 and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§351.861. Definitions.

(a) Department of Family and Protective Services (DFPS): the state agency established by Chapter 40 of the Human Resources code, and responsible for administration of Child Protective Services.

(b) DFPS Office of Consumer Affairs (OCA): a neutral party that reviews complaints regarding case-specific activities of DFPS program areas to determine if policies and procedures were followed in compliance with DFPS administrative rules at 40 TAC, Chapter 702, Subchapter I (relating to Ombudsman Services).

(c) Foster Care Ombudsman (FCO): the Ombudsman for Children and Youth in Foster Care.

(d) Office of the Ombudsman (OO): the office established by §531.0171 of the Government Code.

(e) Substantiated: a complaint where research clearly indicates agency policy was violated or agency expectations were not met.

(f) Unable to Substantiate: a complaint where research does not clearly indicate if agency policy was violated or agency expectations were met.

(g) Unsubstantiated: a complaint where research clearly indicates agency policy was not violated or agency expectations were met.

(h) Youth: children and youth in the conservatorship of DFPS.

§351.863. Creation of Program and Population Served.

(a) The Ombudsman for Children and Youth in Foster Care was created by Subchapter Y of Chapter 531 of the Government Code and is administratively attached to the Health and Human Services OO.

(b) The FCO serves as a neutral party in assisting children and youth in the conservatorship of DFPS with complaints regarding issues within the authority of DFPS or other HHS agencies.

(c) FCO is responsible for receiving and investigating inquiries and complaints from youth in the conservatorship of DFPS.

(d) FCO may refer youth to any HHS program or service that can assist with their inquiry. With permission from the youth, FCO may work with staff in any HHS program to resolve a complaint.

§351.865. Contact Information.

Youth may contact FCO through the following methods:

(1) Toll-free phone: 1-844-286-0769 (8 am to 5 pm, Monday through Friday)

(2) Toll-free fax: 1-888-780-8099

(3) Mail: Texas Health and Human Services Commission, Foster Care Ombudsman, MC H-700, P.O. Box 13247, Austin, Texas 78711-3247

(4) Online: <http://www.hhsc.state.tx.us/ombudsman>

§351.867. Confidentiality.

(a) FCO will maintain the confidentiality of its communications and records, including records FCO receives from others.

(b) The disclosure of confidential information to FCO does not constitute a waiver of confidentiality. Any information disclosed to FCO remains confidential and privileged following disclosure.

§351.869. Data and Reports.

(a) FCO maintains records of all inquiries and complaints in the HHS Enterprise Administrative Report and Tracking system. FCO case records are maintained separate from other OO case records.

(b) FCO staff will be granted access to any and all DFPS data and systems necessary to complete their investigations of DFPS cases, including but not limited to:

(1) Information Management Protecting Adults and Children in Texas (IMPACT); and

(2) Child Care Licensing Automated Support System (CLASS).

(c) FCO is required to submit an annual report to the Executive Commissioner and DFPS by December 1st, which will be posted on the HHSC and DFPS websites. The report must include the following:

(1) a description of FCO activities;

(2) a list of HHS agency changes made in response to substantiated complaints received;

(3) a description of trends in the nature of complaints received, recommendations to address them, and an evaluation of the feasibility of those recommendations;

(4) a glossary of terms;

(5) a description of methods used to promote awareness and the plan for the coming year; and

(6) any feedback from the public on the previous annual report.

§351.871. *Contacts Outside FCO Scope and Referral to Other Offices.*

(a) If someone other than a youth contacts FCO indicating they wish to provide information about a DFPS case, they will be given OCA's contact information and transferred to that office. If one of these contacts indicates they have already spoken to OCA and did not achieve a satisfactory resolution to a complaint, FCO will transfer them to OO staff that handle complaints regarding other HHS agencies.

(b) If a youth contacts FCO with a complaint that does not allege a violation of an HHS policy or procedure, FCO staff will explain to the youth that it is outside the scope of FCO's ability to assist them and offer resources for working on the issue.

(c) If an adjudicated youth that is not in foster care contacts FCO, they will be referred to the Independent Ombudsman for the Texas Juvenile Justice System.

(d) If someone other than a youth contacts FCO seeking information about HHS programs, or indicating they wish to complain about an HHS program, they will be transferred to OO staff that handle complaints regarding those programs.

(e) Case that contain allegations of discrimination regarding the delivery of HHS services, including those concerning lack of access to benefits and services due to language or disability, will be forwarded to the Civil Rights Office.

(f) Cases that contain allegations of fraud, waste, or abuse regarding HHS programs or services will be forwarded to the Office of the Inspector General.

§351.873. *Telephone Communications.*

(a) When a call is received by FCO staff, they will immediately begin entry of the case record and will explain FCO's process to the youth, including those relating to confidentiality and follow-up communications.

(b) To overcome communication barriers, OO will use HHS Language Line Services when an interpreter is necessary to gather information.

§351.875. *Allegations of Abuse or Neglect.*

(a) Calls that include information that give FCO staff reason to suspect abuse or neglect will be transferred to the Texas Abuse Hotline operated by DFPS Statewide Intake (SWI). FCO staff will assist the youth in making a report. Online reports can be made when hold times warrant.

(b) In the case of written submissions that include information that give FCO reason to suspect abuse or neglect, FCO staff will attempt to communicate with the youth by phone. If FCO staff are not able to speak with the youth by phone within one business day, FCO staff will report the suspected abuse or neglect by calling SWI. Online reports can be made when hold times warrant.

§351.877. *Research Using DFPS Systems and Policies.*

(a) FCO staff will review any and all available information about a foster care case through inquiry into DFPS systems, including IMPACT and CLASS.

(b) Each case will be reviewed to determine if DFPS policy was followed. Applicable policies will include federal and state law, administrative rules, and program handbooks.

(c) If FCO staff discovers a violation of DFPS policy during the course of their research that was not outlined in the original submission from the youth, an additional complaint will be entered in the existing case record.

(d) If FCO staff determine a youth is adjudicated, they will note this in the case record and outreach to the Independent Ombudsman for the Texas Juvenile Justice System to determine if coordination would be helpful on the case.

(e) When FCO research of a case through available systems is not sufficient to make a finding on a complaint, FCO staff will request a response to the complaint from appropriate DFPS program staff, if the youth has authorized discussion of their case with HHS staff.

§351.879. *Follow-up Communication with Youth.*

(a) FCO staff will follow-up with the youth within one business day of the date of receipt of the case, and then at least every five business days thereafter, until the case is Closed.

(b) All follow-up communication will be in a secure format, unless FCO has received the youth's written consent to provide case information in an unsecure format.

§351.881. *Substantiating and Closing Cases.*

(a) Once FCO staff have determined all pertinent information has been gathered and their investigation of a case is complete, they will enter a Resolution in the case record, choosing one of three options: Substantiated, Unable to Substantiate, or Unsubstantiated.

(b) For Substantiated complaints, FCO staff will also enter a Program Corrective Action based on the response provided by program staff.

(c) An FCO complaint cannot be Closed without a Resolution and Program Corrective Action. Additionally, the case record must document informing program staff and the youth of the Resolution.

(d) A written response to program staff will include additional recommended corrective actions, when applicable. Regardless of which HHS agency was the subject of the youth's complaint, DFPS will be provided a copy of the written response to program staff.

(e) A written response may be provided to the youth, if requested, and will include:

(1) a description of the steps taken to investigate the complaint;

(2) a general description of what FCO found as a result of their investigation;

(3) if a complaint is Substantiated, a description of the actions taken by the HHS agency in response to that finding; and

(4) if a complaint is not Substantiated, a description of additional steps the youth can take to have someone review their concern (e.g., speak to their court-appointed advocate or to the judge assigned to their case).

§351.883. *Retaliation.*

(a) If FCO staff believe a youth has been retaliated against because of a complaint submitted to FCO, the FCO will Open a new complaint within the case record.

(b) FCO staff will collaborate with DFPS staff to identify consequences for any retaliatory action taken against a youth by any person in response to a complaint filed with FCO.

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 11, 2016.

TRD-201604033

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 25, 2016

For further information, please call: (512) 424-6900



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 7. LOCAL RECORDS

SUBCHAPTER D. RECORDS RETENTION SCHEDULES

13 TAC §7.125

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 13 TAC §7.125(a)(5) is not included in the print version of the Texas Register. The figure is available in the html version of the August 26, 2016, issue of the Texas Register online.)

The Texas State Library and Archives Commission proposes to amend 13 TAC §7.125(a)(5), regarding local government retention schedule for Records of Public Safety Agencies (Schedule PS) pursuant to the Government Code §441.158(a). The amendment proposes revisions necessary to keep the schedule up-to-date with current laws, administrative rules, and improve retention of public records.

Craig Kelso, Director, State & Local Records Management Division, has determined that for each year of the first five years the amendment is in effect, there may be fiscal implications for state or local governments as a result of administering or enforcing the amendment. Because of the many variables in many local governments, it is not possible to estimate the total fiscal impact of this proposal. Mr. Kelso does not anticipate either a loss of, or an increase in, revenue to state or local governments as a result of the proposed amendment.

Mr. Kelso has also determined that for each year of the first five years the amendment is in effect the public benefit will be that the amended schedules will help to provide better management of records by improving retention of public records and will increase access to those records by the public.

There will be no impact on small businesses, micro-businesses, or individuals as a result of enforcing the amendment as proposed.

Written comments on the proposed rule may be submitted to Sarah Jacobson, Manager, Records Management Assistance, Box 12927, Austin, Texas 78711; by fax to (512) 936-2306; or by email to sjacobson@tsl.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amended section is proposed under Government Code §441.158 that grants authority to the Texas State Library and Archives Commission to provide records retention schedules to local governments and §441.160 that allows the commission to revise the schedules.

The proposed section affects Government Code §441.158 and §441.160.

§7.125. *Records Retention Schedules.*

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

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

(5) Local Schedule PS: Records of Public Safety Agencies, 4th [3rd] Edition.

Figure: 13 TAC §7.125(a)(5)

(6) - (12) (No change.)

(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.

Filed with the Office of the Secretary of State on August 12, 2016.

TRD-201604049

Sarah Jacobson

Manager, Records Management Assistance

Texas State Library and Archives Commission

Earliest possible date of adoption: September 25, 2016

For further information, please call: (512) 463-5449



TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.15

The Railroad Commission of Texas (Commission) proposes amendments to §3.15, relating to Surface Equipment Removal Requirements and Inactive Wells. The amendments are proposed to more accurately track when inactive wells have been returned to production, thereby reducing the administrative burden for those wells and associated costs to industry.

The Commission proposes to amend §3.15(a)(1) to modify the procedure used to determine when a well that has been designated as an "inactive well" under §3.15(a)(6) may be restored to "active operation" status. By rulemaking effective November 1, 2000, the Commission established minimum production levels for producing wells that must be met before an inactive well could

achieve active operation. To return to active operation, an oil well must produce at least 10 barrels of oil per month for three consecutive months, and a gas well must produce at least 100,000 cubic feet of gas per month for three consecutive months. The Commission proposes to amend those standards such that the Commission will deem an inactive oil well restored to active operation upon reporting actual oil production of either five barrels of oil per month for three consecutive months, or any amount of oil greater than zero for 12 consecutive months. Similarly, the Commission will deem an inactive gas well restored to active operation upon reporting actual gas production of either 50,000 cubic feet of gas per month for three consecutive months, or any amount of gas greater than zero for 12 consecutive months.

The Commission further proposes to amend §3.15(i) to delete paragraphs (5), (6) and (7). These paragraphs contain requirements applicable to the five-year phase-in of surface cleanup requirements pursuant to Texas Natural Resources Code §89.029(f). The five-year phase-in period ended on September 1, 2015; therefore, the Commission proposes these paragraphs be deleted from the rule.

Further, the Commission proposes additional non-substantive modifications and clarifications to conform the rule to current Commission practices.

Mr. Tim Poe, Assistant Director for Administrative Compliance, Oil & Gas Division, has determined that for each year of the first five years the amendments will be in effect there will be fiscal implications to the Commission as a result of the amendments. There will be no fiscal effect on local government. Between June 1, 2015 and June 1, 2016, the Commission received \$80,250 in rule exception fees associated with 214 filings of Form W-3C, Certification of Surface Equipment Removal for an Inactive Well. Fees from this source are deposited into the Oil & Gas Regulation and Cleanup ("OGRC") Fund. Staff estimates that approximately 50% of these fees are associated with wells that would no longer be considered "inactive" under the proposed amendments. Accordingly, OGRC revenue would decrease approximately \$40,125 per year.

Relatedly, the decrease in Form W-3C filings for exception requests will also lessen the processing burden on Commission staff. Each Form W-3C filing seeking an exception to the surface cleanup requirements passes through multiple departments of the Commission. Assuming a reduction in filing of approximately 50%, the decrease in staff time would represent a savings of approximately \$1,070 per year.

Additionally, the proposed amendments would result in a one-time cost to the Commission associated with minor ITS modifications to enable the Commission's data processing systems to recognize a return to active operation based on the proposed criteria. Staff estimates the total cost of ITS modifications to be \$2,200.

Mr. Poe has determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be efficient use of Commission resources due to more accurate classification of inactive and active wells.

Mr. Poe has also determined that there is no economic cost for persons required to comply with the proposed amendments. Industry will, however, benefit from the amended requirements through an estimated savings of \$40,125 per year from exception filing fees no longer paid to the Commission. Industry will also benefit because the amended definition of "active operation" will

reduce the amount of marginal producing wells that must comply with inactive well requirements. Commission records indicate that there are 4,455 wells that are flagged "inactive" but that the operator reports are in production. Assuming 50% of these wells will meet one of the two criteria for returning to active operation, and assuming a cost of \$100 that these wells would otherwise bear to comply with the Commission's inactive well requirements, the amendments will result in approximately \$222,750 in savings per year to industry in reduced compliance costs.

The Commission has determined that the proposed amendments to §3.15 will not have an adverse economic effect on small businesses or micro-businesses. As noted above, there is no anticipated additional cost for any person required to comply with the proposed amendments. Therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility analysis pursuant to Texas Government Code §2006.002.

The Commission has also determined that the proposed amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

Comments on the proposed amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/legal/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until noon (12:00 p.m.) on Monday, September 26, 2016, which is 31 days after publication in the *Texas Register*. Comments should refer to O&G Docket No. 20-031256. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's web site more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mysti Doshier, P-5 Financial Assurance Unit Manager, Oil & Gas Division, at (512) 463-6743. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/legal/rules/proposed-rules.

The Commission proposes these amendments under Texas Natural Resources Code, §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under Commission jurisdiction; Texas Natural Resources Code §§85.042, 85.202, 86.041 and 86.042, which require the Commission to adopt rules to control waste of oil and gas; and Texas Natural Resources Code, §89.023, which authorizes the Commission to adopt rules relating to the definition of active operation.

Texas Natural Resources Code, §§81.051, 81.052, 85.042, 85.202, 86.041, 86.042, and 89.023 are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code §§81.051, 81.052, 85.042, 85.202, 86.041, 86.042, and 89.023.

Cross-reference to statute: Texas Natural Resources Code, Chapters 81, 85, 86, and 89.

Issued in Austin, Texas, on August 9, 2016.

§3.15. *Surface Equipment Removal Requirements and Inactive Wells.*

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

(1) Active operation--Regular and continuing activities related to the production of oil and gas for which the operator has all necessary permits. In the case of a well that has been inactive for 12 consecutive months or longer and that is not permitted as a disposal or injection well, the well remains inactive for purposes of this section, regardless of any minimal activity, until the well has any reported production in each month for 12 consecutive months or reported production of at least five [10] barrels of oil for oil wells or 50 [100] mcf of gas for gas wells each month for at least three consecutive months.

(2) Cost calculation for plugging an inactive well--The cost, calculated by the Commission or its delegate, for each foot of well depth plugged based on average actual plugging costs for wells plugged by the Commission for the preceding state fiscal year for the Commission Oil and Gas Division district in which the inactive well is located.

(3) Delinquent inactive well--An inactive well for which, after notice and opportunity for a hearing, the Commission or its delegate has not extended the plugging deadline.

(4) Enhanced oil recovery (EOR) project--A project that does not include a water disposal project and is:

(A) a Commission-approved EOR project that uses any process for the displacement of oil or other hydrocarbons from a reservoir other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process;

(B) a certified project described by Texas Tax Code, §202.054; or

(C) any other project approved by the Commission or its delegate for EOR.

(5) Good faith claim--A factually supported claim based on a recognized legal theory to a continuing possessory right in a mineral estate, such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.

(6) Inactive well--An unplugged well that has been spudded or has been equipped with cemented casing and that has had no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months.

(7) Physical termination of electric service to the well's production site--Disconnection of the electric service to an inactive well site at a point on the electric service lines most distant from the production site toward the main supply line in a manner that will not interfere with electrical supply to adjacent operations, including cathodic protection units.

(8) Operator designation form--A certificate of compliance and transportation authority or an application to drill, recomplete, and reenter that has been approved by the Commission or its delegate.

(b) Plugging of inactive bay and offshore wells required.

(1) An operator of an existing inactive bay or offshore well as defined in §3.78 of this title (relating to Fees and Financial Security Requirements) must:

(A) restore the well to active operation [status] as defined by Commission rule;

(B) plug the well in compliance with a Commission rule or order; or

(C) obtain the approval of the Commission or its delegate of an extension of the deadline for plugging an inactive bay or offshore well.

(2) The Commission or its delegate may not approve an extension of the deadline for plugging an inactive bay or offshore well if the plugging of the well is otherwise required by Commission rules or orders.

(c) Extension of deadline for plugging an inactive bay or offshore well. The Commission or its delegate may administratively grant an extension of the deadline for plugging an inactive bay or offshore well as defined by Commission rules if:

(1) the operator has a current organization report;

(2) the operator has, and on request provides, evidence of a good faith claim to a continuing right to operate the well;

(3) the well and associated facilities are otherwise in compliance with all Commission rules and orders; and

(4) for a well more than 25 years old, the operator successfully conducts and the Commission or its delegate approves a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil, and gas.

(d) Plugging of inactive land wells required.

(1) An operator that assumes responsibility for the physical operation and control of an existing inactive land well must maintain the well and all associated facilities in compliance with all applicable Commission rules and orders and within six months after the date the Commission or its delegate approves an operator designation form must either:

(A) restore the well to active operation [status] as defined by Commission rule;

(B) plug the well in compliance with a Commission rule or order; or

(C) obtain approval of the Commission or its delegate of an extension of the deadline for plugging an inactive well.

(2) The Commission or its delegate may not approve an extension of the deadline for plugging an inactive land well if the plugging of the well is otherwise required by Commission rules or orders.

(3) Except for an operator designation form filed for the purpose of a name change, the Commission or its delegate may not approve an operator designation form for an inactive land well [~~submitted within the six-month compliance period of paragraph (1) of this subsection~~] until the operator satisfies the requirements of paragraph (1)(C) of this subsection.

(4) If an operator fails to restore the well to active operation [status] as defined by Commission rule, plug the well in compliance with a Commission rule or order, or obtain an extension of the deadline for plugging an inactive well within six months after acquiring an inactive well, the Commission or its delegate may, after notice and opportunity for hearing, revoke the operator's organization report.

(5) The Commission or its delegate may approve an organization report that is delinquent or has been revoked if the Commission or its delegate simultaneously approves extensions of the deadline for plugging the operator's inactive wells.

(e) Extension of deadline for plugging an inactive land well. The Commission or its delegate may administratively grant an extension of the deadline for plugging an inactive land well if:

(1) the Commission or its delegate approves the operator's Application for an Extension of Deadline for Plugging an Inactive Well (Commission Form W-3X);

(2) the operator has a current organization report;

(3) the operator has, and on request provides evidence of, a good faith claim to a continuing right to operate the well;

(4) the well and associated facilities are otherwise in compliance with all Commission rules and orders; and

(5) for a well more than 25 years old, the operator successfully conducts and the Commission or its delegate approves a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil, and gas.

(f) Application for an extension of deadline for plugging an inactive land well.

(1) This subsection does not apply to a bay well or an offshore well as those terms are defined in §3.78 of this title.

(2) An operator must include the following in an application for an extension of the deadline for plugging an inactive well:

(A) an affirmation made by an individual with personal knowledge of the physical condition of the inactive well pursuant to the provisions of Texas Natural Resources Code, §91.143, stating the following: that the operator has physically terminated electric service to the well's production site; and either:

(i) if the operator does not own the surface of the land where the well is located and the well has been inactive for at least five years but for less than 10 years as of the date of renewal of the operator's organization report, that the operator has emptied or purged of production fluids all piping, tanks, vessels, and equipment associated with and exclusive to the well; or

(ii) if the operator does not own the surface of the land where the well is located, and the well has been inactive for at least 10 years as of the date of renewal of the operator's organization report, that the operator has removed all surface equipment and related piping, tanks, tank batteries, pump jacks, headers, fences, and firewalls; has closed all open pits; and has removed all junk and trash, as defined by Commission rule, associated with and exclusive to the well; and

(B) documentation that the operator has satisfied at least one of the following requirements:

(i) for all inactive land wells that an operator has operated for more than 12 months, the operator has plugged or restored to active operation, as defined by Commission rule, 10% of the number of inactive land wells operated at the time of the last annual renewal of the operator's organization report;

(ii) if the operator is a publicly traded entity, for all inactive land wells, the operator has filed with the Commission a copy of the operator's federal documents filed to comply with Financial Accounting Standards Board Statement No. 143, Accounting for Asset Retirement Obligations, and an original executed Uniform Commercial Code Form 1 Financing Statement, filed with the Secretary of State,

that names the operator as the "debtor" and the Railroad Commission of Texas as the "secured creditor" and specifies the funds covered by the documents in the amount of the cost calculation for plugging all inactive wells;

(iii) the filing of a blanket bond on Commission Form P-5PB(2), Blanket Performance Bond, a letter of credit on Commission Form P-5LC, Irrevocable Documentary Blanket Letter of Credit, or a cash deposit, in the amount of either the lesser of the cost calculation for plugging all inactive wells or \$2 million;

(iv) for each inactive land well identified in the application, the Commission has approved an abeyance of plugging report and the operator has paid the required filing fee;

(v) for each inactive land well identified in the application, the operator has filed a statement that the well is part of a Commission-approved EOR project;

(vi) for each inactive land well identified in the application that is not otherwise required by Commission rule or order to conduct a fluid level or hydraulic pressure test of the well, the operator has conducted a successful fluid level test or hydraulic pressure test of the well and the operator has paid the required filing fee;

(vii) for each inactive land well identified in the application, the operator has filed Commission Form W-3X and the Commission or its delegate has approved a supplemental bond, letter of credit, or cash deposit in an amount at least equal to the cost calculation for plugging an inactive land well for each well specified in the application; or

(viii) for each time an operator files an application for a plugging extension and for each inactive land well identified in the application, the operator has filed Commission Form W-3X [W3-X] and the Commission or its delegate has approved an escrow fund deposit in an amount at least equal to 10% of the total cost calculation for plugging an inactive land well.

(g) Commission action on application for plugging extension.

(1) The Commission or its delegate shall administratively grant all applications for plugging extensions that meet the requirements of Commission rules.

(2) The Commission or its delegate may administratively deny an application for a plugging extension for an inactive well if the Commission or its delegate determines that:

(A) the applicant does not have an active organization report at the time the plugging extension application is filed;

(B) the applicant has not submitted all required filing fees and financial assurance for the requested plugging extension and for renewal of its organization report; or

(C) the applicant has not submitted a signed organization report for the applied-for extension year that qualifies for approval regardless of whether the applicant has complied with the inactive well requirements of this section.

(3) Except as provided in paragraph (2) of this subsection, if the Commission or its delegate determines that an organization report should be denied renewal solely because it does not meet the inactive well requirements of this section, a Commission delegate shall, within a reasonable time of not more than 14 days after receipt of the applicant's administratively complete organization report renewal packet, including all statutorily required fees and financial assurance:

(A) notify the operator of the determination;

(B) provide the operator with a written statement of the reasons for the determination; and

(C) notify the operator that it has 90 days from the expiration of its most recently approved organization report to comply with the requirements of this section.

(4) If, after the expiration of the 90-day period specified in paragraph (3)(C) of this subsection, the Commission or its delegate determines that the operator remains out of compliance with the requirements of this section, the Commission delegate shall mail the operator a [second] written notice of this determination. The operator may request a hearing. [The operator must file a written request for hearing and the hearing fee of \$4,500 with the Office of General Counsel, Hearings Section, Docket Services, no later than 30 days from the date the second written notice was mailed to the operator. In the request for hearing, the operator must identify by its assigned American Petroleum Institute (API) number each inactive well for which the operator is seeking a hearing to contest the determination that the well remains out of compliance.] If the operator fails to timely file a request for hearing and the required hearing fee, the Commission shall enter an order denying the plugging extension request and denying renewal of the operator's organization report without further notice or opportunity for hearing.

(5) To request a hearing, the operator must file a written request for hearing and the hearing fee of \$4,500 with the Hearings Division, no later than 30 days from the date the written notice was mailed to the operator. In the request for hearing, the operator must identify by its assigned American Petroleum Institute (API) number each inactive well for which the operator is seeking a hearing to contest the determination that the well remains out of compliance. At the time an operator files a request for hearing under this subsection, the operator shall provide a list of affected persons to be given notice of the hearing. Affected persons shall include the owners of the surface estate of each tract on which a well that is the subject of the hearing request is located, the director of the Commission's Enforcement Section, and the district director of each Commission district in which the wells are located. The applicant's failure to diligently prosecute a hearing requested under this subsection may result in the application being involuntarily dismissed for want of prosecution on the motion of any affected person or on the Commission's own motion.

(6) If an operator files a timely plugging extension application that is not properly administratively denied for the reasons specified in paragraph (2) of this subsection, then the operator's previously approved organization report shall remain in effect until the Commission approves its plugging extension application or enters a final order denying the application.

(h) Revocation of extension. The Commission or its delegate may revoke an extension of the deadline for plugging an inactive well if the Commission or its delegate determines, after notice and an opportunity for a hearing, that the applicant is ineligible for the extension under the Commission's rules or orders.

(i) Removal of surface equipment for land wells inactive more than 10 years. Requirements to remove surface equipment for land wells inactive more than 10 years do not excuse an operator from compliance with all other applicable Commission rules and orders including the requirements in Chapter 4 of this title (relating to Environmental Protection).

(1) An operator of an inactive land well must leave a clearly visible sign as required by §3.3 of this title (relating to Identification of Properties, Wells, and Tanks) at the wellhead of the well and must maintain wellhead control as required by §3.13 of this title (relating to Casing, Cementing, Drilling, and Completion Requirements).

(2) An operator may not store surface equipment removed from an inactive land well on an active lease.

(3) An operator may be eligible for a temporary extension of the deadline for plugging an inactive land well or a temporary exemption from the surface equipment removal requirements if the operator is unable to comply with the requirements of subsection (f)(2)(A) of this section because of safety concerns or required maintenance of the well site and the operator includes with the application a written affirmation of the facts regarding the safety concerns or maintenance.

(4) An operator may be eligible for an extension of the deadline for plugging a well without complying with the surface equipment removal requirements for inactive land wells if the well is located on a unit or lease or in a field associated with an EOR project and the operator includes a statement in the written affirmation that the well is part of such a project. The exemption provided by this subsection applies only to the equipment associated with current and future operations of the project.

~~{(5) For land wells that have been inactive for more than 10 years as of September 1, 2010, an operator must file documentation with its annual organization report filing to demonstrate that the operator has restored these wells to active operation; plugged and removed the surface equipment from these wells; or removed the surface equipment and obtained a plugging extension for these wells under the following schedule:}~~

~~{(A) at least 20% of the wells by the first renewal of the operator's organization report after September 1, 2011;}~~

~~{(B) at least 40% of the wells by the first renewal of the operator's organization report after September 1, 2012;}~~

~~{(C) at least 60% of the wells by the first renewal of the operator's organization report after September 1, 2013;}~~

~~{(D) at least 80% of the wells by the first renewal of the operator's organization report after September 1, 2014; and}~~

~~{(E) any wells remaining by the first renewal of the operator's organization report after September 1, 2015.}~~

~~{(6) Upon the transfer of a land well that has been inactive for more than 10 years as of September 1, 2010, to a new operator, the new operator must bring the well into compliance with the requirement to remove surface equipment not later than six months after the date the Commission or its delegate approves the Commission Form P-4 under which the new operator assumes responsibility for the well. The removal of surface equipment by a new operator after a transfer does not count toward the fulfillment of the requirements of paragraph (5) of this subsection for either operator.}~~

~~{(7) The operator of a land well that becomes inactive for more than 10 years after September 1, 2010, must bring the well into compliance with the requirement to remove surface equipment prior to the next renewal of the operator's annual organization report. The removal of surface equipment from such a well does not count toward the fulfillment of the requirements of paragraph (5) of this subsection.}~~

(j) Abeyance of plugging report.

(1) An operator that files an abeyance of plugging report must:

(A) pay an annual fee of \$100 for each inactive land well covered by the report;

(B) use Commission Form W-3X on which the operator must specify the field and the covered wells within that field; and

(C) for each well, include a certification signed and sealed by a person licensed by the Texas Board of Professional Engineers or the Texas Board of Professional Geoscientists stating that the well has:

(i) a reasonable expectation of economic value in excess of the cost of plugging the well for the duration of the period covered by the report, based on the cost calculation for plugging an inactive well;

(ii) a reasonable expectation of being restored to a beneficial use that will prevent waste of oil or gas resources that otherwise would not be produced if the well were plugged; and

(iii) documentation demonstrating the basis for the affirmation of the well's future utility.

(2) Except as provided in paragraph (3) of this subsection, the Commission or its delegate may not transfer an abeyance of plugging report to a new operator of an existing inactive land well. The new operator of an existing inactive land well must file a new abeyance of plugging report or otherwise comply with the requirements of this subchapter not later than six months after the date the Commission or its delegate approves the new operator's request to be recognized as the operator of the well.

(3) The Commission or its delegate may transfer an abeyance of plugging report in the event of a change of name of an operator.

(k) Enhanced oil recovery (EOR) project.

(1) An inactive well is considered to be part of an EOR project if the well is located on a unit or lease or in a field associated with a Commission-approved EOR project.

(2) Except as provided in paragraph (3) of this subsection, the Commission and its delegate may not transfer a statement that an inactive well is part of an EOR project to a new operator of an existing inactive well. A new operator of an existing inactive well must file a new statement stating that the well is part of such an EOR project or otherwise comply with the provisions of this section not later than six months after the date the Commission or its delegate approves the new operator's request to be recognized as the operator of the well.

(3) The Commission or its delegate may transfer a statement that a well is part of an EOR project in the event of a change of name of an operator.

(l) Fluid level or hydraulic pressure test for inactive wells more than 25 years old.

(1) At least three days prior to the test, the operator must give the district office notice of the date and approximate time the operator intends to conduct a fluid level or hydraulic pressure test. The district office may require that a test be witnessed by a Commission employee. The district office may allow an operator to conduct a test even if notice of the test is provided to the district office fewer than three days prior to the test.

(2) No operator may conduct a test other than a fluid level or hydraulic pressure test without prior approval from the district director or the director's delegate.

(3) For each inactive well that is more than 25 years old and that has been inactive more than 10 years, the operator must perform either a fluid level test once every 12 months or a hydraulic pressure test once every five years and obtain the approval of the Commission or its delegate of the results of said tests.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, an operator may conduct a hydraulic pressure test without prior approval from the district director or the director's delegate, provided that the operator gives the district office written notice of the date and approximate time for the test at least three days prior to the time the test will be conducted; the production casing is tested to a depth of at least 250 feet below the base of usable quality water strata or 100 feet below the top of cement behind the production casing, whichever is deeper; and the minimum test pressure is greater than or equal to 250 psig for a period of at least 30 minutes.

(5) Using Commission Form H-15, each operator must file in the Commission's Austin office the results of a successful fluid level test within 30 days of the date the test was performed. The results, if approved, are valid for a period of one year from the date of the test. Upon request by the Commission or its delegate, the operator must file the actual test data.

(6) Using Commission Form H-5 or Form H-15, each operator must file in the district office the results of a successful hydraulic pressure test, including the original pressure recording chart or its electronic equivalent, within 30 days of the date the test was performed. The results, if approved, are valid for a period of five years from the date of the test, unless the Commission or its delegate requires the operator to perform testing more frequently to ensure that the well does not pose a threat of harm to natural resources.

(7) An operator of an inactive well that is more than 25 years old may not return that inactive well to active operation unless the operator performs either a successful fluid level test of the well within 12 months prior to the return to activity or a successful hydraulic pressure test of the well within five years prior to the return to activity.

(m) Fluid level or hydraulic pressure test for inactive land well less than 25 years old.

(1) At least three days prior to the test, each operator must give the district office notice of the date and approximate time the operator intends to conduct a fluid level or hydraulic pressure test. The district office may require that a test be witnessed by a Commission employee. The district office may allow an operator to conduct a test even if notice of the test is provided to the district office fewer than three days prior to the test.

(2) No operator may conduct a test other than a fluid level or hydraulic pressure test without prior approval from the district director or the director's delegate.

(3) Notwithstanding the provisions of paragraph (1) of this subsection, an operator may conduct a hydraulic pressure test without prior approval from the district director or the director's delegate, provided that the operator gives the district office written notice of the date and approximate time for the test at least three days prior to the time the test will be conducted; the production casing is tested to a depth of at least 250 feet below the base of usable quality water strata or 100 feet below the top of cement behind the production casing, whichever is deeper; and the minimum test pressure is greater than or equal to 250 psig for a period of at least 30 minutes.

(4) An operator that files documentation of a fluid level test or a hydraulic pressure test for an inactive land well less than 25 years old in order to obtain a plugging extension must pay an annual fee of \$50 for each well covered by the documentation.

(5) Using Commission Form H-15, each operator must file in the Commission's Austin office the results of a successful fluid level test within 30 days of the date the test was performed. The results, if approved, are valid for a period of one year from the date of the test.

Upon request by the Commission or its delegate, the operator must file the actual test data.

(6) Using Commission Form H-5 or Form H-15, each operator must file in the district office the results of a successful hydraulic pressure test, including the original pressure recording chart or its electronic equivalent, within 30 days of the date the test was performed. The results, if approved, are valid for a period of five years from the date of the test, unless the Commission or its delegate requires the operator to perform testing more frequently to ensure that the well does not pose a threat of harm to natural resources.

(7) The Commission or its delegate may transfer documentation of the results of a fluid level or hydraulic pressure test to a new operator of an existing inactive land well that is less than 25 years old.

(n) Supplemental financial assurance.

(1) A supplemental bond, letter of credit, or cash deposit filed as part of an application for an extension for an inactive land well in addition to any other financial assurance otherwise required of the operator or for the well.

(2) The Commission or its delegate may not transfer a supplemental bond, letter of credit, or cash deposit to a new operator of an existing inactive land well. A new operator of an existing inactive land well must file a new supplemental bond, letter of credit, or cash deposit or otherwise comply with the provisions of this section not later than six months after the date the Commission or its delegate approves an operator designation form.

(o) Escrow funds.

(1) An operator must deposit escrow funds with the Commission each time the operator files an application for an extension of the deadline for plugging an inactive well.

(2) The Commission or its delegate may release escrow funds deposited with the Commission only as prescribed by §3.78 of this title.

(p) Plugging more than 10% of inactive well inventory. If an operator plugs more than 10% of the number of inactive land wells during a 12-month organization report cycle, the Commission will count the number of plugged wells above 10% toward fulfillment of the 10% blanket option under subsection (f)(2)(B)(i) of this section during the next organization report cycle.

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 9, 2016.

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Haley Cochran

Rules Attorney, Office of General Counsel

Railroad Commission of Texas

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For further information, please call: (512) 475-1295



PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS

SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS

DIVISION 3. PROGRAMS FOR GREYHOUNDS

16 TAC §303.102

The Texas Racing Commission proposes an amendment to 16 TAC §303.102, concerning Greyhound Rules. The section relates to the procedures governing the Accredited Texas-Bred program for greyhounds. The proposal would amend the rule to address the change from year-round live racing to the new seasonal racing model. Under the previous system, Texas-bred funds were accumulated monthly and disbursed to the owners of Texas-bred greyhounds that won races in that month. Under the new model, Texas-bred funds will accumulate for most of the year before there is a short greyhound meet during which to disburse the funds. The amendments ensure that the accumulated funds are distributed equitably by (1) modifying payouts of owner awards for Texas-bred greyhounds to provide for such awards for the first four Texas-bred greyhounds in each race, instead of only the winner, and (2) distributing Texas-bred funds that accumulate during the intervening months proportionately according to the number of performances proposed for each month of the live meet.

Chuck Trout, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for local or state government as a result of enforcing the amended rule.

Mr. Trout has determined that for each year of the first five years that the amended rule is in effect the anticipated public benefit will be to enhance greyhound breeding in Texas by ensuring that Accredited Texas Bred funds are fairly distributed to the owners of successful Texas-bred greyhounds.

The amendment will have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

The amendment will have a positive effect on the state's greyhound breeding and greyhound training industries by ensuring that the benefits of the Accredited Texas Bred program are fairly distributed.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules to administer the Act, and §6.091, which requires the Commission to establish rules for the distribution of Texas-bred program funds.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

§303.102. *Greyhound Rules.*

(a) (No change.)

(b) Owners' Awards.

(1) The owner of a registered Texas-bred greyhound is eligible to receive an owner's award if the greyhound is among the first four Texas-bred greyhounds to finish a pari-mutuel race in Texas [that wins a pari-mutuel race in Texas is eligible to receive an owner's award]. For purposes of this subdivision, each elimination and final in a stakes race competition is considered a pari-mutuel race. A dead heat for any [the win] position is considered a placement in that position [win] for each greyhound involved in the dead heat.

(2) TGA will pay owners' awards no later than the last business day of each month for the previous month's awards. TGA will issue the check for each award to the person in whose name the Texas-bred greyhound is registered.

(3) Determination of Available Award Funds. Available owners' awards for each month are composed of the sum of the following two amounts:

(A) the total amount of money received from the Commission for the Texas Bred Incentive Program for the period between the dates that the last Texas greyhound meet ended and the current Texas greyhound meet began, minus the statutorily permitted amount for administrative expenses, multiplied by the ratio of the live pari-mutuel races proposed for the month to the number of live pari-mutuel races proposed in the current greyhound meet; and

(B) [To determine the amount of each award,] the total amount of money received from the Commission for the Texas Bred Incentive Program during the current greyhound meet for the [preceeding] month, minus the statutorily permitted amount for administrative expenses[, shall be divided by the number of pari-mutuel races won by registered Texas-bred greyhounds during the preceeding month, plus five. The result is the amount of owner's award to be paid for each registered Texas-bred greyhound that won a pari-mutuel race in Texas during the preceeding month].

(4) Owners' awards for each live race during a month shall be paid out as follows:

(A) First Texas-bred greyhound - each Texas-bred greyhound finish for first among Texas-bred greyhounds that compete in a Texas pari-mutuel race shall receive an equal share of 50% of the award funds available under paragraph (3) of this subsection.

(B) Second Texas-bred greyhound - each Texas-bred greyhound finish for second among Texas-bred greyhounds that compete in a Texas pari-mutuel race shall receive an equal share of 25% of the award funds available under paragraph (3) of this subsection.

(C) Third Texas-bred greyhound - each Texas-bred greyhound finish for third among Texas-bred greyhounds that compete in a Texas pari-mutuel race shall receive an equal share of 15% of the award funds available under paragraph (3) of this subsection.

(D) Fourth Texas-bred greyhound - each Texas-bred greyhound finish for fourth among Texas-bred greyhounds that compete in a Texas pari-mutuel race shall receive an equal share of 10% of the award funds available under paragraph (3) of this subsection.

(5) [3] TGA shall make a reasonable effort to deliver all owners' awards. If after 12 months after issuing a check for an owner's award TGA is unsuccessful in delivering the check to the proper person, TGA shall void the check and add the unclaimed amount to the total amount to be distributed as owners' awards for the next greyhound meet. [month.]

(6) [(4)] Each month, one [five] owner's award share under each subparagraph listed under paragraph (4) of this subsection [shares]

will be retained to cover errors that may be made by TGA. A person who believes he or she is entitled to an owner's award must file a claim with TGA no later than 90 days after the end of the month during which the race on which the claim is based was conducted. On receipt of a claim for an owner's award, TGA shall determine whether the claim is valid. If the claim is valid, TGA shall immediately pay the owner's award. After the deadline for filing a claim, TGA shall add the remaining retained owner's award shares to the total amount to be distributed in the next greyhound meet. [month.] If more than one [five] valid claim is [claims are] filed, TGA shall pay the second [sixth] and subsequent claims from the owner's award shares retained from the next and subsequent months until all valid claims are paid.

(7) At the conclusion of the current greyhound meet and after the TGA has distributed all owners' awards under this subsection, the TGA shall add any remaining Accredited Texas Bred Funds to the total amount to be distributed as owners' awards at the next greyhound meet.

(8) [(5)] An owner's award may not be paid for a greyhound that is disqualified from a race due to a positive drug test. On notice to TGA that a race's results are affected by a positive drug test, TGA shall retain any owner's award due to the affected [winning] greyhound until the Commission's disciplinary proceedings regarding the positive drug test are final and unappealable. If the greyhound's disqualification is overturned, the TGA shall pay the retained owner's award within 30 days of receiving notice of the final disposition of the proceeding. If the greyhound's disqualification is upheld, the amount of the retained owner's award shall be added to the total amount to be distributed as owners' awards for the next greyhound meet [month] after the month in which TGA is notified of the final disposition of the proceeding.

(c) - (d) (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.

Filed with the Office of the Secretary of State on August 12, 2016.

TRD-201604052

Mark Fenner

General Counsel

Texas Racing Commission

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



TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 228. REQUIREMENTS FOR EDUCATOR PREPARATION PROGRAMS

19 TAC §§228.2, 228.10, 228.15, 228.17, 228.20, 228.30, 228.35, 228.40, 228.50, 228.60, 228.70

The State Board for Educator Certification (SBEC) proposes amendments to 19 TAC §§228.2, 228.10, 228.20, 228.30, 228.35, 228.40, 228.50, 228.60, and 228.70 and new 19 TAC §228.15 and §228.17, concerning requirements for educator preparation programs (EPPs). The SBEC rules in 19 TAC Chapter 228 establish requirements for EPPs to prepare candidates to teach Texas schoolchildren. The proposed amendments

to 19 TAC §§228.2, 228.10, 228.20, 228.30, 228.35, 228.40, 228.50, 228.60, and 228.70 and new 19 TAC §228.15 and §228.17 would include changes as the result of recent legislative changes, SBEC input, stakeholder input, and input received from staff at the Texas Education Agency (TEA). Chapter 228 encompasses all the requirements that each EPP must provide to prospective teachers to ensure they are prepared sufficiently.

The Texas Education Code (TEC), §21.031, states that the SBEC is established to oversee all aspects of the certification and continuing education of public school educators and to 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. The TEC, §21.049, authorizes the SBEC to propose rules providing for educator certification programs as an alternative to traditional EPPs.

At the January 2015 SBEC Work Session, the SBEC members received three presentations on educator quality as it pertains to EPPs in the state of Texas. The Texas Teaching Commission, the Council for the Accreditation of Educator Preparation, and the National Council on Teacher Quality provided state and national perspectives on educator quality in relation to Texas EPPs. SBEC members provided feedback to TEA staff on those presentations. Specifically, as it relates to 19 TAC Chapter 228, the SBEC requested policy options that focus on raising EPP standards, improving teacher preparation programs, and new and improved ways to train better teachers.

TEA staff conducted an SBEC work session on June 9, 2016, to provide the SBEC with a shared understanding of the preparation process, to discuss current issues related to educator preparation and teacher quality, and to capture SBEC's perspective on preparation so that TEA staff could provide the desired support in preparation for possible rule changes. The TEA staff also convened three face-to-face stakeholder meetings in December 2015 and June 2016 to gather input on the proposed revisions to 19 TAC Chapter 228, Requirements for Educator Preparation Programs. The proposed rules reflect input received from the SBEC, TEA staff, and TEA staff-convened stakeholder meetings, but also includes additional changes since the draft rule text was shared at the December 2015, April 2016, and June 2016 SBEC meetings. Following is a description of the proposed revisions.

§228.2, Definitions

This section defines key terms that share common meaning across several certification and educator preparation rules within the Texas Administrative Code (TAC). The SBEC's goal is to ensure there is a common understanding of frequently used terms resulting in accurate and effective communication and alignment throughout the state between EPPs, school districts, educators, candidates for certification, and other stakeholders.

The SBEC proposes amending the definition of *field supervisor* to define more clearly the criteria an EPP must use in hiring a field supervisor. The current definition only requires a field supervisor applicant to hold a current certification to observe candidates, monitor their performance, and provide constructive feedback to improve their effectiveness as educators. The amendment would clarify that a field supervisor must have at least three years of experience as an accomplished educator as shown by student learning. Evidence of student learning includes evaluations that include evidence of student learning, campus or district reports that include evidence of student learning, and/or let-

ters of recommendation that include evidence of student learning. The amendment would clarify that a field supervisor must hold a current certification in the certification class in which supervision is provided. A field supervisor with experience as a principal and who holds a current certificate that is appropriate for a principal assignment may supervise principal, classroom teacher, master teacher, and reading specialist candidates. A field supervisor with experience as a superintendent and who holds a current certificate that is appropriate for a superintendent assignment may supervise superintendent, principal, classroom teacher, master teacher, and reading specialist candidates. If an individual is not currently certified, the amendment would clarify that an individual must hold at least a master's degree in the academic area or field related to the certification class for which supervision is being provided and comply with the same number, content, and type of continuing professional education requirements for the certification class for which supervision is being provided. The amendment would clarify that a field supervisor cannot be employed by the same school where the candidate being supervised is completing his or her clinical teaching, internship, or practicum. The amendment would also clarify that a field supervisor cannot also serve as a candidate's mentor, cooperating teacher, or site supervisor. Because the field supervisor fulfills an essential role in preparing educators, creating and clarifying criteria for the selection of field supervisors would improve the preparation of educators and provide consistency among preparation programs.

The SBEC proposes amending the definition of *post-baccalaureate program* to differentiate it from the definition of *alternative certification program*. The amendment would clarify that a post-baccalaureate program at an institution of higher education (IHE) would provide educator preparation for individuals who are seeking a degree beyond a bachelor's degree along with certification as an educator. The amendment would clarify that an alternative certification program at an IHE would provide educator preparation for individuals who are only seeking certification as an educator and not another degree. By amending the definition in this way, consumer information regarding the performance of EPPs would be more accurate.

The SBEC proposes adding definitions of *accredited institution of higher education*, *benchmarks*, *certification category*, *certification class*, *classroom teacher*, *contingency admission*, *formal admission*, *initial certification*, *intern certificate*, *probationary certificate*, *school day*, and *school year*. These additional definitions are necessary to provide clarity to new terms that are being proposed and existing terms.

The SBEC proposes amending the definitions of *alternative certification program*, *candidate*, *clock hours*, and *educator preparation program* to align these definitions with other chapters in the TAC. The SBEC proposes amending the definitions of *clinical teaching*, *internship*, and *practicum* to reflect possible revisions in 19 TAC Chapter 228. The SBEC also proposes amending the definition of *field-based experience* to clarify that field-based experiences are a requirement for the classroom teacher class of certificate and that observations of classrooms are the minimum requirement for field-based experiences. Because field-based experiences fulfill an essential role in preparing educators, clarifying the minimum criteria as opposed to "active engagement in instructional activities or educational activities under supervision" that is required by the TEC, §21.051(b), would improve the preparation of educators and provide consistency among preparation programs. The SBEC proposes amending the definitions of *cooperating teacher* to define the responsibilities of

the cooperating teacher. The responsibilities of the cooperating teacher (those assigned to assist candidates during clinical teaching) would be similar to those of a mentor (those assigned to assist candidates during internship) and a site supervisor (those assigned to assist candidates during practicum). The responsibilities would include guiding, assisting, and supporting a candidate during the candidate's clinical teaching in areas such as planning, classroom management, instruction, assessment, working with parents, obtaining materials, and district policies. The SBEC also proposes amending the definitions of *cooperating teacher*, *mentor*, and *site supervisor* to require EPPs and school or district administrators to collaboratively select the individuals and require the individuals to be accomplished educators as shown by student learning. Evidence of student learning would include evaluations that include evidence of student learning, campus or district reports that include evidence of student learning, and/or letters of recommendation that include evidence of student learning. The amendment would require individuals to have at least three years of experience and require an individual serving as a cooperating teacher and mentor to be currently certified in the certification category for the clinical teaching or internship assignment. The amendment would require a site supervisor to be currently certified in the certification class for the practicum assignment. The amendment would also require EPPs to provide training for these individuals prior to their being assigned to clinical teaching, internship, or practicum candidates. Because the cooperating teacher, mentor, and site supervisor fulfill essential roles in preparing educators, creating and clarifying criteria for the selection of individuals for these roles would improve the preparation of educators and provide consistency among preparation programs.

The SBEC proposes amending the definition of *late hire* to reflect more accurately when an individual would be considered a late hire and to decrease the number of candidates who are serving as a classroom teacher during an internship who have not completed the pre-internship requirements of coursework and field-based experiences. Candidates are currently considered a late hire if they are admitted to an EPP and hired by a school or district after June 15. Late hire candidates are not required to complete the 80 hours of coursework and 30 hours of field-based experiences prior to being hired as a classroom teacher. The SBEC proposes amending the definition to set the late hire date to July 10. This date would be near the 45th day before the first instructional day, which is the date by which educators under a contract with another school or district may resign from their contract without any penalties. Options for field-based experiences in classrooms are limited after this date and the ability of a candidate to complete required pre-internship coursework that is sustained, rigorous, interactive, student-focused, and performance-based between July 10 and the start of school is unlikely. Candidates who do not qualify as a late hire would not be able to be hired as a classroom teacher under an intern or probationary certificate but may be hired by the school or district under an emergency permit, school district teaching permit, or as a substitute teacher. Because coursework and field-based experiences are essential components in preparing educators, changing the late hire date to limit the number of candidates hired as classroom teachers who have not completed the pre-internship requirements of coursework and field-based experiences would improve the recruiting, admission, and preparation practices of EPPs and the hiring practices of schools and districts.

The SBEC proposes removing the definition of *professional certification* because all of the certification classes, including the

classroom teacher class, are considered a part of the education profession. The SBEC also proposes removing the definition of *teacher of record* because the SBEC proposes the use of the term *classroom teacher* throughout 19 TAC Chapter 228. Because *classroom teacher* is a broader term than *teacher of record*, all candidates seeking a classroom teacher certificate would be prepared to be a *teacher of record* even though a particular assignment as a classroom teacher may not require an individual to be responsible for evaluating student achievement and assigning grades.

§228.10, Approval Process

The SBEC proposes amending the new entity approval process to include all the requirements of 19 TAC Chapter 227, Provisions for Educator Preparation Candidates, 19 TAC Chapter 229, Accountability System for Educator Preparation Programs, and 19 TAC Chapter 230, Professional Educator Preparation and Certification, as well as specific sections of 19 TAC Chapter 228. These amendments would update the new entity approval process with the current expectations for EPPs. The updated program approval components would also be used to inform continuing entity approval reviews for existing EPPs.

The SBEC also proposes amending the new entity approval process to include a post-approval visit. The post-approval process is a current practice that allows TEA staff to confirm that a new EPP is implementing the approved program components.

The SBEC proposes amending the continuing entity approval process to include a figure that describes the evidence an EPP is expected to maintain for a period of five years regarding its compliance with EPP standards and requirements. The amendment would also include a requirement that EPPs ensure the security of information that is being maintained. Creating a figure that describes the evidence an EPP is expected to maintain regarding its compliance with EPP standards and requirements would provide clarity and consistency of what is expected for new program approvals and continuing entity approval reviews. Creating a requirement to ensure the security of information that is being maintained by the EPP would improve the safekeeping of confidential information and information that may be required to be provided as part of a continuing entity approval review.

The SBEC proposes amending the continuing entity approval process to include the EPP risk model and risk factors in accordance with TEC, §21.0454, as added by House Bill (HB) 2205, 84th Texas Legislature, Regular Session, 2015. These risk factors would determine the need for discretionary continuous approval reviews and the type of five-year continuous approval reviews.

§228.15, Program Consolidation or Closure

The SBEC proposes revising 19 TAC Chapter 228 by adding proposed new 19 TAC §228.15 to describe the procedures an EPP would need to follow for closure or consolidation. The proposed new rule is based on the procedures that TEA staff is currently using for EPPs that are closing or consolidating. The proposed new rule would require an EPP that is closing or consolidating to submit a letter on official letterhead to TEA staff signed by the legal authority of the EPP that contains a formal statement of consolidation or closing with an effective date of August 31 for consolidation or closure. The proposed new rule would require an EPP to contact candidates currently in the EPP with notification of consolidation or closure and the steps candidates must take in relation to their program status. The proposed new rule would require an EPP to maintain evidence of attempts to no-

tify each candidate and require an EPP to provide and update a representative's name, electronic mail address, and telephone number that would be valid for five years after the EPP's closure to provide access to candidate records and responses to former candidate's questions and/or issues. If an EPP is consolidating, the candidate records would transfer to the new EPP. The proposed new rule would require an EPP to complete required SBEC and TEA actions such as required submissions of information, surveys, and other accountability data, removal of security accesses, and reconciliation of certification recommendations. The proposed new rule would prevent the chief operating officer, legal authority, or a member of the governing body of an EPP who fails to comply with the consolidation or closure procedures from being eligible to be recommended to the SBEC for approval as an EPP and would prevent the chief operating officer, legal authority, or a member of the governing body of an EPP that closes voluntarily due to pending TEA or SBEC action or involuntarily due to SBEC action from being eligible to be recommended to the SBEC for approval as an EPP. The proposed new rule would also allow TEA staff to recommend that the SBEC impose sanctions affecting the new EPP's accreditation status if an EPP is consolidating and fails to comply with the consolidation procedures. Adding this section to 19 TAC Chapter 228 would provide clear and consistent rules for programs to follow when closing or consolidating and provide support for candidates in programs that are closing or consolidating.

§228.17, Change of Ownership

The SBEC proposes revising 19 TAC Chapter 228 by proposing new 19 TAC §228.17 to define a change in ownership of an EPP as any agreement to transfer the control of an EPP. The control of an EPP is considered to have changed in the case of ownership by an individual, when more than half of the EPP has been sold or transferred; in the case of ownership by a partnership or a corporation, when more than half of the owning partnership or corporation has been sold or transferred; or in the case of ownership by a board of directors, officers, shareholders, or similar governing body, when more than 50% of the ownership has changed.

In order for an EPP with new ownership to continue preparing educators, the new owners of the EPP must notify TEA staff of the ownership change in writing within 10 days of the change in ownership. Adding this section to 19 TAC Chapter 228 would provide clear and consistent rules for programs to follow when transferring ownership.

§228.20, Governance of Educator Preparation Programs

The SBEC proposes amending the governance of EPP section to decrease the minimum number of times an advisory committee must meet each academic year from two to one and clarify that the EPP must inform each member of the advisory committee of the roles and responsibilities of the committee. The amendment would allow EPPs more flexibility in how the advisory committee assists in the design, delivery, evaluation, and major policy decisions of the EPP.

The SBEC proposes amending this section to clarify how an EPP may amend its program. To make changes to its program, an EPP would submit notification of a proposed amendment on a letter signed by the EPP's legally authorized agent or representative that explains the amendment, details the rationale for changes, and includes documents relevant to the amendment. If the EPP is rated "accredited" or "accredited-not rated," this notice must be sent to TEA staff 60 days prior to the EPP im-

plementing the changes. If the EPP is not rated "accredited" or "accredited-not rated," this notice must be sent to TEA staff 120 days prior to the EPP implementing the changes, and the changes must be approved by TEA staff. The amendment would create a clear and efficient process for EPPs to amend program components.

The SBEC also proposes amending this section to require each EPP to develop and implement a calendar of program activities that must include a deadline for accepting candidates into a program cycle to assure adequate time for admission, coursework, training, and field-based experience requirements prior to a clinical teaching or internship experience. This amendment would provide applicants to an EPP with more information as to the expectations for adequate educator preparation. If an applicant is admitted after the deadline, the applicant would have a better understanding of whether the applicant can reasonably complete the requirements necessary to be placed in a clinical teaching assignment or hired as a classroom teacher during an internship.

§228.30, Educator Preparation Curriculum

Because the educator preparation curriculum serves as the basis of the coursework and training that fulfills an essential role in preparing educators, the SBEC proposes amending 19 TAC §228.30 to improve the preparation of educators and provide consistency among preparation programs. The SBEC proposes amending this section to clarify which of the existing curriculum requirements are for all classes of certificates and which requirements are appropriate for a specific class of certificate. The SBEC also proposes amending the curriculum requirements for the classroom teacher class of certificate to include the English Language Proficiency Standards and, for certificate fields that include early childhood, the Prekindergarten Guidelines.

The SBEC proposes adding curriculum requirements for all classes of certificates to include the information required by the TEC, §21.044, as amended by HB 2012, 83rd Texas Legislature, Regular Session, 2013; and the TEC, §21.0453, as added by HB 2318, 83rd Texas Legislature, Regular Session, 2013. These requirements would include the skills that educators are required to possess, the responsibilities that educators are required to accept, and the high expectations for students; the importance of building strong classroom management skills; and the framework for teacher and principal evaluation. The SBEC proposes adding curriculum requirements to include mental health, substance abuse, and youth suicide training as required by the TEC, §21.044, as amended by Senate Bill (SB) 674, 84th Texas Legislature, Regular Session, 2015. The SBEC also proposes adding a curriculum requirement for the principal class of certificate to include the skills and competencies captured in the Texas administrator standards as indicated in 19 TAC §149.2001, Principal Standards.

The TEC, §21.044, as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, requires all programs that provide training in certification areas that require a bachelor's degree to include training on the instruction of dyslexia. Changes to 19 TAC Chapter 228 are not necessary because the current rules as written comply with the change in law.

§228.35, Preparation Program Coursework and/or Training

The SBEC proposes amending 19 TAC §228.35 to clarify which of the existing coursework and training requirements are for all classes of certificates and which requirements are appropriate for a specific class of certificate. The SBEC proposes amend-

ing the coursework and training provisions for all classes to clarify that coursework and training must adequately prepare candidates for educator certification and that coursework and training must be sustained, rigorous, intensive, interactive, candidate-focused, and performance based. The SBEC also proposes removing the provision that allows up to 50 hours of an EPP's coursework and/or training to be provided by a school district or campus. EPPs may require additional hours beyond the minimum requirement of 300 hours and allow school district or campus professional development to count toward these additional hours. In accordance with the Texas Occupations Code, §55.007, the SBEC proposes adding a provision that would allow an EPP to substitute prior or ongoing service, training, or education for educator certification requirements so that military service members and military veterans may credit verified military service, training, or education toward training, education, work experience, or related requirements for educator certification. The SBEC also proposes amending the provision for candidates who are not military service members or military veterans to substitute prior or ongoing service, training, or education if the service, training, or education was provided by an approved EPP or an accredited IHE within the past five years and is directly related to the certification being sought. This amendment would provide flexibility to EPPs and candidates while providing consistency among EPPs.

Because many EPPs are already either offering or planning to offer coursework and training online, the SBEC proposes adding a requirement for EPPs that offer coursework and/or training online to meet standards for online coursework and training. EPPs at public and private universities must already meet Texas Higher Education Coordinating Board (THECB) standards for online coursework and training. Requiring EPPs to meet online accreditation or certification standards would improve the preparation of educators participating in online coursework and training and provide consistency among preparation programs offering online coursework and training.

The SBEC proposes amending the coursework and training provisions for the classroom teacher class of certificate to clarify that an EPP must provide a minimum of 300 hours of coursework and training. The SBEC also proposed that the number of coursework hours required before clinical teaching or an internship be increased from 80 to 150 hours and the content of these hours include 10 proficiencies that are based on the performance standards described in 19 TAC §149.1001, Teacher Standards. The coursework and training would require candidates to demonstrate proficiency in areas specified in proposed 19 TAC §228.35(b)(2).

The proposal to increase the hours and provide more specificity of the coursework and training would improve the quality of educator preparation for candidates who would be hired as a classroom teacher under an internship and candidates who would be working directly with students in the capacity of a clinical teacher. The coursework and training requirement would be equivalent to 10 semester credit hours at an accredited IHE. The content of the coursework and training requirement would be similar to the performance standards to be used to inform the training, appraisal, and professional development of all teachers. The proposals are based on the direction provided by SBEC members and input from a variety of stakeholders.

The SBEC proposes amending the EPP delivery provisions to clarify that an EPP must direct a candidate's participation in a field-based experience. The SBEC also proposes amending the

field-based experience provisions so that the standards are similar for onsite experiences and those experiences provided by use of electronic transmission or other video or technology-based method. Because field-based experiences fulfill an essential role in preparing educators, clarifying these provisions would improve the preparation of educators and provide consistency among preparation programs.

The SBEC proposes amending the clinical teaching provisions to increase the 12-week clinical teaching experience to 14 weeks of at least 65 full days and increasing the 24-week clinical teaching experience to 28 weeks of at least 130 half days. By increasing the minimum standards for the length of clinical teaching, the amendment would improve the preparation of educators by providing clinical teachers with more opportunities to develop their knowledge and skills. The SBEC also proposes amending the clinical teaching provisions to require candidates to experience a full range of professional responsibilities that include the start of the school year through field-based experiences and/or clinical teaching. This amendment would allow candidates to observe how critical routines and procedures are established during the first part of the year.

The proposal also provides language that would allow the SBEC to approve an EPP request for an exception to the clinical teaching options described in rule. An exception request must include an alternative option that would adequately prepare candidates for educator certification and ensure the educator is effective in the classroom. An exception request must include the rationale and support for the alternative option, a full description and methodology of the alternative option, a description of the controls to maintain the delivery of equivalent and quality support for clinical teaching, and a description of the ongoing monitoring and evaluation process to ensure EPP objectives are met. By allowing an exception to the existing clinical teaching options, an innovative program can be allowed to pursue flexible and creative designs to accommodate the unique characteristics and needs of different regions of the state as well as the diverse population of potential educators.

The SBEC proposes amending the internship provisions to clarify that a candidate must hold an intern or probationary certificate while participating in an internship and must meet the requirements and conditions, including the subject matter knowledge requirement, to be eligible for an intern or probationary certificate. The clarification would address the proposed changes in 19 TAC Chapter 230 regarding the creation of an intern certificate. The SBEC proposes amending the internship provisions to clarify that the beginning and ending date of an internship is the first and last day of instruction with students. This clarification would address confusion with EPPs, schools, and districts regarding the beginning of the contract with the school or district, the beginning of the intern or probationary certificate period, and the beginning of the internship.

The SBEC proposes amending the internship provisions to allow for an additional internship assignment of less than a full day under conditions specified in proposed 19 TAC §228.35(e)(2)(C)(iii).

This amendment would provide more flexibility for EPPs to meet the needs of schools and districts.

The SBEC also proposes amending the internship provisions to clarify that an EPP may recommend an additional internship year if the EPP certifies that the first internship was not successful, the EPP has developed a plan to address any deficiencies identified

by the candidate and the candidate's field supervisor, and the EPP implements the plan during the additional internship. An EPP may also recommend an additional internship year if the EPP certifies that the first internship was successful and that the candidate is making satisfactory progress toward completing the EPP before the end of the additional internship. The amendment would also define an internship as successful when the field supervisor and supervising campus administrator recommend to the EPP that the candidate should be recommended for a standard certificate. The amendment would provide clear and consistent rules for programs to follow regarding recommending additional internships for candidates.

The SBEC also proposes amending the internship provisions to clarify that an EPP must provide ongoing support to a candidate for the full term of the initial or additional internship, unless, prior to the expiration of that term a standard certificate is issued to the candidate during an additional internship; the candidate resigns, is non-renewed, or is terminated from the school assignment; or the candidate withdraws, is discharged, or is released from the EPP.

The amendment would also clarify how a candidate, an EPP, an employing school or district, and the TEA must be notified if a candidate resigns, is non-renewed, or is terminated from the school assignment or withdraws, is discharged, or is released from the EPP. The amendment would provide clear and consistent rules for providing ongoing support for candidates and improve communication between candidates, EPPs, schools and districts, and TEA staff in the event of a resignation, termination, withdrawal, release, or discharge.

The SBEC proposes amending the Head Start Program provisions to clarify that an internship or clinical teaching experience for certificates that include early childhood may be completed at a Head Start Program that meets the requirements. This amendment would address any future changes to the Early Childhood-Grade 6 certificate.

The SBEC proposes amending the internship, clinical teaching, and practicum provisions to prohibit an assignment in a setting where the candidate has an administrative role over or is related to the mentor, cooperating teacher, or site supervisor. This amendment would address inappropriate supervisory relationships. The SBEC also proposes clarifying that a practicum assignment must take place in an actual school setting rather than a distance education learning lab or virtual school setting. This amendment would align the practicum requirement with the existing requirements for clinical teaching and internships.

The SBEC proposes amending the practicum provisions to clarify that an intern or probationary certificate may be issued to a candidate in a certification class other than classroom teacher if the candidate meets the requirements of the EPP and the candidate meets the requirements and conditions, including the subject matter knowledge requirement, for the probationary certificate. The clarification would address the proposed changes in 19 TAC Chapter 230 regarding the probationary certificate.

The SBEC also proposes amending the practicum provisions to clarify that an EPP may recommend an additional practicum if the EPP certifies that the first practicum was not successful, the EPP has developed a plan to address any deficiencies identified by the candidate and the candidate's field supervisor, and the EPP implements the plan during the additional practicum. An EPP may also recommend an additional practicum if the EPP certifies that the first practicum was successful and that the can-

didate is making satisfactory progress toward completing the EPP before the end of the additional practicum. The amendment would define a practicum as successful when the field supervisor and supervising campus administrator recommend to the EPP that the candidate should be recommended for a standard certificate. The amendment would provide clear and consistent rules for programs to follow regarding recommending additional practicums for candidates.

The SBEC proposes amending the mentor, cooperating teacher, and site supervisor provision to require that a site supervisor who is trained by the EPP be assigned to a practicum candidate. The amendment would also allow a regional education service center (ESC) to provide the required mentor, cooperating teacher, and/or site supervisor training. The amendment would align the requirements for the site supervisor with those that are in rule for the mentor and cooperating teacher. The amendment would also provide EPPs with more flexibility to ensure that mentors, cooperating teachers, and site supervisors have had the required training. The SBEC also proposes amending this provision to allow the EPP and campus or district administrator to assign an individual who most closely meets the cooperating teacher, mentor, or site supervisor criteria if an individual who meets the criteria is not available. The EPP and campus or district administrator must document the reason for selecting an individual that does not meet the criteria. The amendment would provide flexibility in selecting cooperating teachers, mentors, or site supervisors. The SBEC proposes amending the provisions for ongoing support for teacher candidates to emphasize collaboration among the field supervisor, candidate, cooperating teacher, mentor, and supervising campus administrator. This amendment would underscore the joint responsibility of EPPs, schools, and districts to develop, deliver, and evaluate educator preparation. The amendment would require supervision provided on or after September 1, 2017 to be provided by a field supervisor who has completed TEA-approved observation training. This amendment would provide consistency among programs and align the supervision of candidates with the criteria used by schools and districts to develop and support teachers. The amendment would require an individualized pre-conference and an individualized and synchronous post-observation conference for each formal observation. This amendment is supported by systems of support such as the Texas Teacher Evaluation and Support System (T-TESS). The amendment would allow a formal observation by a field supervisor that was conducted in collaboration with school or district personnel to meet the requirements for ongoing support. The amendment would require the field supervisor to provide a copy of the written observation feedback to the cooperating teacher or mentor, but only require the field supervisor to provide a copy of the written observation feedback to the candidate's supervising campus administrator for an internship. This amendment would identify the most appropriate members of the collaboration team who would need to receive a copy of the written observation feedback. Because a candidate participating in an internship is a classroom teacher, it is appropriate for the candidate's campus supervisor to receive a copy of the written observation feedback. The SBEC also proposes amending the ongoing support for teacher candidate provisions to increase the number of observations for a 28-week half-day clinical teaching experience from three to four. The amendment would increase the number of observations from three to five for an internship under an intern certificate or an additional internship under a probationary certificate due to an unsuccessful internship. The amendment would require three observations for an internship under a probationary certificate unless the pro-

bationary certificate was an extension due to an unsuccessful internship. For an internship under an intern certificate or an additional internship under a probationary certificate due to an unsuccessful internship that involves more than one certification category that cannot be taught concurrently during the same period of the school day, the amendment would require three observations to be provided for each assignment. For a first-year internship under a probationary certificate or an internship under a probationary certificate where the candidate has already had a successful internship experience, the amendment would require two observations for each assignment. For each type of assignment, the amendment would clarify when initial contacts and formal observations need to occur to provide consistency among EPPs. The amendment would increase the level of support at EPPs that currently provide a minimum of three observations and comports with the SBEC's request for policy options that focus on raising EPP standards, improving teacher preparation programs, and new and improved ways to train better teachers. The SBEC also proposes amending the ongoing support for school counselor, school librarian, principal, superintendent, educational diagnostician, reading specialist, and master teacher candidate provisions to emphasize collaboration between the field supervisor, candidate, and site supervisor. This amendment would underscore the joint responsibility of EPPs, schools, and districts to develop, deliver, and evaluate educator preparation. The amendment would require supervision provided on or after September 1, 2017, to be provided by a field supervisor who has completed TEA-approved observation training. This amendment would provide consistency among programs and align the supervision of candidates with the criteria used by schools and districts to develop and support teachers. The amendment would require an individualized pre-conference and an individualized and synchronous post-observation conference for each formal observation. This amendment is supported by systems of support such as the T-TESS. The amendment would also require the field supervisor to provide a copy of the written observation feedback to the site supervisor. The amendment would also require at least one of the observations to be conducted by the field supervisor on the candidate's site in a face-to-face setting. If a formal observation is not conducted on the candidate's site in a face-to-face setting, the observation may be provided by use of electronic transmission or other video or technology-based method. As EPPs continue to investigate and research the use of video-based observations, the SBEC proposes that at least one of the formal observations be on the candidate's site so that the field supervisor can have a better understanding of the environment in which the candidate is serving his or her practicum. The amendment would also clarify when initial contacts and formal observations need to occur to provide consistency among EPPs. The SBEC proposes amending the exemption provisions to allow a candidate who was employed by a school or district as a Junior Reserve Officer Training Corps (JROTC) instructor before the person was enrolled in an EPP or is employed as a JROTC instructor while the person is enrolled in an EPP to be exempt from any student teaching, internship, or field-based experience program requirement, as required by the TEC, §21.0487(c)(2)(B), as added by SB 1309, 84th Texas Legislature, Regular Session, 2015.

§228.40, Assessment and Evaluation of Candidates for Certification and Program Improvement

The SBEC proposes amending 19 TAC §228.40 to clarify that unless a candidate demonstrates content knowledge on a content certification examination prior to being admitted to an EPP,

an EPP is responsible for providing coursework and training that adequately prepares a candidate to pass the content certification examination(s) required for certification. If an EPP admits a candidate under the 12 or 15 semester credit criteria, the EPP must provide the coursework and training necessary for the candidate to pass the content certification examination(s) required for certification. If an EPP admits a candidate under the content certification examination criteria and the content certification examination used for admission is the same content certification examination used for certification, the EPP is not responsible for providing the coursework and training necessary for the candidate to pass the content certification examination(s) required for certification. The amendment would add language to allow an EPP to prepare a candidate and grant test approval for a classroom teacher certificate category other than the category for which the candidate was initially admitted to the EPP if the candidate requests the new category in writing. This amendment would provide more flexibility for schools and districts to hire interns who have met the subject matter requirement for an intern or probationary certificate. The amendment would clarify that an EPP shall determine the readiness of each candidate to take the appropriate certification examination(s). The current rule only requires an EPP to determine readiness for the Pedagogy and Professional Responsibilities examination. Because candidates are now limited to how many times they can attempt a certification examination, this provision would provide a higher level of support to candidates. The amendment would clarify that an EPP shall not grant test approval for a certification examination until a candidate has been contingently or formally admitted into a program. This amendment would align with the admission language in 19 TAC Chapter 227. The amendment would also clarify that an EPP must continuously evaluate the design and delivery of the approved program components based on performance data, scientifically-based research practices, and the results of internal and external feedback and assessments. Because the current rule only requires EPPs to evaluate their curriculum, this amendment would improve all aspects of preparation.

§228.50, Professional Conduct

The SBEC proposes amending 19 TAC §228.50 to include requiring an EPP to ensure that candidates and individuals preparing candidates understand the Educators' Code of Ethics. This amendment would foster a better understanding of the Educators' Code of Ethics by candidates and individuals preparing candidates.

§228.60, Implementation Date

The SBEC proposes amending 19 TAC §228.60 to remove language related to the temporary teaching certificate. The removal of the temporary teaching certificate from 19 TAC Chapter 230 is being proposed and may be found in the Proposed Rules section of this issue of the *Texas Register*.

§228.70, Complaints and Investigations Procedures

The SBEC proposes amending 19 TAC §228.70 to clarify that a mentor, cooperating teacher, site supervisor, or administrator must be employed or have been employed at a site that serves as a site for clinical teaching, internship, or practicum experiences to be eligible to file a complaint against an EPP. This amendment would further define the jurisdiction of SBEC to investigate complaints that are directly related to an EPP. The TEC, §21.0455, as added by HB 2205, 84th Texas Legislature, Regular Session, 2015, requires the SBEC to propose rules necessary to establish a process for a candidate for teacher certifi-

cation to direct a complaint against an EPP to the TEA. HB 2205 also requires an EPP to notify candidates for teacher certification of this complaint process. Changes to 19 TAC Chapter 228 are not necessary because the current rules as written comply with the change in law.

The proposed rule actions would have additional procedural and reporting implications as follows.

Approval Process

The proposed amendment to 19 TAC §228.10(a) and (b)(1) would modify the components required to be submitted for program approval and renewal.

Program Consolidation or Closure

Proposed new 19 TAC §228.15(a)(1) would require new procedures for EPP closure or consolidation.

Change of Ownership

Proposed new 19 TAC §228.17(b) would require new procedures for notifying the TEA of change in ownership.

Governance of Educator Preparation Programs

The proposed amendment to 19 TAC §228.20(e) and (f) would modify the way EPP program amendments are approved.

Educator Preparation Curriculum

Proposed 19 TAC §228.30(c)(3) would require new curriculum requirements for substance abuse, suicide prevention, the framework for teacher and principal evaluation, and the principal standards.

Preparation Program Coursework and/or Training

Proposed 19 TAC §228.35(a)(4) would require the development and implementation of specific criteria and procedures for crediting military service, training, or education toward training, education, work experience, or related educator certification requirements. If coursework and training is offered online, proposed 19 TAC §228.35(a)(5) would require an EPP to meet or be making progress in meeting criteria set for accreditations, quality assurance, and/or compliance with an approved accrediting organization, certification organization, or the Texas Higher Education Coordinating Board.

For coursework and training required before clinical teaching or an internship, proposed 19 TAC §228.35(b)(2) would increase the number of hours from 80 to 150 and prescribe coursework and training content. Proposed 19 TAC §228.35(e)(2)(A) and (B) would increase full-day clinical teaching assignments from 12 to 14 weeks and increase half-day clinical teaching assignments from 24 to 28 weeks. Proposed 19 TAC §228.35(e)(2)(C)(v) and (6)(C) would identify the way additional internships and practicums can be recommended. Proposed 19 TAC §228.35(e)(2)(C)(vi)(II)-(IV) would modify the way EPPs notify the TEA about resignations, terminations, non-renewals, withdrawals, discharges, and releases. Proposed 19 TAC §228.35(e)(2)(D) would create a new clinical teaching exception approval process. Proposed 19 TAC §228.35(e)(2)(E) would require clinical teaching and/or field-based experiences to include experiences during the start of the school year. Proposed 19 TAC §228.35(e)(7)(D) would modify the data collection from the SBEC to the TEA for applications for school sites outside the United States.

Proposed 19 TAC §228.35(f) would require documentation when an individual who does not meet criteria for mentor, cooperat-

ing teacher, or site supervisor is not available. Proposed 19 TAC §228.35(g) and (h) would require pre-observation conferences. Proposed 19 TAC §228.35(g)(2)-(8) would increase the number and prescribe the timing of observations. Proposed 19 TAC §228.35(h)(2) and (3) would require one on-site and face-to-face observation and prescribe the timing of observations for non-teacher candidates.

Assessment and Evaluation of Candidates for Certification and Program Improvement

Proposed 19 TAC §228.40(c) would identify the way candidates can change certification categories. Proposed 19 TAC §228.40(e) would require EPPs to evaluate all components, not just the curriculum. Proposed 19 TAC §228.40(f) would require EPPs to maintain admission and completion records for those who withdraw or are discharged from an EPP.

The proposed rule actions would have additional locally maintained paperwork requirements. Proposed 19 TAC §228.10(b)(1) would require an EPP to establish procedures and practices sufficient to ensure the security of information that is required to be retained as evidence of compliance with existing standards and requirements for EPPs. An EPP would need to secure information against unauthorized or accidental access, disclosure, modification, destruction, or misuse prior to the expiration of the retention period. Evidence of compliance is described in the figure provided in 19 TAC §228.10(b)(1). Proposed 19 TAC §228.40(f) would require an EPP to maintain admission and completion records for those who withdraw from or are discharged from an EPP.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed rule actions are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the proposed rule actions.

The following fiscal implications are based on costs for state government (ESCs and public universities), local government (public community colleges, counties, open-enrollment charter schools, and school districts), persons (individuals), and small businesses and microbusinesses that operate EPPs for fiscal years (FYs) 2017-2021.

The proposed rule actions to 19 TAC Chapter 228 would require EPPs to meet standards for online coursework and increase the level of support provided to EPP candidates. The proposed rule actions would also require EPPs to hire field supervisors who have participated in TEA-approved training.

The TEA estimates the total costs for state government-operated EPPs at \$620,600 in FY 2018, \$622,800 in FY 2019, \$631,000 in FY 2020, and \$635,200 in FY 2021. The TEA estimates the total costs for local government-operated EPPs at \$237,100 in FY 2018, \$239,300 in FY 2019, \$251,700 in FY 2020, and \$253,900 in FY 2021. The TEA estimates the total costs for individuals at \$344,800 in FY 2017 and \$34,500 in each year for FYs 2018-2021. The TEA estimates the local employment impact at \$2,741,000 in each year for FYs 2018-2021. The TEA estimates the total costs for small businesses and microbusinesses that operate EPPs at \$1,616,400 in FY 2018, \$1,620,800 in FY 2019, \$1,639,300 in FY 2020, and \$1,646,700 in FY 2021. For FY 2017, there would be no costs for EPPs or local employment impact because there would be no need to hire additional field supervisors.

The estimated costs for ESC EPPs to meet standards for online coursework is up to \$7,300 per EPP over three years' and it is estimated that two ESC EPPs would begin the process of meeting these standards in FYs 2018-2020 and four additional ESC EPPs would begin the process of meeting these standards in FY 2021. If fewer ESC EPPs seek to offer online coursework, the estimated cost will be less. If more ESC EPPs begin the process of meeting standards sooner, the estimated cost would be more. Public university EPPs must already meet standards for online coursework. The estimated cost of increasing the level of support for state government EPPs (ECS and public university) is \$150 per additional observation by a field supervisor. The estimated cost for state government EPPs to provide a minimum of five observations for teacher candidates participating in internships under intern certificates is \$447,200 in each year for FYs 2018-2021. If more teacher candidates participate in internships under probationary certificates that only require three observations, the estimated cost for state government EPPs will be less. The estimated cost for state government EPPs to provide at least one observation for non-teacher candidates enrolled in state government EPPs that do not require any on-site and face-to-face observations is \$169,200 in each year for FYs 2018-2021. For FY 2017, there would be no costs for hiring additional field supervisors and seeking online certification.

The TEA estimates that if ESCs provide the TEA-approved training at the cost of \$125 per field supervisor, the estimated increase in revenue is \$344,800 in FY 2017 and \$34,500 in each year for FYs 2018-2021. If other organizations are approved by the TEA to offer the field supervisor training, this estimated revenue increase for state government will be lower.

The TEA estimates costs for local government EPPs to meet standards for online coursework is up to \$7,300 per EPP over three years and it is estimated that two local government EPPs would begin the process of meeting these standards in FYs 2018-2019 and four additional local government EPPs would begin the process of meeting these standards in FYs 2020-2021. If fewer local government EPPs seek to offer online coursework, the estimated cost will be less. If more local government EPPs begin the process of meeting standards sooner, the estimated cost would be more. The estimated cost of increasing the level of support for local government EPPs (school district, charter school, community college, and county) is \$150 per additional observation by a field supervisor. The estimated cost for local government EPPs to provide a minimum of five observations for teacher candidates participating in internships under intern certificates is \$232,900 in each year for FYs 2018-2021. If more teacher candidates participate in internships under probationary certificates that only require three observations, the estimated cost for local government EPPs will be less. For FY 2017, there would be no costs for hiring additional field supervisors and seeking online certification.

The TEA estimates costs for individuals for trained field supervisors, if the TEA-approved training is provided at the cost of \$125 per field supervisor by ESCs, at \$344,800 in FY 2017 and \$34,500 in each year for FYs 2018-2021. If other organizations are approved by the TEA to offer the field supervisor training, this estimated cost to persons will be higher or lower depending on the cost of the training.

The estimated increase in local employment throughout the state is \$150 per additional observation by a field supervisor. The estimated employee increase to provide a minimum of five observations by a field supervisor for teacher candidates and

at least one observation by a field supervisor for non-teacher candidates is \$2,741,000 in each year for FYs 2018-2021. The estimated employee increase to provide at least one observation for non-teacher candidates enrolled in EPPs that do not require any on-site and face-to-face observations is \$169,200 in each year for FYs 2018-2021. These estimates include field supervisors who are hired by state government, local government, small business, microbusiness, private university, and non-profit EPPs. If more teacher candidates participate in internships under probationary certificates that only require three observations, the estimated employee increase will be less. By ESC geographic area, the local employment impact for each year of FYs 2018-2021 would be as follows: \$333,000 for Region 1; \$106,000 for Region 2; \$77,000 for Region 3; \$285,000 for Region 4; \$89,000 for Region 5; \$90,000 for Region 6; \$112,000 for Region 7; \$73,000 for Region 8; \$73,000 for Region 9; \$284,000 for Region 10; \$258,000 for Region 11; \$122,000 for Region 12; \$75,000 for Region 13; \$79,000 for Region 14; \$87,000 for Region 15; \$122,000 for Region 16; \$75,000 for Region 17; \$117,000 for Region 18; \$87,000 for Region 19; and \$210,000 for Region 20. For FY 2017, there would be no local employment impact because there would be no need to hire additional field supervisors.

There would be an anticipated economic impact for small businesses and microbusinesses that serve as approved EPPs. It is estimated that the proposed rule actions to 19 TAC Chapter 228 would affect between 1-100 small businesses and 1-100 microbusinesses (businesses with 20 or fewer employees). The projected economic impact would consist of compliance costs for EPPs to meet standards for online coursework and increase the level of support provided to EPP candidates. The estimated cost for small business and microbusiness EPPs to meet standards for online coursework is up to \$7,300 per EPP over three years and it is estimated that four small business and microbusiness EPPs would begin the process of meeting these standards in FYs 2018-2019, five small business and microbusiness EPPs would begin the process of meeting these standards in FY 2020, and eight small business and microbusiness EPPs would begin the process of meeting these standards in FY 2021. If fewer small business and microbusiness EPPs seek to offer online coursework, the estimated cost will be less. If more small business and microbusiness EPPs begin the process of meeting standards sooner, the estimated cost would be more. The estimated cost of increasing the level of support for small business and microbusiness EPPs is \$150 per additional observation by a field supervisor. The estimated costs for small business and microbusiness EPPs to provide a minimum of five observations by a field supervisor for teacher candidates and at least one observation by a field supervisor for non-teacher candidates is \$1,608,000 in each year for FYs 2018-2021. If more teacher candidates participate in internships under probationary certificates that only require three observations, the estimated cost for small business and microbusiness EPPs will be less. For FY 2017, there would be no costs because there is no need to hire additional field supervisors.

In accordance with Texas Government Code, §2006.002, TEA conducted a regulatory flexibility analysis and assessed alternatives to the proposed rule actions to 19 TAC Chapter 228. Three alternatives that would minimize the adverse impacts on small businesses and microbusinesses include:

1. Not adopting the rules;
2. Adopting rules that allow small business and microbusiness EPPs to provide less support for candidates than other EPPs;
- and 3. Adopting rules that allow

small business and microbusiness EPPs to not meet the same standards for online coursework and hiring qualified field supervisors as other EPPs.

TEA assessed alternatives, as described earlier, to the proposed rule actions to 19 TAC Chapter 228 that would diminish the impact on small businesses and microbusinesses; however, it is not possible to provide regulatory flexibility on this matter for the reasons that follow.

If the rule actions were not adopted into rule, candidates may have less support, online coursework may not meet standards, and candidates would be observed by field supervisors who may not have participated in training that meets state standards. If rules were adopted that allowed small business and microbusiness EPPs to provide less support for candidates, candidates enrolled in small business and microbusiness EPPs may be provided with less support than candidates enrolled in other EPPs. If rules were adopted that allowed small business and microbusiness EPPs to not meet the same standards for online coursework and hiring of qualified field supervisors, candidates enrolled in small business and microbusiness EPPs may not receive the same quality of online coursework and may not receive the same quality of supervision as candidates enrolled in other EPPs.

The anticipated effect on local economy and the local employment impact statement required under Texas Government Code, §2001.022, is described earlier in this section.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for the first five-year period the proposed rule actions are in effect the public and student benefit anticipated as a result of the proposed rule actions would be the development of clear, minimum EPP requirements that would ensure educators are prepared to positively impact the performance of the diverse student population of this state. The anticipated economic cost to persons who are required to comply with the proposed rule actions is described earlier under Fiscal Note.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. The anticipated economic impact for small businesses and microbusinesses and the flexibility analysis, specified in Texas Government Code, §2006.002, are described earlier under Fiscal Note.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins August 26, 2016, and ends September 26, 2016. The SBEC will take registered oral and written comments on the proposed amendments to 19 TAC §§228.2, 228.10, 228.20, 228.30, 228.35, 228.40, 228.50, 228.60, and 228.70 and new 19 TAC §228.15 and §228.17 at the October 7, 2016, meeting in accordance with the SBEC board operating policies and procedures. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to sberules@tea.texas.gov. All requests for a public hearing on the proposed rule actions 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, 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* on August 26, 2016.

STATUTORY AUTHORITY. The amendments and new sections are proposed under the Texas Education Code (TEC), §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the TEC, §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; the TEC, §21.044(b), which requires a person seeking certification that requires a bachelor's degree to receive training in dyslexia; the TEC, §21.044(c-1), which requires a person seeking certification that requires a bachelor's degree to receive training in mental health, substance abuse, and suicide prevention; the TEC, §21.044(g), which requires each EPP to provide certain information related to performance of the EPP, the importance of building strong classroom management skills, the framework for teacher and principal evaluation, the skills that educators are required to possess, the responsibilities that educators are required to accept, and the high expectations for students; the TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; the TEC, §21.045(a), which states that the board shall propose rules establishing standards to govern the continuing accountability of all EPPs; the TEC, §21.0453, which states that the SBEC may propose rules as necessary to ensure that all EPPs provide candidates with accurate information; the TEC, §21.0454, which states the SBEC shall propose rules necessary to develop a set of risk factors to use in assessing the overall risk level of each EPP; the TEC, §21.0455, which states the SBEC shall propose rules necessary to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency; the TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; the TEC, §21.0487(c)(2)(B), which requires the SBEC to propose rules to establish requirements under which a person's employment by a school district as a Junior Reserve Officer Training Corps instructor before the person was enrolled in an EPP or while the person is enrolled in an EPP is applied to satisfy any student teaching, internship, or field-based experience program requirement; the TEC, §21.049, which authorizes the SBEC to propose rules providing for educator certification programs as an alternative to traditional EPPs; the TEC, §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's

degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under the TEC, Chapter 28, Subchapter A; the TEC, §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; and the TEC, §21.051, which provides a requirement that before a school may employ a certification candidate as a teacher of record, the candidate must have completed at least 15 hours of field-based experience in which the candidate is actively engaged at an approved school in instructional or educational activities under supervision.

CROSS REFERENCE TO STATUTE. The proposed amendments and new sections implement the TEC, §§21.031; 21.041(b)(1) and (2); 21.044(a), (b), (c-1), and (g); 21.0443; 21.045(a); 21.0453; 21.0454; 21.0455; 21.048(a); 21.0487(c)(2)(B); 21.049; 21.050(a) and (c); and 21.051.

§228.2. *Definitions.*

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

(1) Academic year--If not referring to the academic year of a particular public, private, or charter school or institution of higher education, September 1 through August 31.

(2) Accredited institution of higher education--An institution of higher education that, at the time it conferred the degree, was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board.

(3) [(2)] Alternative certification program--An approved educator preparation program, delivered by entities described in §228.20(a) of this title (relating to Governance of Educator Preparation Programs), specifically designed as an alternative to a traditional undergraduate certification program, for individuals already holding at least a bachelor's degree from an accredited institution of higher education.

(4) Benchmarks--A record similar to a transcript for each candidate enrolled in an educator preparation program documenting the completion of admission, program, certification, and other requirements.

(5) [(3)] Candidate--An individual who has been formally or contingently admitted into an educator preparation program[; including an individual who has been accepted on a contingency basis]; also referred to as an enrollee or participant.

(6) Certification category--A certificate type within a certification class; also known as certification field.

(7) Certification class--A certificate, as described in §230.33 of this title (relating to Classes of Certificates), that has defined characteristics; also known as certification field.

(8) Classroom teacher--An educator who is employed by a school or district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide or a full-time administrator.

(9) [(4)] Clinical teaching--A supervised [minimum 12-week, full-day or 24-week, half-day] educator assignment through an educator preparation program at a public school accredited by the

Texas Education Agency (TEA) or other school approved by the TEA for this purpose that may lead to completion of a standard certificate; also referred to as student teaching.

(10) [(5)] Clock-hours--The actual number of hours of coursework or training provided; for purposes of calculating the training and coursework required by this chapter, one semester credit hour at an accredited institution of higher education [university] is equivalent to 15 clock-hours. Clock-hours of field-based experiences, clinical teaching, internship, and practicum are actual hours spent in the required educational activities and experiences.

(11) Contingency admission--Admission as described in §227.15 of this title (relating to Contingency Admission).

(12) [(6)] Cooperating teacher--For a clinical teacher candidate, an educator who is collaboratively assigned by the educator preparation program (EPP) and campus administrator; who has at least three years of teaching experience; who is an accomplished educator as shown by student learning; who has completed cooperating teacher training by the EPP prior to being assigned to a clinical teacher; who is currently certified in the certification category for the clinical teaching assignment for which the clinical teacher candidate is seeking certification; who guides, assists, and supports the candidate during the candidate's clinical teaching in areas such as planning, classroom management, instruction, assessment, working with parents, obtaining materials, district policies; and who reports the candidate's progress to that candidate's field supervisor. [The campus-based mentor teacher for the clinical teacher.]

(13) [(7)] Educator preparation program--An entity that must be approved by the State Board for Educator Certification to recommend candidates in one or more educator certification classes [fields].

(14) [(8)] Entity--The legal entity that is approved to deliver an educator preparation program.

(15) [(9)] Field-based experiences--Introductory experiences for a classroom teacher certification candidate involving, at the minimum, reflective observation of Early Childhood-Grade 12 students, teachers, and faculty/staff members engaging in educational activities in a school setting.

(16) [(10)] Field supervisor--A currently certified educator, hired by the educator preparation program, who preferably has advanced credentials, to observe candidates, monitor their performance, and provide constructive feedback to improve their effectiveness as educators. A field supervisor shall have at least three years of experience and current certification in the class in which supervision is provided. A field supervisor shall be an accomplished educator as shown by student learning. A field supervisor with experience as a principal and who holds a current certificate that is appropriate for a principal assignment may supervise principal, classroom teacher, master teacher, and reading specialist candidates. A field supervisor with experience as a superintendent and who holds a current certificate that is appropriate for a superintendent assignment may supervise superintendent, principal, classroom teacher, master teacher, and reading specialist candidates. If an individual is not currently certified, an individual must hold at least a master's degree in the academic area or field related to the certification class for which supervision is being provided and comply with the same number, content, and type of continuing professional education requirements described in §232.11 of this title (relating to Number and Content of Required Continuing Professional Education Hours), §232.13 of this title (relating to Number of Required Continuing Professional Education Hours by Classes of Certificates), and §232.15 of this title (relating to Types of Acceptable Continuing Professional Education Activities). A mentor, cooperating teacher, or site supervisor,

assigned as required by §228.35(e) of this title (relating to Preparation Program Coursework and/or Training), may not also serve as a candidate's field supervisor. A field supervisor shall not be employed by the same school where the candidate being supervised is completing his or her clinical teaching, internship, or practicum.

(17) Formal admission--Admission as described in §227.17 of this title (relating to Formal Admission).

(18) ~~[(14)]~~ Head Start Program--The federal program established under the Head Start Act (42 United States Code, §9801 et seq.) and its subsequent amendments.

(19) Initial certification--The first Texas certificate in a class of certificate issued to an individual based on participation in an approved educator preparation program.

(20) Intern certificate--A type of certificate as specified in §230.36 of this title (relating to Intern Certificates) that is issued to a candidate who has pass all required content certification examinations and is completing initial requirements for certification through an approved educator preparation program.

(21) ~~[(12)]~~ Internship--A paid supervised classroom teacher[-; full-time educator] assignment for one full school year at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that may lead to completion of a standard certificate. An internship is successful when the field supervisor and supervising campus administrator recommend to the EPP that the candidate should be recommended for a standard certificate.

(22) ~~[(13)]~~ Late hire--An individual who has not been accepted into an educator preparation program before July 10 [June 15] and who is hired for a teaching assignment by a school after July 10 [June 15] or after the school's academic year has begun.

(23) ~~[(14)]~~ Mentor--For an internship candidate [a classroom teacher], an [a certified] educator who is collaboratively assigned by the campus administrator and the educator preparation program (EPP); who has at least three years of teaching experience; who is an accomplished educator as shown by student learning; who has completed mentor training by an EPP prior to being assigned to the intern; who is currently certified in the certification category in which the internship candidate is seeking certification; who guides, assists, and supports the candidate [teacher] during the internship [his or her intern year] in areas such as planning, classroom management, instruction, assessment, working with parents, obtaining materials, district policies; and who reports the candidate's [teacher's] progress to that candidate's field supervisor [teacher's educator preparation program].

(24) ~~[(15)]~~ Pedagogy--The art and science of teaching, incorporating instructional methods that are developed from scientifically-based research.

(25) ~~[(16)]~~ Post-baccalaureate program--An [approved] educator preparation program, delivered by an accredited institution of higher education and approved by the State Board for Educator Certification to recommend candidates for certification, that is designed for individuals who already hold at least a bachelor's degree and are seeking an additional degree [that is approved by the State Board for Educator Certification to recommend candidates for certification].

(26) ~~[(17)]~~ Practicum--A supervised [professional] educator assignment at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that is in a school setting in the particular class [field] for which a [professional] certificate in a class other than classroom teacher is

sought [such as superintendent, principal, school counselor, school librarian, educational diagnostician, reading specialist, and/or master teacher].

(27) Probationary certificate--A type of certificate as specified in §230.37 of this title (relating to Probationary Certificates) that is issued to a candidate who has passed all required certification examinations and is completing requirements for certification through an approved educator preparation program.

(28) School day--If not referring to the school day of a particular public or private school, a school day shall be at least seven hours (420 minutes) each day, including intermissions and recesses.

(29) School year--If not referring to the school year of a particular public or private school, a school year shall provide at least 180 days (75,600 minutes) of instruction for students.

~~[(18)]~~ Professional certification--Certification for superintendent, principal, school counselor, school librarian, educational diagnostician, reading specialist, and/or master teacher.]

(30) ~~[(19)]~~ Site supervisor--For a practicum candidate, an [a certified] educator who has at least three years of experience in the aspect(s) of the [professional] certification class being pursued by the candidate; who is collaboratively assigned by the campus or district administrator and the educator preparation program (EPP); who is currently certified in the certification class in which the practicum candidate is seeking certification; who has completed training by the EPP prior to being assigned to a practicum candidate; who is an accomplished educator as shown by student learning [or orientation for site supervision]; who guides, assists, and supports the candidate during the practicum; and who reports the candidate's progress to the candidate's field supervisor [educator preparation program].

~~[(20)]~~ Teacher of record--An educator employed by a school district who teaches the majority of the instructional day in an academic instructional setting and is responsible for evaluating student achievement and assigning grades.]

(31) ~~[(21)]~~ Texas Education Agency staff--Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's administrative functions and services.

(32) ~~[(22)]~~ Texas Essential Knowledge and Skills (TEKS)--The kindergarten-Grade 12 [Kindergarten-Grade 12] state curriculum in Texas adopted by the State Board of Education and used as the foundation of all state certification examinations.

§228.10. Approval Process.

(a) New entity approval [Entity Approval]. An entity seeking initial approval to deliver an educator preparation program (EPP) shall submit an application and proposal with evidence indicating the ability to comply with the provisions of this chapter, [and] Chapter 227 of this title (relating to Provisions for Educator Preparation Candidates), Chapter 229 of this title (relating to Accountability System for Educator Preparation Programs), and Chapter 230 of this title (relating to Professional Educator Preparation and Certification). [The proposal shall include the following program approval components: entity commitment to adequate preparation of certification candidates; program standards; and community collaboration; criteria for admission to an EPP; curriculum; program delivery and evaluation; and a plan for ongoing support of the candidates. The proposal must also identify the certificates proposed to be offered by the entity and meet applicable federal statutes or regulations.] The proposal will be reviewed by the Texas Education Agency (TEA) staff and a pre-approval site visit will be conducted. The TEA staff shall recommend to the State Board for Educator Certification (SBEC) whether the entity should be approved.

A post-approval site visit will be conducted after the first year of the EPP's operation.

(1) The proposal shall include the following program approval components:

(A) ownership and governance of the EPP;

(B) criteria for admission to the EPP;

(C) EPP curriculum;

(D) EPP coursework and/or training, including ongoing support during clinical teaching, internship, and practicum experiences;

(E) certification procedures;

(F) assessment and evaluation of candidates for certification and EPP improvement;

(G) professional conduct of EPP staff and candidates;

(H) EPP complaint procedures; and

(I) required submissions of information, surveys, and other accountability data.

(2) The proposal shall also include identification of the classes and categories of certificates proposed to be offered by the entity.

(b) Continuing entity approval [Entity Approval]. An entity approved by the SBEC under this chapter shall be reviewed at least once every five years [under procedures approved by the TEA staff]; however, a review may be conducted at any time at the discretion of the TEA staff.

(1) At the time of the review, the entity shall submit to the TEA staff [SBEC] a status report regarding its compliance with existing standards and requirements for EPPs. An EPP is responsible for establishing procedures and practices sufficient to ensure the security of information against unauthorized or accidental access, disclosure, modification, destruction, or misuse prior to the expiration of the retention period. Evidence of compliance is described in the figure provided in this paragraph [and the entity's original proposal].
Figure: 19 TAC §228.10(b)(1)

(2) Unless specified otherwise, the entity must retain evidence of compliance described in the figure in paragraph (1) of this subsection for a period of five years.

(3) TEA staff shall, at the minimum, use the following risk factors to determine the need for discretionary reviews and the type of five-year reviews:

(A) a history of the program's compliance with state law and board rules, standards, and procedures, with consideration given to:

(i) the seriousness of any violation of a rule, standard, or procedure;

(ii) whether the violation resulted in an action being taken against the program;

(iii) whether the violation was promptly remedied by the program;

(iv) the number of alleged violations; and

(v) any other matter considered to be appropriate in evaluating the program's compliance history;

(B) whether the program meets the accountability standards under Texas Education Code, §21.045; and

(C) whether a program is accredited by other organizations.

(c) Approval of clinical teaching [Clinical Teaching] for an alternative certification program [Alternative Certification Program]. An alternative certification program seeking approval to implement a clinical teaching component shall submit a description of the following elements of the program for approval by the TEA staff on an application in a form developed by the TEA staff that shall include, at a minimum:

(1) general clinical teaching program description, including conditions under which clinical teaching may be implemented;

(2) selection criteria for clinical teachers;

(3) selection criteria for cooperating [mentor] teachers;

(4) description of support and communication between candidates, cooperating teachers [mentors], and the alternative certification program;

(5) description of program supervision; and

(6) description of how candidates are evaluated.

(d) Addition of certificate categories and classes [Certificate Fields].

(1) An EPP that is rated "accredited," as provided in §229.4 of this title (relating to Determination of Accreditation Status), may request additional certificate categories [fields] be approved by TEA staff, by submitting an application in a form developed by the TEA staff that shall include, at a minimum, the curriculum matrix; a description of how the standards for Texas educators are incorporated into the EPP; and documentation showing that the program has the staff knowledge and expertise to support individuals participating in each certification category [field] being requested. The curriculum matrix must include the standards, framework competencies, applicable Texas Essential Knowledge and Skills, course and/or module names, and the benchmarks or assessments used to measure successful program progress.

(2) An EPP rated "accredited" [," as provided in §229.4 of this title,] and currently approved to offer a [content area] certificate for which the SBEC is changing the grade level of the certificate may request to offer the preapproved category [content field] at different grade levels by submitting an application in a form developed by the TEA staff that shall include, at a minimum, a modified curriculum matrix that includes the standards, course and/or module names, and the benchmarks or assessments used to measure successful program progress. The requested additional certificate categories [fields] must be within the classes of certificates for which the EPP has been previously approved by the SBEC.

(3) An EPP that is not rated "accredited" may not apply to offer additional certificate categories [fields] or classes of certificates.

(4) [(2)] An EPP that is rated "accredited" may request the addition of [certificate fields in] a certificate class [of certificates] that has not been previously approved by the SBEC, but must present a full proposal on an application in a form developed by the TEA staff for consideration and approval by the SBEC.

(e) Addition of program locations [Program Locations]. An EPP that is rated "accredited," [as provided in §229.4 of this title,] may open additional locations, provided the program informs the SBEC of any additional locations at which the program is providing educator preparation 60 days prior to providing educator preparation at the location. Additional program locations must operate in accordance with

the program components under which the program has been approved to operate.

(f) Contingency of approval [Approval]. Approval of an EPP by the SBEC [or by the TEA staff], including each specific certificate class and category [field], is contingent upon approval by other lawfully established governing bodies such as the Texas Higher Education Coordinating Board, boards of regents, or school district boards of trustees. Continuing EPP approval is contingent upon compliance with superseding state and federal law.

§228.15. Program Consolidation or Closure.

(a) An educator preparation program (EPP) that is consolidating or closing must comply with the following procedures to ensure that all issues relevant to EPP consolidation or closure have been addressed.

(1) The EPP must submit a letter on official letterhead to Texas Education Agency (TEA) staff signed by the legal authority of the EPP that contains a formal statement of consolidation or closing with an effective date of August 31 for consolidation or closure.

(2) The EPP must contact candidates currently in the EPP with notification of consolidation or closure and the steps candidates must take in relation to their status. The EPP shall maintain evidence of the attempts to notify each candidate.

(3) The EPP must identify and keep current a representative's name, electronic mail address, and telephone number that will be valid for five years after an EPP's closure to provide access to candidate records and responses to former candidate's questions and/or issues. If an EPP is consolidating, the candidate records will transfer to the new EPP.

(4) The EPP must complete required State Board for Educator Certification (SBEC) and TEA actions such as required submissions of information, surveys, and other accountability data; removal of security accesses; and reconciliation of certification recommendations.

(b) The chief operating officer, legal authority, or a member of the governing body of an EPP that fails to comply with the consolidation or closure procedures in this section is not eligible to be recommended to the SBEC for approval as an EPP.

(c) The chief operating officer, legal authority, or a member of the governing body of an EPP that closes voluntarily due to pending TEA or SBEC action or involuntarily due to SBEC action is not eligible to be recommended to the SBEC for approval as an EPP.

(d) If an EPP is consolidating and fails to comply with the consolidation procedures in this section, TEA staff may make a recommendation that the SBEC impose sanctions affecting the new EPP's accreditation status in accordance with §229.5 of this title (relating to Accreditation Sanctions and Procedures) and/or continuing approval status in accordance with §229.6 of this title (relating to Continuing Approval).

§228.17. Change of Ownership.

(a) Any agreement to transfer the control of an educator preparation program (EPP) is considered a change of ownership. The control of an EPP is considered to have changed:

(1) in the case of ownership by an individual, when more than 50% of the EPP has been sold or transferred;

(2) in the case of ownership by a partnership or a corporation, when more than 50% of the owning partnership or corporation has been sold or transferred; or

(3) in the case of ownership by a board of directors, officers, shareholders, or similar governing body, when more than 50% of the ownership has changed.

(b) In order to continue providing educator preparation, the new owners of the EPP shall notify TEA staff of the ownership change in writing within 10 days of the change in ownership.

§228.20. Governance of Educator Preparation Programs.

(a) Preparation for the certification of educators may be delivered by an institution of higher education, regional education service center, public school district, or other entity approved by the State Board for Educator Certification (SBEC) under §228.10 of this title (relating to Approval Process).

(b) The preparation of educators shall be a collaborative effort among public schools accredited by the Texas Education Agency (TEA) and/or TEA-recognized private schools; regional education service centers; institutions of higher education; and/or business and community interests; and shall be delivered in cooperation with public schools accredited by the TEA and/or TEA-recognized private schools. An advisory committee with members representing as many as possible of the groups identified as collaborators in this subsection shall assist in the design, delivery, evaluation, and major policy decisions of the educator preparation program (EPP). The approved EPP shall inform each member of the advisory committee of [approve] the roles and responsibilities of [each member of] the advisory committee and shall meet a minimum of once [twice] during each academic year.

(c) The governing body and chief operating officer of an entity approved to deliver educator preparation shall provide sufficient support to enable the EPP to meet all standards set by the SBEC and shall be accountable for the quality of the EPP and the candidates whom the program recommends for certification.

(d) All EPPs must be implemented as approved by the SBEC as specified in §228.10 of this title.

(e) An EPP that is rated "accredited" or "accredited-not rated" may amend its program, provided the program informs TEA staff of any amendments 60 days prior to implementing the amendments. An EPP must submit notification of a proposed amendment to its program on a letter signed by the EPP's legally authorized agent or representative that explains the amendment, details the rationale for changes, and includes documents relevant to the amendment.

(f) [(e)] An EPP that is not rated "accredited" or "accredited-not rated" may amend its program, provided the program informs TEA staff of any amendments 120 days prior to implementing the amendments. An EPP must submit notification of a proposed amendment on a letter signed by the EPP's legally authorized agent or representative that explains the amendment, details the rationale for changes, and includes documents relevant to the amendment. [Proposed amendments to an EPP must be submitted to the TEA staff and be approved prior to implementation. Significant amendments, related to the five program-approval components specified in §228.10(a) of this title, must be approved by the SBEC to become effective.] The EPP will be notified in writing of the approval or denial of its proposal within 60 days following the receipt of the notification [a determination] by the TEA staff [SBEC].

(g) Each EPP must develop and implement a calendar of program activities that must include a deadline for accepting candidates into a program cycle to assure adequate time for admission, coursework, training, and field-based experience requirements prior to a clinical teaching or internship experience.

§228.30. Educator Preparation Curriculum.

(a) The educator standards adopted by the State Board for Educator Certification (SBEC) shall be the curricular basis for all educator preparation and, for each certificate, address the relevant Texas Essential Knowledge and Skills (TEKS).

(b) The curriculum for each educator preparation program shall rely on scientifically-based [~~scientifically based~~] research to ensure educator [~~teacher~~] effectiveness [~~and align to the TEKS. Coursework and training should be sustained, rigorous, interactive, student-focused, and performance-based~~].

(c) The following subject matter shall be included in the curriculum for candidates seeking initial certification in any certification class:

~~[(1) reading instruction, including instruction that improves students' content-area literacy;]~~

(1) ~~[(2)]~~ the code of ethics and standard practices for Texas educators, pursuant to Chapter 247 of this title (relating to Educators' Code of Ethics), which include:

(A) professional ethical conduct, practices, and performance;

(B) ethical conduct toward professional colleagues; and

(C) ethical conduct toward students;

~~[(3) the skills and competencies captured in the Texas teacher standards, as indicated in Chapter 149 of this title (relating to Commissioner's Rules Concerning Educator Standards), which include:]~~

~~[(A) instructional planning and delivery;]~~

~~[(B) knowledge of students and student learning;]~~

~~[(C) content knowledge and expertise;]~~

~~[(D) learning environment;]~~

~~[(E) data-driven practice; and]~~

~~[(F) professional practices and responsibilities;]~~

(2) ~~[(4)]~~ instruction in detection and education of students with dyslexia, as indicated in the Texas Education Code (TEC), §21.044(b); ~~[and]~~

(3) ~~[(5)]~~ instruction regarding mental health, substance abuse, and youth suicide [~~in detection of students with mental or emotional disorders~~], as indicated in the TEC, §21.044(c-1); ~~[and (e-2).]~~

(4) the skills that educators are required to possess, the responsibilities that educators are required to accept, and the high expectations for students in this state;

(5) the importance of building strong classroom management skills; and

(6) the framework in this state for teacher and principal evaluation.

(d) The following subject matter shall be included in the curriculum for candidates seeking initial certification in the classroom teacher certification class:

(1) the relevant TEKS, including the English Language Proficiency Standards;

(2) reading instruction, including instruction that improves students' content-area literacy;

(3) for certificates that include early childhood and prekindergarten, the Prekindergarten Guidelines; and

(4) the skills and competencies captured in the Texas teacher standards in Chapter 149, Subchapter AA, of this title (relating to Teacher Standards), which include:

(A) instructional planning and delivery;

(B) knowledge of students and student learning;

(C) content knowledge and expertise;

(D) learning environment;

(E) data-driven practice; and

(F) professional practices and responsibilities.

(e) For candidates seeking certification in the principal certification class, the curriculum shall include the skills and competencies captured in the Texas administrator standards, as indicated in Chapter 149, Subchapter BB, of this title (relating to Administrator Standards), which include:

(1) instructional leadership;

(2) human capital;

(3) executive leadership;

(4) school culture; and

(5) strategic operations.

§228.35. *Preparation Program Coursework and/or Training.*

(a) Coursework and/or training for candidates seeking initial certification in any certification class [~~Training for Candidates Seeking Initial Certification~~].

(1) An educator preparation program (EPP) shall provide coursework and/or training to adequately prepare candidates for educator certification and ensure the educator is effective in the classroom.

(2) Coursework and/or training shall [~~Professional development should~~] be sustained, rigorous, intensive, interactive, candidate-focused, and performance-based [~~and classroom focused~~].

~~[(3) An EPP shall provide each candidate with a minimum of 300 clock-hours of coursework and/or training. A candidate who does not qualify as a late hire who is issued a probationary certificate after September 1, 2012, may not be employed by a school district as a teacher of record until the candidate completes a minimum of 30 clock-hours of field-based experience or clinical teaching in which the candidate is actively engaged in instructional or educational activities under supervision at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose, as provided in this section. Unless a candidate qualifies as a late hire, a candidate shall complete the following prior to any clinical teaching or internship:]~~

~~[(A) a minimum of 30 clock-hours of field-based experience. Up to 15 clock-hours of this field-based experience may be provided by use of electronic transmission or other video or technology-based method; and]~~

~~[(B) 80 clock-hours of coursework and/or training.]~~

(3) ~~[(4)]~~ All coursework and/or training shall be completed prior to EPP completion and standard certification.

~~[(5) With appropriate documentation such as certificate of attendance, sign-in sheet, or other written school district verification, 50 clock-hours of training may be provided by a school district and/or~~

campus that is an approved TEA continuing professional education provider.}]

(4) [(6)] Each EPP must develop and implement specific criteria and procedures that allow:

(A) military service member or military veteran candidates to credit verified military service, training, or education toward the training, education, work experience, or related requirements (other than certification examinations) for educator certification requirements, provided that the military service, training, or education is directly related to the certificate being sought; and

(B) candidates who are not military service members or military veterans to substitute prior or ongoing service, training, or education, provided that the experience, education, or [and/or professional] training is not also counted as a [for] part of the [educator preparation requirements, provided that the experience or training is not also counted as a part of the] internship, clinical teaching, or practicum requirements, was provided by an approved EPP or an accredited institution of higher education within the past five years, and is directly related to the certificate being sought.

(5) Coursework and training that is offered online must meet, or the EPP must be making progress toward meeting, criteria set for accreditation, quality assurance, and/or compliance with one or more of the following:

(A) Accreditation by the Distance Education Accrediting Commission;

(B) Program Design and Teaching Support Certification by Quality Matters;

(C) Chapter 4, Subchapter P, of this title (relating to Approval of Distance Education Courses and Programs for Public Institutions); or

(D) Chapter 7 of this title (relating to Degree Granting Colleges and Universities Other than Texas Public Institutions).

(b) Coursework and/or training for candidates seeking initial certification in the classroom teacher certification class. An EPP shall provide each candidate with a minimum of 300 clock-hours of coursework and/or training. Unless a candidate qualifies as a late hire, a candidate shall complete the following prior to any clinical teaching or internship:

(1) a minimum of 30 clock-hours of field-based experience. Up to 15 clock-hours of this field-based experience may be provided by use of electronic transmission or other video or technology-based method; and

(2) 150 clock-hours of coursework and/or training that allows candidates to demonstrate proficiency in:

(A) designing clear, well-organized, sequential, engaging, and flexible lessons that reflect best practice, align with standards and related content, are appropriate for diverse learners and encourage higher-order thinking, persistence, and achievement;

(B) formally and informally collecting, analyzing, and using student progress data to inform instruction and make needed lesson adjustments;

(C) ensuring high levels of learning, social-emotional development, and achievement for all students through knowledge of students, proven practices, and differentiated instruction;

(D) clearly and accurately communicating to support persistence, deeper learning, and effective effort;

(E) organizing a safe, accessible, and efficient classroom;

(F) establishing, communicating, and maintaining clear expectations for student behavior;

(G) leading a mutually respectful and collaborative class of actively engaged learners;

(H) meeting expectations for attendance, professional appearance, decorum, procedural, ethical, legal, and statutory responsibilities;

(I) reflect on his or her practice; and

(J) effectively communicating with students, families, colleagues, and community members.

(c) [(b)] Coursework and/or training [Training] for candidates seeking initial certification in a certification class other than classroom teacher [Professional Certification]. An EPP shall provide coursework and/or training to ensure that the educator is effective in the [professional] assignment. An EPP shall provide a candidate with a minimum of 200 clock-hours of coursework and/or training that is directly aligned to the educator [state] standards for the applicable certification class [field].

(d) [(e)] Late hire provisions [Hire Provisions]. A late hire for a school district teaching position may begin employment under an intern or [a] probationary certificate before completing the pre-internship requirements of subsection (b) [(a)(3)] of this section [and, if applicable, 15 clock-hours of active, supervised experience], but shall complete these requirements within 90 school days of assignment.

(e) [(d)] Educator preparation program delivery [Preparation Program Delivery]. An EPP shall provide evidence of ongoing and relevant field-based experiences throughout the EPP in a variety of educational settings with diverse student populations, including observation, modeling, and demonstration of effective practices to improve student learning.

(1) For initial certification in the classroom teacher certification class, each EPP shall provide field-based experiences, as defined in §228.2 of this title (relating to Definitions), for a minimum of 30 clock-hours. The field-based experiences must be completed prior to assignment in an internship or clinical teaching. [Up to 15 clock-hours of field-based experience may be provided by use of electronic transmission or other video or technology-based method.]

(A) Field-based experiences must include 15 clock-hours in which the candidate, under the direction of the EPP [supervision], is actively engaged in instructional or educational activities that include:

(i) [(A)] authentic school settings in a public school accredited by the Texas Education Agency (TEA) [TEA] or other school approved by the TEA for this purpose;

(ii) [(B)] instruction by content certified teachers;

(iii) [(C)] actual students in classrooms/instructional settings with identity-proof provisions;

(iv) [(D)] content or grade-level specific classrooms/instructional settings; and

(v) written [(E)] reflection of the observation.

(B) Up to 15 clock-hours of field-based experience may be provided by use of electronic transmission or other video or technology-based method. Field-based experience provided by use of elec-

tronic transmission or other video or technology-based method must include:

- (i) direction of the EPP;
- (ii) authentic school settings in an accredited public or private school;
- (iii) instruction by content certified teachers;
- (iv) actual students in classrooms/instructional settings with identity-proof provisions;
- (v) content or grade-level specific classrooms/instructional settings; and
- (vi) written reflection of the observation.

(2) For initial certification in the classroom teacher certification class, each EPP shall also provide at least one of the following:

(A) clinical teaching[; as defined in §228.2 of this title,] for a minimum of 14 [+2] weeks (no less than 65 full days), with a full day being 100% of the school day; or

(B) clinical teaching for a minimum of 28 [24] weeks (no less than 130 half days, with a half day being 50% of the school day; or

(C) [~~(B)~~] internship[; as defined in §228.2 of this title,] for a minimum of one full school year for the classroom teacher assignment or assignments that match [~~matches~~] the certification category or categories [~~field~~] for which the candidate [~~individual~~] is prepared by the EPP. [~~The individual would hold a probationary certificate and be classified as a "teacher" as reported on the campus Public Education Information Management System (PEIMS) data.~~]

(i) An EPP may permit an internship of up to 30 school days less than the minimum if due to maternity leave, military leave, illness, or late hire date.

(ii) The beginning and ending date for an internship is the first and last day of instruction with students based on the school calendar of the school or district in which the internship takes place.

(iii) An internship assignment shall not be less than an average of four hours each day in the subject area and grade level of certification sought. An EPP may permit an additional internship assignment of less than an average of four hours each day if:

(I) the primary assignment is not less than an average of four hours each day in the subject area and grade level of certification sought;

(II) the EPP is approved to offer preparation in the certification category required for the additional assignment;

(III) the EPP provides ongoing support for each assignment as prescribed in subsection (g) of this section;

(IV) the EPP provides coursework and training for each assignment to adequately prepare the candidate to be effective in the classroom; and

(V) the employing school or district notifies the candidate and the EPP in writing that an assignment of less than four hours will be required.

(iv) A candidate must hold an intern or probationary certificate while participating in an internship. A candidate must meet the requirements and conditions, including the subject matter knowledge requirement, prescribed in §230.36 of this title (relating to Intern Certificates) and §230.37 of this title (relating to Probationary Certificates) to be eligible for an intern or probationary certificate.

(v) An EPP may recommend an additional internship if:

(I) the EPP certifies that the first internship was not successful, the EPP has developed a plan to address any deficiencies identified by the candidate and the candidate's field supervisor, and the EPP implements the plan during the additional internship; or

(II) the EPP certifies that the first internship was successful and that the candidate is making satisfactory progress toward completing the EPP before the end of the additional internship.

(vi) An EPP must provide ongoing support to a candidate as described in subsection (g) of this section for the full term of the initial and any additional internship, unless, prior to the expiration of that term:

(I) a standard certificate is issued to the candidate during any additional internship under a probationary certificate;

(II) the candidate resigns, is non-renewed, or is terminated by the school or district. A candidate must provide the EPP the official notice of resignation or termination within one business day after receipt of the notice from the employing school or district. Within one business day after receipt of the official notice of resignation or termination, an EPP must notify a candidate in writing that the EPP will provide TEA with notice about the resignation or termination and that the intern certificate will be inactivated by the TEA 30 calendar days from the effective date of the resignation or termination. Within one business day after providing the notice to a candidate, an EPP must email the TEA a copy of the notice to the candidate and a copy of the official notice of the resignation or termination;

(III) the candidate is discharged or is released from the EPP. An EPP must notify a candidate in writing that the candidate is being discharged or released, that the EPP will provide the employing school or district with notice of the discharge or release, that the EPP will provide TEA with notice about the resignation or termination, and that the intern certificate will be inactivated by the TEA 30 calendar days from the effective date of the discharge or release. Within one business day after providing a candidate with notice of discharge or release, an EPP must provide written notification to the employing school or district of the withdrawal, discharge, or release. Within one business day of providing notice to the employing school or district, an EPP must email the TEA a copy of the notice of discharge or release and a copy of the notice to the employing school or district; or

(IV) the candidate withdraws from the EPP. A candidate must notify the EPP in writing that the candidate is withdrawing from the EPP. Within one business day after receipt of the withdrawal notice, an EPP must notify a candidate in writing that the EPP will provide the employing school or district with notice of the withdrawal, that the EPP will provide TEA with notice about the withdrawal, and that the intern certificate will be inactivated by the TEA 30 calendar days from the effective date of the withdrawal. Within one business day after providing a candidate with notice of discharge or release, an EPP must provide written notification to the employing school or district of the withdrawal, discharge, or release. Within one business day of providing notice to the employing school or district, an EPP must email the TEA a copy of the notice of withdrawal and a copy of the notice to the employing school or district.

(D) An EPP may request an exception to the clinical teaching option described in this subsection. An exception must include an alternate requirement that will adequately prepare candidates for educator certification and ensure the educator is effective in the

classroom. The request for an exception must be submitted in a form developed by the TEA staff which shall include:

(i) the rationale and support for the alternate clinical teaching option;

(ii) a full description and methodology of the alternate clinical teaching option;

(iii) a description of the controls to maintain the delivery of equivalent, quality education; and

(iv) a description of the ongoing monitoring and evaluation process to ensure that EPP objectives are met.

(E) Exception requests will be reviewed by TEA staff, and the TEA staff shall recommend to the State Board for Educator Certification (SBEC) whether the exception should be approved.

(F) Candidates need to experience a full range of professional responsibilities that shall include the start of the school year. If these experiences cannot be provided through clinical teaching, they must be provided through field-based experiences.

(3) [(4)] An internship or clinical teaching experience for certificates that include early childhood [an Early Childhood-Grade 6 candidate] may be completed at a Head Start Program with the following stipulations:

(A) [(H)] a certified teacher is available as a trained mentor;

(B) [(HH)] the Head Start program is affiliated with the federal Head Start program and approved by the TEA;

(C) [(HH)] the Head Start program teaches three- and four-year-old students; and

(D) [(IV)] the state's prekindergarten [pre-kindergarten] curriculum guidelines are being implemented.

(4) [(ii)] An internship ~~or~~ clinical teaching [or practicum] experience must take place in an actual school setting rather than a distance learning lab or virtual school setting.

(5) An internship or clinical teaching experience shall not take place in a setting where the candidate:

(A) has an administrative role over the mentor or cooperating teacher; or

(B) is related to the field supervisor, mentor, or cooperating teacher by blood (consanguinity) within the third degree or by marriage (affinity) within the second degree.

(6) [(3)] For certification in a class other than classroom teacher [candidates seeking professional certification], each EPP shall provide a practicum [as defined in §228.2 of this title,] for a minimum of 160 clock-hours whereby a candidate must demonstrate proficiency in each of the educator standards for the certificate class being sought.

(A) A practicum experience must take place in an actual school setting rather than a distance learning lab or virtual school setting.

(B) A practicum shall not take place in a setting where the candidate:

(i) has an administrative role over the site supervisor; or

(ii) is related to the field supervisor or site supervisor by blood (consanguinity) within the third degree or by marriage (affinity) within the second degree.

(C) An intern or probationary certificate may be issued to a candidate for a certification class other than classroom teacher who meets the requirements and conditions, including the subject matter knowledge requirement, prescribed in §230.37 of this title.

(i) A candidate for an intern or probationary certificate in a certification class other than classroom teacher must meet all requirements established by the recommending EPP, which shall be based on the qualifications and requirements for the class of certification sought and the duties to be performed by the holder of a probationary certificate in that class.

(ii) An EPP may recommend an additional practicum under a probationary certificate if:

(I) the EPP certifies that the first practicum was not successful, the EPP has developed a plan to address any deficiencies identified by the candidate and the candidate's field supervisor, and the EPP implements the plan during the additional practicum; or

(II) the EPP certifies that the first practicum was successful and that the candidate is making satisfactory progress toward completing the EPP before the end of the additional practicum.

(D) A practicum is successful when the field supervisor and the site supervisor recommend to the EPP that the candidate should be recommended for a standard certificate.

(7) [(4)] Subject to all the requirements of this section, the TEA may approve a school that is not a public school accredited by the TEA as a site for field-based experience, internship, clinical teaching, and/or practicum.

(A) All Department of Defense Education Activity (DoDEA) schools, wherever located, and all schools accredited by the Texas Private School Accreditation Commission (TEPSAC) are approved by the TEA for purposes of field-based experience, internship, clinical teaching, and/or practicum.

(B) An EPP may file an application with the TEA for approval, subject to periodic review, of a public school, a private school, or a school system located within any state or territory of the United States, as a site for field-based experience [or for video or other technology-based depiction of a school setting]. The application shall be in a form developed by the TEA staff and shall include, at a minimum, evidence showing that the instructional standards of the school or school system align with those of the applicable Texas Essential Knowledge and Skills (TEKS) and SBEC certification standards.

(C) An EPP may file an application with the TEA for approval, subject to periodic review, of a public or private school located within any state or territory of the United States, as a site for an internship, clinical teaching, and/or practicum required by this chapter. The application shall be in a form developed by the TEA staff and shall include, at a minimum:

(i) the accreditation(s) held by the school;

(ii) a crosswalk comparison of the alignment of the instructional standards of the school with those of the applicable TEKS and SBEC certification standards;

(iii) the certification, credentials, and training of the field supervisor(s) who will supervise candidates in the school; and

(iv) the measures that will be taken by the EPP to ensure that the candidate's experience will be equivalent to that of a candidate in a Texas public school accredited by the TEA.

(D) An EPP may file an application with the TEA [SBEC] for approval, subject to periodic review, of a public or private

school located outside the United States, as a site for clinical teaching, internship, or practicum required by this chapter. The application shall be in a form developed by the TEA staff and shall include, at a minimum, the same elements required in subparagraph (C) of this paragraph for schools located within any state or territory of the United States, with the addition of a description of the on-site program personnel and program support that will be provided and a description of the school's recognition by the U.S. State Department Office of Overseas Schools.

(f) ~~[(e)]~~ Mentors, cooperating teachers, and site supervisors [Campus Mentors and Cooperating Teachers]. In order to support a new educator and to increase educator ~~[teacher]~~ retention, an EPP shall collaborate with the campus or district administrator to assign each candidate a ~~[campus]~~ mentor during the candidate's ~~[his or her]~~ internship, ~~[or]~~ assign a cooperating teacher during the candidate's clinical teaching experience, or assign a site supervisor during the candidate's practicum. If an individual who meets the certification category and/or experience criteria for a cooperating teacher, mentor, or site supervisor is not available, the EPP and campus or district administrator shall assign an individual who most closely meets the criteria and document the reason for selecting an individual that does not meet the criteria. The EPP is responsible for providing mentor, ~~[and/or]~~ cooperating teacher, and/or site supervisor training that relies on scientifically-based research, but the program may allow the training to be provided by a school, district, or regional education service center if properly documented.

(g) ~~[(f)]~~ Ongoing educator preparation program support for initial certification of teachers [Educator Preparation Program Support for Initial Certification of Teachers]. Supervision of each candidate shall be conducted with the structured guidance and regular ongoing support of an experienced educator who has been trained as a field supervisor. Supervision provided on or after September 1, 2017, must be provided by a field supervisor who has completed TEA-approved observation training. The initial contact, which may be made by telephone, email, or other electronic communication, with the assigned candidate must occur within the first three weeks of assignment. For each formal observation, the ~~[The]~~ field supervisor shall participate in an individualized pre-observation conference with the candidate, document educational ~~[instructional]~~ practices observed; ~~;~~ provide written feedback through an individualized, synchronous, and interactive post-observation conference with the candidate; ~~;~~ and provide a copy of the written feedback to the candidate's cooperating teacher or mentor. Neither the pre-observation conference nor the post-observation conference need to be onsite. For candidates participating in an internship, the field supervisor shall provide a copy of the written feedback to the candidate's supervising campus administrator. Formal observations by the field supervisor conducted through collaboration with school or district personnel can be used to meet the requirements of this subsection. Informal observations and coaching shall be provided by the field supervisor as appropriate. In a clinical teaching experience, the field supervisor shall collaborate with the candidate and cooperating teacher throughout the clinical teaching experience. For an internship, the field supervisor shall collaborate with the candidate, mentor, and supervising campus administrator throughout the internship.

(1) Each formal observation must be at least 45 minutes in duration, must be conducted by the field supervisor, and must be on the candidate's site in a face-to-face setting.

(2) An EPP must provide the first formal observation within the first third of all clinical teaching assignments and the first six weeks of all internship assignments.

(3) For an internship under an intern certificate or an additional internship described in subsection (e)(2)(C)(v)(I) of this section,

an EPP must provide a minimum of ~~three [two]~~ formal observations during the first half ~~[four months]~~ of the internship ~~[assignment]~~ and a minimum of two ~~[one]~~ formal observations ~~[observation]~~ during the last half ~~[five months]~~ of the internship ~~[assignment]~~.

(4) For a first-year internship under a probationary certificate or an additional internship described in subsection (e)(2)(C)(v)(II) of this section, an EPP must provide a minimum of one formal observation during the first third of the assignment, a minimum of one formal observation during the second third of the assignment, and a minimum of one formal observation during the last third of the assignment.

(5) If an internship under an intern certificate or an additional internship described in subsection (e)(2)(C)(v)(I) of this section involves certification in more than one certification category that cannot be taught concurrently during the same period of the school day, an EPP must provide a minimum of three observations in each assignment. For each assignment, the EPP must provide at least two formal observations during the first half of the internship and one formal observation during the second half of the internship.

(6) For a first-year internship under a probationary certificate or an additional internship described in subsection (e)(2)(C)(v)(II) of this section that involves certification in more than one certification category that cannot be taught concurrently during the same period of the school day, an EPP must provide a minimum of one formal observation in each of the assignments during the first half of the assignment and a minimum of one formal observation in each assignment during the second half of the assignment.

(7) ~~[(4)]~~ For a 14-week, full-day clinical teaching assignment, an EPP must provide a minimum of one formal observation ~~[three observations]~~ during the first third of the assignment, a minimum of one formal observation during the second third of the assignment, and a minimum of one formal observation during the last third of the assignment ~~[which is a minimum of 12 weeks]~~.

(8) For a 28-week, half-day clinical teaching assignment, an EPP must provide a minimum of two formal observations during the first half of the assignment and a minimum of two formal observations during the last half of the assignment.

(h) ~~[(g)]~~ Ongoing educator preparation program support for certification in a certification class other than classroom teacher [Educator Preparation Program Support for Professional Certification]. Supervision of each candidate shall be conducted with the structured guidance and regular ongoing support of an experienced educator who has been trained as a field supervisor. Supervision provided on or after September 1, 2017, must be provided by a field supervisor who has completed TEA-approved observation training. The initial contact, which may be made by telephone, email, or other electronic communication, with the assigned candidate must occur within the first quarter ~~[three weeks]~~ of the assignment. For each formal observation, the ~~[The]~~ field supervisor shall participate in an individualized pre-observation conference with the candidate; document educational ~~[professional]~~ practices observed; ~~;~~ provide written feedback through an individualized, synchronous, and interactive post-observation conference with the candidate; ~~;~~ and provide a copy of the written feedback to the candidate's site supervisor. Neither the pre-observation conference nor the post-observation conference need to be onsite. Formal observations conducted through collaboration with school or district personnel can be used to meet the requirements of this subsection. Informal observations and coaching shall be provided by the field supervisor as appropriate. The field supervisor shall collaborate with the candidate and site supervisor throughout the practicum experience.

(1) Formal observations [Observations] must be at least 135 minutes in duration in total throughout the practicum and must be conducted by the field supervisor.

(2) At least one of the formal observations must be on the candidate's site in a face-to-face setting.

(3) If a formal observation is not conducted on the candidate's site in a face-to-face setting, the formal observation may be provided by use of electronic transmission or other video or technology-based method. A formal observation that is not conducted on the candidates' site in a face-to-face setting must include a pre- and post-conference.

~~(2) An EPP must provide the first observation within the first six weeks of all assignments.]~~

(4) ~~[(3)] An EPP must provide a minimum of one formal observation within the first third of the practicum, one formal observation within the second third of the practicum, and one formal observation within the final third of the practicum [three observations during the term of the practicum].~~

~~(i) [(h)] Exemptions [Exemption].~~

~~(1) Under the Texas Education Code (TEC), §21.050(c), a candidate who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, is exempt from the requirements of this chapter relating to field-based experience, [or] internship, or [consisting of] clinical teaching.~~

~~(2) Under the TEC, §21.0487(c)(2)(B), a candidate's employment by a school or district as a Junior Reserve Officer Training Corps instructor before the person was enrolled in an EPP or while the person is enrolled in an EPP is exempt from any clinical teaching, internship, or field-based experience program requirement.~~

§228.40. Assessment and Evaluation of Candidates for Certification and Program Improvement.

(a) To ensure that a candidate for educator certification is prepared to receive a standard certificate, the ~~[entity delivering] educator preparation program (EPP)~~ shall establish benchmarks and structured assessments of the candidate's progress throughout the ~~EPP [educator preparation program (EPP)].~~

(b) An EPP is responsible for ensuring that each candidate is adequately prepared to pass the appropriate content certification examination(s) required for certification, unless a candidate passes the appropriate content certification examination(s) as a requirement for admission to an EPP.

(c) Upon the written request of the candidate, an EPP may prepare a candidate and grant test approval for a classroom teacher certificate category other than the category for which the candidate was initially admitted to the EPP.

(d) ~~[(b)] An EPP shall determine the readiness of each candidate to take the appropriate certification examination [assessment] of content, pedagogy, and professional responsibilities, including professional ethics and standards of conduct. An EPP shall not grant test approval for a certification examination [the pedagogy and professional responsibilities assessment] until a candidate has met all of the requirements for admission to the EPP [program] and has been contingently or formally admitted [fully accepted] into the EPP.~~

(e) ~~[(e)] For the purposes of EPP improvement, an entity shall continuously evaluate the design and delivery of the EPP components~~

~~[educator preparation curriculum] based on performance data, scientifically-based research practices, and the results of internal and external feedback and assessments.~~

~~(f) [(d)] An EPP shall retain documents that evidence a candidate's eligibility for admission to the program and evidence of completion of all program requirements for a period of five years after a candidate completes, withdraws from, or is discharged or released from the program [completion].~~

§228.50. Professional Conduct.

During the period of preparation, the educator preparation program shall ensure that the individuals preparing candidates and the candidates themselves understand and adhere to Chapter 247 of this title (relating to Educators' Code of Ethics).

§228.60. Implementation Date.

~~[(a)] The provisions of this chapter that were in effect on the date an educator preparation program (EPP) candidate was admitted to an EPP shall determine the program requirements applicable to that candidate.~~

~~[(b) All provisions in this chapter, except the total clock-hour training requirement, shall apply to §230.39 of this title (relating to Temporary Teacher Certificates).]~~

§228.70. Complaints and Investigations Procedures.

(a) Purpose. Texas Education Agency (TEA) staff shall maintain a process through which a candidate or former candidate in an educator preparation program (EPP), an applicant for candidacy in an EPP, an employee or former employee of an EPP, a cooperating teacher, a mentor, a site supervisor, or an administrator in a ~~public [school district, charter school,] or private school that serves as a site for clinical teaching, internship, or practicum experiences~~ may submit, in accordance with subsection (c)(1) of this section, a complaint about an EPP for investigation and resolution.

(b) EPP responsibilities.

(1) The EPP shall adopt and send to TEA staff, for inclusion in the EPP's records, a complaint procedure that requires the EPP to timely attempt to resolve complaints at the EPP level before a complaint is filed with TEA staff.

(2) The EPP shall post on its website a link to the TEA complaints website and information regarding how to file a complaint under the EPP's complaint policy.

(3) The EPP shall post a notification at all of its physical site(s) used by employees and candidates, in a conspicuous location, information regarding filing a complaint with TEA staff in accordance with subsection (c)(1) of this section.

(4) Upon request of an individual, the EPP shall provide information in writing regarding filing a complaint under the EPP's complaint policy and the procedures to submit a complaint to TEA staff in accordance with subsection (c)(1) of this section.

(c) TEA responsibilities.

(1) Filing a complaint. TEA staff will develop a complaint form to standardize information received from an individual making a complaint against an EPP. The complaint form will be available on the TEA website. All complaints filed against an EPP must be in writing on the complaint form. The written complaint must clearly state the facts that are the subject of the complaint and must state the measures the complainant has taken to attempt resolution of the complaint with the EPP. Anonymous complaints may not be accepted or investigated.

(2) Processing the complaint.

(A) TEA staff will record all complaints in the TEA complaints tracking system. Each complaint, no matter the severity, shall be assigned a tracking number.

(B) The complaint will be forwarded to the division responsible for educator preparation for further action, including assessing the complaint, providing a severity status and prioritizing the complaint accordingly, and determining jurisdiction.

(C) If TEA staff determines that the complaint is not within the State Board for Educator Certification's (SBEC's) jurisdiction, TEA staff shall notify the complainant that the complaint will be closed without action for lack of jurisdiction. TEA staff and the SBEC do not have jurisdiction over complaints related to contractual arrangements with an EPP, commercial issues, obtaining a higher grade or credit for training, or seeking reinstatement to an EPP.

(D) If TEA staff determines the complainant knew or should have known about the events giving rise to a complaint more than two years before the earliest date the complainant filed a complaint with either TEA staff or the EPP, TEA staff will notify the complainant that the complaint will be closed without action.

(E) If a complainant has not exhausted all applicable complaint and appeal procedures that the EPP has established to address complaints, TEA staff may delay initiating an investigation until the EPP's complaint and appeal process is complete.

(3) Investigating the complaint.

(A) If TEA staff determines a complaint is within the SBEC's jurisdiction, TEA staff will notify the respondent EPP that a complaint has been made, provide a summary of the allegations in the complaint, and request that the EPP respond to the complaint.

(B) TEA staff may request further information from the individual and from the EPP.

(C) An EPP shall:

(i) cooperate fully with any SBEC investigation; and

(ii) respond within 21 business days of receipt to requests for information regarding the complaint(s) and other requests for information from the TEA, except where:

(I) TEA staff imposes a different response date;

or
(II) the EPP is unable to meet the initial response date and requests and receives a different response date from TEA staff.

(D) If an EPP fails to comply with subparagraph (C) of this paragraph, the SBEC may amend the complaint to reflect the violation and may deem admitted the violation of SBEC rules and/or Texas Education Code (TEC), Chapter 21, alleged in the original complaint.

(4) Resolving the complaint.

(A) Upon completion of an investigation, TEA staff will notify both the individual and the EPP in writing of the findings of the investigation. If TEA staff finds that a violation occurred, the notice will specify the statute and/or rule that was alleged to have been violated.

(B) Each party will have ten business days to present additional evidence or to dispute the findings of the investigation.

(C) After reviewing any additional evidence, if TEA staff finds that no violation has occurred, the complaint will be closed and TEA staff will notify both parties in writing.

(D) After reviewing any additional evidence, if TEA staff finds that the EPP has violated SBEC rules and/or TEC, Chapter 21, the following provisions apply.

(i) TEA staff will notify the EPP in writing and specify for each violation the seriousness and extent of the violation, including whether the EPP has been found to have violated that statute and/or rule previously.

(ii) Within ten business days of TEA staff notifying the EPP in writing that a violation has occurred, the EPP and TEA staff will collaboratively develop and agree to a timely resolution of each violation. If the parties cannot agree on a resolution within ten business days, TEA staff will unilaterally propose a resolution within ten business days of TEA staff issuing the violation notice.

(iii) If the EPP complies with the agreed or proposed resolution, the investigation is closed and results recorded in accordance with subparagraph (E) of this paragraph.

(iv) If the EPP does not comply with the agreed or proposed resolution within the timelines set out in the resolution, TEA staff will make a recommendation that the SBEC impose sanctions affecting the EPP's accreditation status in accordance with §229.5 of this title (relating to Accreditation Sanctions and Procedures) and/or continuing approval status in accordance with §229.6 of this title (relating to Continuing Approval).

(v) The EPP shall be entitled to an informal review of the proposed recommendation for sanctions under the conditions and procedures set out in §229.7 of this title (regarding Informal Review of Texas Education Agency Recommendations).

(E) The final disposition of the complaint will be recorded in the TEA complaints tracking system.

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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CHAPTER 229. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS

The State Board for Educator Certification (SBEC) proposes amendments to 19 TAC §§229.1 - 229.9 and repeal of 19 TAC §229.21, concerning an accountability system for educator preparation programs (EPPs). The SBEC rules in 19 TAC Chapter 229 establish the process used for issuing annual accreditation ratings for all EPPs. The proposed amendments to 19 TAC §§229.1 - 229.9 and the proposed repeal of 19 TAC §229.21 would include changes as the result of recent legislative changes, SBEC input, stakeholder input, and input received from staff at the Texas Education Agency (TEA).

The Texas Education Code (TEC), §21.045, states that the SBEC shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs. At the January 2015 SBEC work session, the SBEC members

received three presentations on educator quality as it pertains to EPPs in the state of Texas. The Texas Teaching Commission, the Council for the Accreditation of Educator Preparation, and the National Council on Teacher Quality provided state and national perspectives on educator quality in relation to Texas EPPs. SBEC members provided feedback to TEA staff on those presentations. Specifically, as it relates to 19 TAC Chapter 229, the SBEC requested policy options that focus on raising EPP standards, improving teacher preparation programs, and new and improved ways to train better teachers. The TEA staff also convened three stakeholder meetings in December 2015 and three stakeholder meetings in June 2016 to gather input on the proposed revisions to 19 TAC Chapter 229.

General Provisions and Purpose of Accountability System for Educator Preparation Programs

The SBEC proposes amending the language in 19 TAC §229.1(a) to replace *certification field* with *certification class* or *category*. This would align the language used in 19 TAC Chapters 227, 228, 230, and 233.

Definitions

The SBEC proposes that the definitions of *accredited institution of higher education* and *site supervisor* be added for clarity and alignment between other chapters in the TAC. The SBEC proposes that the definitions of *candidate*, *clinical teaching*, *cooperating teacher*, *educator preparation program*, *field supervisor*, *internship*, and *practicum* be amended for clarity and alignment between other chapters in the TAC. The SBEC proposes that the definitions of *completer* and *educator preparation program data* be amended for clarity, that the definition of *campus-based mentor* be replaced by *mentor* for clarity and alignment between other chapters in the TAC, and that the definitions of *alternative certification program*, *institutional report*, and *scaled score* be removed because the terms are not referenced in the chapter.

The SBEC proposes that the definition of *certification field* be replaced by *certification category* and *certification class* so that the definitions align with 19 TAC Chapters 227, 228, 230, and 233. The definitions would include "also referred to as certification field" so that the common term for categories and classes can continue to be used by TEA staff and EPPs. To align the definitions across all chapters, the SBEC proposes that these changes be made in 19 TAC §229.2 with conforming changes made throughout the chapter.

In accordance with the TEC, §21.045(a)(5), as amended by House Bill (HB) 2205, 84th Texas Legislature, Regular Session, 2015, the SBEC proposes adding a definition of *new teacher* as the first year of employment as a classroom teacher under a standard certificate after completing an EPP. In accordance with the TEC, §21.0441, as added by HB 2205, 84th Texas Legislature, Regular Session, 2015, the SBEC proposes adding a definition of *incoming class*.

The SBEC proposes amending the definition of *beginning teacher* to clarify that it means a classroom teacher with less than three years of experience and is used for the purpose of implementing the TEC, §21.045(a)(3), in this chapter. The SBEC also proposes amending the definition of *first-year teacher* to clarify that it is used for the purpose of implementing the TEC, §21.045(a)(2), in this chapter.

The SBEC proposes moving the definition of pass rate to the determination of accreditation status section. In addition, the definitions would be renumbered accordingly.

Required Submissions of Information, Surveys, and Other Data

In accordance with the TEC, §21.045(a)(5), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, and the TEC, §21.0441, as added by HB 2205, 84th Texas Legislature, Regular Session, 2015, the SBEC proposes amending and adding language in 19 TAC §229.3(a), (e), and (f) to clarify who is required to provide data and when the data is required to be submitted. The SBEC also proposes amending these subsections to clarify that the data and information required to be provided is set forth in subsections (e) and (f).

In accordance with the TEC, §21.045, as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, and §21.0452, as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, the SBEC proposes replacing the figure in 19 TAC §229.3(f)(1) to clarify data that is required to be collected and reported.

The collection and reporting of new annual performance report data includes the results of teacher satisfaction surveys; data related to field supervision of candidates completing clinical teaching and internships; the number of teachers employed under standard certificates within one year of completing an EPP; the amount of time required by candidates employed as beginning teachers under probationary certificates to be issued standard certificates; the ratio of field supervisors to candidates completing clinical teaching or an internship; and any other information necessary to assess effectiveness of the program on the basis of teacher retention and success criteria such as the performance of candidates on all examinations approved by an EPP and the percentage of applicants who are admitted to a program.

The collection and reporting of new consumer information data includes for each semester, the average ratio of field supervisors to candidates completing clinical teaching and internships; the percentage of teachers employed under a standard teaching certificate within one year of completing an EPP; and the results of teacher satisfaction surveys.

Determination of Accreditation Status

In accordance with the TEC, §21.045(a), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, the SBEC proposes amending language in 19 TAC §229.4(a) to include disaggregation of EPP accountability indicators by race. The SBEC proposes amending language in 19 TAC §229.4(a)(4) to include candidates completing clinical teaching in the performance standards related to field supervision. The SBEC proposes adding 19 TAC §229.4(a)(5) to include the teacher satisfaction survey indicator into rule. The performance standard would be set after the teacher satisfaction survey is piloted during the 2016 - 2017 academic year. The SBEC also proposes amending language in 19 TAC §229.4(d) and (e) to align with the accreditation indicators in subsection (a) and include race as a way to disaggregate EPP candidates.

The SBEC proposes that the current definition of pass rate and the performance standard of 80% on all certification examinations in 19 TAC §229.4(a)(1) continue to be used for accreditation purposes for the 2016 - 2017 academic year. The SBEC proposes a new pass rate to be used for accreditation purposes after the 2016 - 2017 academic year. This pass rate would include, for each academic year, the percent of candidates who passed an examination that was approved by the EPP and required for the certification field in which the EPP is preparing or has prepared the candidate within the first two attempts. The amended definition would also include examination attempts that

may occur in the academic years while a candidate is enrolled or after a candidate has completed a program. The amended definition would create a higher and more transparent standard for this accreditation indicator.

The SBEC also proposes setting a separate performance standard for the results of Pedagogy and Professional Responsibilities (PPR) and non-PPR examinations after the 2016 - 2017 academic year. The performance standard for PPR examinations would use the new pass rate, be set at 80% for the 2016 - 2017 academic year, and would be used for reporting purposes only. Beginning with the 2017 - 2018 academic year, the performance standard would be set at 85% for the 2017 - 2018 academic years and 90% for the 2018 - 2019 academic years and beyond. The performance standard for the non-PPR examination would also use the new pass rate, be set at 70% for the 2016 - 2017 academic year, and would be used for reporting purposes only. Beginning with the 2017 - 2018 academic year, the performance standard would also increase by 5% until it reaches 90% for the 2020 - 2021 academic year and beyond. As required by the TEC, §21.045(a)(1), the results of certification examinations are required to be used as part of the accreditation status of an EPP. Separating PPR examination results from non-PPR examination results would provide more transparency in the accountability system. Lowering the performance standard below the current standard of 80% and considering 2016 - 2017 as a reporting year would provide EPPs time to evaluate and make changes to their programs before the performance standards would be used for accreditation purposes. Incrementally raising the standard by 5% each year would be a similar method for raising the performance standard to what the SBEC has done in the past. Raising the performance standard beyond the current standard of 80% to 90% would comport with the SBEC's request for policy options that focus on raising EPP standards and improving teacher preparation programs.

The SBEC proposes amending language in 19 TAC §229.4(a)(2) to set a performance standard for the results of a principal survey of first-year teachers. The performance standard would be defined as the percentage of first-year teachers who were appraised as sufficiently prepared or well prepared. The performance standard would be 70% for the 2016 - 2017 academic year and would be used for reporting purposes only. Beginning with the 2017 - 2018 academic year, the performance standard would increase by 5% until it reaches 90% for the 2020 - 2021 academic year and beyond. The use of first-year teacher performance data is required by the TEC, §21.045(a)(2), and the recommended performance standards are based on the results of SBEC-approved surveys that have been piloted for several years. Incrementally raising the standard by 5% each year would be a similar method for raising the performance standard to what the SBEC has done in the past. Raising the performance standard to 90% would comport with the SBEC's request for policy options that focus on raising EPP standards and improving teacher preparation programs.

The SBEC proposes amending the language in 19 TAC §229.4(a)(4) to set the performance standards for the frequency, duration, and quality of field supervision of clinical teachers and intern teachers. The performance standard for the frequency and duration of field supervision would be defined as the percentage of candidates who were observed by their field supervisor according to the requirements described in 19 TAC §228.35. For accreditation purposes, the performance standard for the frequency and duration of field supervision would be set at 95% for the 2016 - 2017 academic year for internship ob-

servations. For reporting purposes, the performance standard for the frequency and duration of field supervision would be set at 95% for the 2016 - 2017 academic year for internship and clinical teaching observations. For accreditation purposes, the performance standard for the frequency and duration of field supervision would be set at 95% for the 2017 - 2018 academic year and beyond for internship and clinical teaching observations. The performance standard for the quality of field supervision would be based on an exit survey of candidates when they complete an EPP. The performance standard would be defined as the percentage of candidates who rate the field supervision as always or almost always providing the required components of structural guidance and ongoing support. The performance standard would be set at 85% for the 2016 - 2017 academic year and would be used for reporting purposes only. The performance standard would increase to 90% for the 2017 - 2018 academic year and beyond. The use of field supervision data is required by the TEC, §21.045(a)(4), and the recommended performance standards are based on the results of surveys that have been piloted for several years. Incrementally raising the standard by 5% each year would be a similar method for raising the performance standard to what the SBEC has done in the past. Raising the performance standard to 90% would comport with the SBEC's request for policy options that focus on raising EPP standards and improving teacher preparation programs.

In accordance with the TEC, §21.045(a), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, the SBEC proposes amending language in 19 TAC §229.4(g) to include disaggregation of EPP accountability indicators by race. Because the TEC, §21.045(a), requires the SBEC to propose rules that disaggregate EPP performance data by race, ethnicity, and gender, the SBEC proposes that current 19 TAC §229.4(g)(2) be removed and that 19 TAC §229.4(g)(1) and proposed subsection (g)(2), (3), and (4) be amended to include groups disaggregated by race, ethnicity, and gender if the group contains more than 10 candidates. This would be a decrease from the current small group exception of 20, but a small group size of 10 would provide more transparency as to how EPPs are preparing candidates of different genders, races, and ethnicities. A small group size of 10 is also used for the kindergarten-Grade 12 accountability system. The small group exception would not be applied to compliance with the frequency and duration of field supervisor observations. The SBEC proposes amending language in proposed subsection (g)(3) and (4) to clarify how two- and three-year cumulated group performance is calculated. The SBEC proposes amending language in 19 TAC §229.4(g) to remove certification field as a disaggregated group for accreditation status determination but retain language in 19 TAC §229.5(c) so that approval to offer a certification class or category may be revoked if performance standards are not met by the EPP for three consecutive years. The SBEC also proposes amending language in proposed subsection (g)(5) to clarify that the SBEC, rather than TEA staff, may modify sanctions assigned to an EPP.

Accreditation Sanctions and Procedures

The SBEC proposes amending the language in 19 TAC §229.5(c)-(e) to replace *certification field* with *certification class or category*. This would align the language used in 19 TAC Chapters 227, 228, 230, and 233. The SBEC proposes amending the language in 19 TAC §229.5(d) to set the 2016 - 2017 academic year as the first year that candidate performance in an individual certification class or category would be used for determining whether an EPP has failed to meet performance standards for three consecutive years. This would allow EPPs

to be held accountable under provisions that are clearer. To provide more consistency and clarity, the SBEC also proposes amending the language in 19 TAC §229.5(e) to align the small group exception and cumulating rules for individual certification classes and categories with the accreditation status determination rule in 19 TAC §229.4(g).

Continuing Approval

In accordance with the TEC, §21.0443(b), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, the SBEC proposes amending the language in 19 TAC §229.6(a) so that the continuing approval review indicators are congruent with those that are in the program approval process section of 19 TAC Chapter 228. In accordance with the TEC, §21.0443(c), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, the SBEC proposes amending the language in 19 TAC §229.6(b) so that TEA staff makes a recommendation for continuing approval of an EPP and the SBEC makes the final decision for continuing approval of an EPP. In accordance with the TEC, §21.0451(a), as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, the SBEC also proposes amending the language in 19 TAC §229.6(b) to add failure to comply with the TEC, Chapter 21, as a reason why TEA staff shall propose a recommendation to the SBEC relating to an EPP's approval to recommend candidates for educator certification.

Informal Review of Texas Education Agency Recommendations

The TEC, §21.0451, as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, provides for a contested case hearing for an EPP if the SBEC seeks to revoke the EPP's accreditation. Changes to the rule were not necessary to implement this requirement because the rule is already written in such a way to be in compliance with the change in law.

The SBEC proposes amending the language in 19 TAC §229.7(a) to replace *certification field* with *certification class or category*. This would align the language used in 19 TAC Chapters 227, 228, 230, and 233. The SBEC proposes amending the language in 19 TAC §229.7(c) to allow the designee of an EPP's chief operating officer to make the request for an informal review. This would provide EPPs with flexibility in responding to a proposed recommendation for an order or a change in accreditation status. The SBEC proposes clarifying the language in 19 TAC §229.7(c)(2) so that EPPs have a better understanding of what they are responding to in an informal review request. The SBEC also proposes changing *shall* to *may* in 19 TAC §229.7(c)(3) to provide flexibility for EPPs in their informal review request responses. Cross references to other SBEC rules would also be updated.

Contested Cases for Accreditation Revocation

The SBEC proposes amending the language in 19 TAC §229.8(a) and (c) to replace *certification field* with *certification class or category*. This would align the language used in 19 TAC Chapters 227, 228, 230, and 233. In accordance with the Texas Government Code, Chapter 2003, the SBEC proposes amending the language in 19 TAC §229.8(b) to remove a sentence that allows the provision to prevail in the event that there is a conflict with the rule or practice of the State Office of Administrative Hearings. The SBEC also proposes amending 19 TAC §229.8(c) to clarify that the finality of an order from the SBEC would be made under the provisions of the Administrative Procedure Act.

Fees for Educator Preparation Program Approval and Accountability

The TEC, §21.041(d), allows the SBEC to propose rules to adopt fees to provide for the administrative cost of approving, renewing the approval of, and appropriately ensuring the accountability of EPPs. The SBEC proposes amending language in 19 TAC §229.9(2) and (3) to clarify that the fees for continuing and discretionary approval reviews are assessed when a site visit is required for a review. These amendments would revise the fees to more adequately cover the cost of onsite reviews. The SBEC proposes adding 19 TAC §229.9(6) to add a fee for reviewing requests for out-of-state and out-of-country school sites for field-based experiences, clinical teaching, internships, and practicums. This fee would adequately cover the administrative cost of these types of reviews. The SBEC proposes adding language in 19 TAC §229.9(7) to add a fee to adequately cover the costs of administering the accreditation, annual performance, and consumer information requirements for EPPs as required by the TEC, §21.045 and §21.0452. This fee would be collected in the fall of each academic year based on the number of candidates an EPP admitted the prior academic year. The revenue from the fees would be used to adequately cover the cost of the personnel, hardware, and contracted services that would be required to develop and maintain the internal and external systems needed to collect, analyze, and report data. The fee would be set at \$55 per admitted candidate for the 2016 - 2017 and 2017 - 2018 academic years and \$35 per admitted candidate for the 2018 - 2019 academic year and beyond. TEA staff would provide annual updates to the SBEC on the revenues and expenditures related to this new fee as well as any recommendations to lower or raise the fee to adequately cover costs related to Accountability System for Educator Preparation Programs technology systems.

Transitional Provisions

The SBEC proposes repealing 19 TAC §229.21 because updated transitional provisions have been added to language in 19 TAC §229.4 and §229.5.

The proposed rule actions would have additional procedural and reporting implications as a result of the new annual performance report data and new consumer information data proposed in 19 TAC §229.3(f), enacted in the TEC, §21.045 and §21.0452, as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015. The proposed rule actions would have no additional locally maintained paperwork requirements.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed rule actions are in effect there would be additional costs for state and local government as a result of enforcing or administering the proposed rule actions.

The following fiscal implications are based on costs for state government (ESCs and public universities), local government (public community colleges, counties, open-enrollment charter schools, and school districts), and small business and microbusiness EPPs for fiscal years (FYs) 2017 - 2021. There would also be costs for state government (TEA) for FYs 2017 - 2021. The effect on the TEA of the proposed costs would be offset by the effect of increases in the EPP approval and accountability fee structure in 19 TAC §229.9.

The proposed rule actions to 19 TAC Chapter 229 would increase TEA costs of administering the Accountability System for Educator Preparation Programs (ASEP) as authorized by

the TEC, §21.045 and §21.0452. The proposed amendment to 19 TAC §229.9 would add fees to more adequately cover the administrative costs of administering the ASEP and approving applications for out-of-state and out-of-country school sites for field-based experiences, clinical teaching, internships, and practicums for EPPs as authorized by the TEC, §21.041. The proposed amendment to 19 TAC §229.9 would also amend the five-year and discretionary continuing approval review fees so that a fee would be charged only if the review required a visit by TEA staff.

TEA estimates the total costs for state government-operated EPPs at \$1,039,500 in FYs 2018 - 2019 and \$647,500 in FYs 2020 - 2021. TEA estimates the total costs for local government-operated EPPs at \$80,500 in FYs 2018 - 2019 and \$46,500 in FYs 2020 - 2021. TEA estimates the total costs for small businesses and microbusinesses that operate EPPs at \$787,500 in FYs 2018 - 2019 and \$501,500 in FYs 2020 - 2021. TEA estimates the total increase in revenue for SBEC at \$2,020,500 in FYs 2018 - 2019 and \$1,248,500 in FYs 2020 - 2021. The estimated costs and revenue include fees to cover the cost of administering the accreditation, annual performance report, and consumer information requirements for EPPs; processing applications for field-based experiences, clinical teaching, internships, and practicums to be filed by EPPs; and the cost of continuing approval reviews that require visits. These estimated costs and revenues are based on the estimated number of applicants admitted to EPPs, the expected number of applications to be filed by EPPs, and the expected number of continuing approval review visits. No fee or revenue increases are proposed for the estimated FY 2017 cost of \$619,500 because the estimated cost of administering the accreditation, annual performance report, and consumer information requirements for EPPs has already been covered by the current appropriations act. While there are no direct costs for individuals required to comply with the proposed rule's provisions, the fees to cover the cost of administering the accreditation, annual performance report, and consumer information requirements for EPPs is expected to be passed on to individuals who are admitted to EPPs.

The proposed amendments to 19 TAC §§229.3, 229.4, and 229.5 would increase TEA costs of administering the accreditation, annual performance report, and consumer information requirements for EPPs. TEA estimates the total costs for administering the accreditation, annual performance report, and consumer information requirements for EPPs to be \$2,013,500 in FY 2018, \$2,122,500 in FY 2019, and \$1,289,000 in each year for FYs 2020 - 2021. These total costs include personnel costs (10 full-time equivalents) of \$1,139,000 in each year for FYs 2018 - 2021 to develop and maintain the internal systems to collect, analyze, and report data; consultant costs of \$824,500 for FY 2018, \$933,500 for FY 2019, and \$100,000 in each year for FYs 2020 - 2021 to develop and maintain the external systems to collect, analyze, and report data; and equipment costs of \$50,000 in each year for FYs 2017 - 2021 to support the development and maintenance of the internal and external systems. The estimated FY 2017 cost of \$619,500 for administering the accreditation, annual performance report, and consumer information requirements for EPPs has already been covered by the current appropriations act.

There would be an anticipated increase in local employment in the Region 13 Education Service Center geographic area as a result of the increased costs for administering the accreditation, annual performance report, and consumer information require-

ments for EPPs. This anticipated increase in local employment would include personnel (10 full-time equivalents) to develop and maintain the internal systems to collect, analyze, and report data. This anticipated increase in local employment would also include consultants to develop and maintain the external systems to collect, analyze, and report data. The anticipated increase in local employment is \$1,963,500 for FY 2018, \$2,072,500 for FY 2019, and \$1,239,000 for FYs 2020 - 2021. For FY 2017, there would be no costs because no staff would be hired until FY 2018.

There would be an anticipated economic impact for small businesses and microbusinesses that serve as approved EPPs. It is estimated that the proposed amendment to 19 TAC §229.9 would affect between 1-100 small businesses and 1-100 microbusinesses (businesses with 20 or fewer employees). The projected economic impact would consist of compliance costs such as the addition of fees to more adequately cover the administrative costs of administering the accreditation, annual performance report, and consumer information requirements for EPPs and approving applications for out-of-state and out-of-country school sites for field-based experiences, clinical teaching, internships, and practicums for EPPs.

In accordance with Texas Government Code, §2006.002, TEA conducted a regulatory flexibility analysis and assessed alternatives to the proposed amendment to §229.9. Three alternatives that would minimize the adverse impacts on small businesses and microbusinesses include:

1. Not adopting the new fees into rule;
2. Adopting a fee schedule that charges small business and microbusiness EPPs less than other EPPs; and
3. Adopting a fee schedule that does not charge small business and microbusiness EPPs.

TEA assessed alternatives, as described earlier, to the proposed amendment to 19 TAC §229.9 that would diminish the impact on small businesses and microbusinesses; however, it is not possible to provide regulatory flexibility on this matter for the reasons that follow.

If the new fees were not adopted into rule, TEA would continue to process applications for out-of-state and out-of-country school sites for field-based experiences, clinical teaching, internships, and practicums without charging a fee to adequately cover the administrative costs of approving these applications. If new fees were not adopted into rule, the timeline for implementing the accreditation, annual performance report, and consumer information requirements would need to be extended. If small businesses and microbusinesses were charged a lower fee or no fee, this would result in fees for other EPPs that would exceed what is required to adequately provide for the administrative costs of administering the ASEP and applications.

The anticipated effect on local economy and the local employment impact statement required under Texas Government Code, §2001.022, is described earlier in this section.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for the first five-year period the proposed rule actions are in effect the public and student benefit anticipated as a result of the proposed rule actions would be an accountability system that informs the public of the quality of educator preparation provided by each SBEC-approved EPP. The anticipated economic cost to persons who are required to comply with the proposed rule actions is described earlier under Fiscal Note.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MI-

CROBUSINESSES. The anticipated economic impact for small businesses and microbusinesses and the flexibility analysis, specified in Texas Government Code, §2006.002, are described earlier under Fiscal Note.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins August 26, 2016, and ends September 26, 2016. The SBEC will take registered oral and written comments on the proposed amendments to 19 TAC §§229.1 - 229.9 and the proposed repeal of 19 TAC §229.21 at the October 7, 2016 meeting in accordance with the SBEC board operating policies and procedures. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to sbecrules@tea.texas.gov. All requests for a public hearing on the proposed rule actions 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, 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* on August 26, 2016.

19 TAC §§229.1 - 229.9

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; the TEC, §21.041(b)(1), which states that the SBEC shall propose rules that provide for the regulation of educators and the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; the TEC, §21.041(d), which allows the SBEC to propose a rule adopting a fee for the approval or renewal of approval of an educator preparation program (EPP), or for the addition of a certificate or field of certification to the scope of a program's approval. A fee imposed may not exceed the amount necessary, as determined by the SBEC, to provide for the administrative cost of approving, renewing the approval of, and appropriately ensuring the accountability of EPPs; the TEC, §21.0441(c) and (d), which requires the SBEC to adopt rules setting certain admission requirements for EPPs; the TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; the TEC, §21.045, which states that the board shall propose rules establishing standards to govern the continuing accountability of all EPPs; the TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and the TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified

information regarding educator programs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The proposed amendments implement the TEC, §§21.041(a), (b)(1), and (d), 21.0441(c) and (d), 21.0443, 21.045, 21.0451, and 21.0452.

§229.1. *General Provisions and Purpose of Accountability System for Educator Preparation Programs.*

(a) The State Board for Educator Certification (SBEC) is responsible for establishing standards to govern the continuing accountability of all educator preparation programs (EPPs). The rules adopted by the SBEC in this chapter govern the accreditation of each EPP that prepares individuals for educator certification. No candidate shall be recommended for any Texas educator certification class or category [field] except by an EPP that has been approved by the SBEC pursuant to Chapter 228 of this title (relating to Requirements for Educator Preparation Programs) and is accredited as required by this chapter.

(b) The purpose of the accountability system for educator preparation is to assure that each EPP is held accountable for the readiness for certification of candidates completing the programs.

(c) An accredited EPP may receive commendations for success in areas identified by the SBEC.

§229.2. *Definitions.*

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

(1) Academic year--If not referring to the academic year of a particular public, private, or charter school or institution of higher education, September 1 through August 31.

(2) Accredited institution of higher education--An institution of higher education that, at the time it conferred the degree, was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board.

(3) [(2)] ACT®--The college entrance examination from ACT®.

(4) [(3)] Administrator--For purposes of the surveys and information required by this chapter, an educator whose certification would entitle him or her to be assigned as a principal or assistant principal in Texas, whether or not he or she is currently working in such an assignment.

[(4)] Alternative certification program--An approved educator preparation program, delivered by entities described in §228.20(a) of this title (relating to Governance of Educator Preparation Programs), specifically designed as an alternative to a traditional undergraduate certification program, for individuals already holding at least a bachelor's degree.]

(5) Beginning teacher--For purposes of the Texas Education Code, §21.045(a)(3), and its implementation in this chapter, a classroom teacher with less than three years experience.

[(6)] Campus-based mentor--A certified educator assigned by the campus administrator who has completed mentor training; who guides, assists, and supports the beginning teacher; and who reports the beginning teacher's progress to that teacher's educator preparation program.]

(6) [(7)] Candidate--An individual who has been formally or contingently admitted into an educator preparation program [including an individual who has been accepted on a contingency basis]; also referred to as an enrollee or participant.

(7) Certification category--A certificate type within a certification class; also referred to as certification field.

(8) Certification class--A certificate, as described in §230.33 of this title (relating to Classes of Certification), that has defined characteristics; also referred to as certification field.

[(8) Certification field--Academic or career and technical content fields, special education fields, specializations, or professional fields in which an entity is approved to offer certification.]

(9) Clinical teaching--An assignment, as described in §228.35 of this title (relating to Preparation Program Coursework and/or Training). [A minimum 12-week, full-day or 24-week, half-day educator assignment through an educator preparation program at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that may lead to completion of a standard certificate; also referred to as student teaching.]

(10) Completer--[According to the Higher Education Act, "A person who has met all the requirements of an approved [a state-approved] educator preparation program. In applying this definition, the fact that a person has or has not been recommended for a standard certificate or passed a certification examination shall not be used as criteria for determining who is a completer; also referred to as finisher. ["The term completer is no longer used to define the class of educator preparation program candidates subject to a determination of certification examination pass rate.]

(11) Consecutively measured years--Consecutive years for which a group's performance is measured, excluding years in which the small group exception applies, in accordance with §229.4(g) of this title (relating to Determination of Accreditation Status).

(12) Cooperating teacher--An individual, as described in §228.2 of this title (relating to Definitions), who guides, assists, and supports a candidate during a candidate's clinical teaching assignment. [The campus-based mentor teacher for the clinical teacher.]

(13) Demographic group--Male and female, as to gender; the aggregate reporting categories established by the Higher Education Act, as to race and ethnicity. Each educator preparation program will assign a candidate to one gender demographic group and at least one Higher Education Act-established race or ethnicity group.

(14) Educator preparation program --An entity that must be approved by the State Board for Educator Certification to recommend candidates in one or more educator certification classes or categories [fields].

(15) Educator preparation program data--Data elements reported to meet requirements under the Texas Education Code, §21.045(b) and §21.0452.

(16) Examination--An examination or other test required by statute or any other State Board for Educator Certification rule codified in the Texas Administrative Code, Title 19, Part 7, that governs an individual's admission to an educator preparation program, certification as an educator, continuation as an educator, or advancement as an educator.

(17) Field supervisor--An individual, as described in §228.2 of this title (relating to Definitions), who is [A currently certified educator,] hired by an [the] educator preparation program[, who preferably has advanced credentials,] to observe candidates, monitor their performance, and provide constructive feedback to improve their effectiveness as educators. [A campus mentor or cooperating teacher, assigned as required by §228.35(e) of this title (relating to Preparation

Program Coursework and/or Training); may not also serve as a field supervisor.]

(18) First-year teacher [First year in the classroom]--For purposes of the Texas Education Code, §21.045(a)(2) [§21.045(a)(4)], and its implementation in this chapter, the first year of employment as a classroom teacher.

(19) GPA--Grade point average.

(20) GRE®--Graduate Record Examinations®.

(21) Higher Education Act--Federal legislation consisting of the Higher Education Act of 1965 (20 United States Code, §1070 et seq.) and its subsequent amendments, which requires reports of educator preparation program performance data.

(22) Incoming class--Individuals contingently or formally admitted between September 1 and August 31 of each year by an educator preparation program.

[(22) Institutional report--Educator preparation program data reported to the United States Department of Education and the Texas Education Agency as required under the Higher Education Act.]

(23) Internship--An assignment, as described in §228.35 of this title (relating to Preparation Program Coursework and/or Training). [A supervised, full-time educator assignment for one full school year at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that may lead to completion of a standard certificate.]

(24) Mentor--An individual, as described in §228.2 of this title (relating to Definitions), who guides, assists, and supports a candidate during a candidate's internship assignment.

(25) New teacher--For purposes of the Texas Education Code, §21.045(a)(5), and its implementation in this chapter, the first year of employment as a classroom teacher under a standard certificate.

[(24) Pass rate--For each academic year, the percent of tests passed by candidates who have finished all educator preparation program requirements for coursework; training; and internship, clinical teaching, or practicum by the end of that academic year. For purposes of determining the pass rate, candidates shall not be excluded because the candidate has not been recommended for certification, has not passed a certification examination, or is not considered a "completer" for purposes of the Higher Education Act or other applicable law. The pass rate is based solely on the examinations required to obtain certification in the field(s) for which the candidate serves his or her internship, clinical teaching, or practicum. Examinations not required for certification in that field or fields, whether taken before or after admission to an educator preparation program, are not included. The rate reflects a candidate's success only on the last attempt made on the examination by the end of the academic year in which the candidate finishes the coursework; training; and internship, clinical teaching, or practicum program requirements, and does not reflect any attempts made after that year. The formula for calculation of pass rate is the number of successful (i.e., passing) last attempts made by candidates who have finished the specified educator preparation program requirements divided by the total number of last attempts made by those candidates.]

(26) [(25)] Practicum--An assignment, as described in §228.35 of this title (relating to Preparation Program Coursework and/or Training). [A supervised professional educator assignment at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that is in a school setting in the particular field for which a professional certificate is sought such as superintendent, principal, school counselor, school

librarian, educational diagnostician, reading specialist, and/or master teacher.]

(27) [(26)] SAT®--The college entrance examination from the College Board.

(28) Site supervisor--An individual, as described in §228.2 of this title (relating to Definitions), who guides, assists, and supports a candidate during a candidate's practicum assignment.

[(27) Scaled score--A conversion of a candidate's raw score on an examination or a version of the examination to a common scale that allows for a numerical comparison between candidates.]

(29) [(28)] Texas Education Agency staff--Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's administrative functions and services.

§229.3. Required Submissions of Information, Surveys, and Other Data.

(a) Educator preparation programs (EPPs), EPP candidates, first-year teachers, new teachers, beginning teachers, field supervisors, [school principals and] administrators, [campus] mentors, site supervisors, and cooperating teachers shall provide to the Texas Education Agency (TEA) staff all data and information required by this chapter, as set forth in subsections [subsection] (e) and (f) of this section [and the Texas Education Code (TEC), §21.045 and §21.0452].

(b) Any individual holding a Texas-issued educator certificate who fails to provide information required by this chapter and the TEC, §21.045 and §21.0452, as set forth in subsection (e) of this section, may be subject to sanction of his or her certificate, including the placement of restrictions, inscribed or non-inscribed reprimand, suspension, or revocation.

(c) Any Texas public school that fails to provide information required by this chapter and the TEC, §21.045 and §21.0452, as set forth in subsection (e) of this section, may be referred to the commissioner of education with a recommendation that sanctions upon its accreditation status be imposed for failure to comply with this section and the TEC, §21.0452.

(d) Any open-enrollment charter school that fails to provide information required by this chapter and the TEC, §21.045 and §21.0452, as set forth in subsection (e) of this section, may be referred to the commissioner of education with a recommendation that sanctions be imposed for failure to comply with this section and the TEC, §21.0452.

(e) All required EPP data for an academic year shall be submitted to the TEA staff annually by [on] September 15 following the end of that academic year. All surveys and information required to be submitted pursuant to this chapter by [school administrators and] principals shall be submitted by June 15 of any academic year in which an [the school] administrator has [and principal have] had experience with a first-year [candidate or beginning] teacher who was a participant in an EPP. All surveys and information required to be submitted pursuant to this chapter by new teachers shall be submitted by June 15 of the first full academic year after the teacher completed the requirements of an EPP. All surveys and information required to be submitted pursuant to this chapter by EPP candidates shall be submitted by August 31 [4] of the [each] academic year in which the candidate completed the requirements of an EPP [it is required].

(f) The following apply to data submissions required by this chapter.

(1) EPPs shall provide data for all candidates as specified in the figure provided in this paragraph.

Figure: 19 TAC §229.3(f)(1)
[Figure: 19 TAC §229.3(f)(1)]

(2) Candidates [Participants] in an EPP shall complete a survey, in a form approved by the State Board for Educator Certification (SBEC), evaluating the preparation he or she received in the EPP. Completion and submission to the TEA [SBEC] of the survey is a requirement for completion of an EPP [issuance of a standard certificate].

(3) Administrators [Principals or designated administrators] in Texas public schools and open-enrollment charter schools shall complete individual teacher performance surveys, in a form to be approved by the SBEC, for each beginning teacher [under the supervision of an EPP].

(4) Administrators [Principals or designated administrators] in Texas public schools and open-enrollment charter schools shall complete surveys, in a form to be approved by the SBEC, evaluating the effectiveness of preparation for classroom success based on experience with first-year teachers who were participants in an EPP [for each EPP with which the principals or designated administrators have had experience in the previous year].

(5) New teachers in a Texas public school, including an open-enrollment charter school, shall complete surveys, in a form to be approved by the SBEC, evaluating the effectiveness of preparation for classroom success.

§229.4. Determination of Accreditation Status.

(a) Accountability performance indicators. The accreditation status of an educator preparation program (EPP) shall be determined at least annually, based on performance standards established in rule by the State Board for Educator Certification (SBEC), with regard to the following EPP accountability performance indicators, disaggregated with respect to gender, race, and ethnicity (according to the aggregate reporting categories for ethnicity established by the Higher Education Act), and other requirements of this chapter:

(1) the [pass rate] performance standard of certification examinations of EPP candidates; [is]

(A) for the 2016-2017 academic year, the performance standard shall be a pass rate of 80% for all examinations for the academic year. The pass rate is the percent of tests passed by candidates who have finished all EPP requirements for coursework; training; and internship, clinical teaching, or practicum by the end of that academic year. For purposes of determining the pass rate, candidates shall not be excluded because the candidate has not been recommended for certification, has not passed a certification examination, or is not considered a "completer" for purposes of the Higher Education Act or other applicable law. The pass rate is based solely on the examinations required to obtain certification in the field(s) for which the candidate serves his or her internship, clinical teaching, or practicum. Examinations not required for certification in that field or fields, whether taken before or after admission to an EPP, are not included. The rate reflects a candidate's success only on the last attempt made on the examination by the end of the academic year in which the candidate finishes the coursework; training; and internship, clinical teaching, or practicum program requirements and does not reflect any attempts made after that year. The formula for calculation of pass rate is the number of successful (i.e., passing) last attempts made by candidates who have finished the specified EPP requirements divided by the total number of last attempts made by those candidates;

(B) for the 2017-2018 academic year, the performance standard shall be the percent of individuals who passed an examination within the first two attempts. For purposes of determining the pass rate, individuals shall not be excluded because the individual has not been

recommended for a standard certificate. The pass rate is based solely on the examinations approved by the EPP and required to obtain initial certification in the class or category for which the individual serves his or her internship, clinical teaching, or practicum. Examinations not required for certification in that class or category, whether taken before or after admission to an EPP, are not included in the rate. The rate reflects whether or not an individual passed an examination within the first two attempts made on the examination, including those attempted after the individual has completed the EPP. The formula for calculation of pass rate is the number of individuals who have passed an examination on their first or second attempt divided by the number of individuals who passed an examination on their first attempt plus those who passed or failed on their second attempt:

(i) for examinations of pedagogy and professional responsibilities (PPR), the pass rate will be calculated as described in subparagraph (B) of this paragraph and the performance standard shall be:

(I) a pass rate of 80% for the 2016-2017 academic year (reporting year only using the percent of individuals who passed an examination within the first two attempts);

(II) a pass rate of 85% for the 2017-2018 academic year; and

(III) a pass rate of 90% for the 2018-2019 academic year and beyond; and

(ii) for non-PPR examinations, the pass rate will be calculated as described in subparagraph (B) of this paragraph and the performance standard shall be:

(I) a pass rate of 70% for the 2016-2017 academic year (reporting year only using the percent of individuals who passed an examination within the first two attempts);

(II) a pass rate of 75% for the 2017-2018 academic year;

(III) a pass rate of 80% for the 2018-2019 academic year;

(IV) a pass rate of 85% for the 2019-2020 academic year; and

(V) a pass rate of 90% for the 2020-2021 academic year and beyond;

(2) the results of appraisals of first-year [beginning] teachers by [school] administrators, based on a survey in a form to be approved by the SBEC. The performance standard shall be the percentage of first-year teachers from each EPP who are appraised as "sufficiently prepared" or "well prepared." The performance standard shall be: [an appraisal document and standards that must be independently developed by the Texas Education Agency (TEA) staff and approved by the SBEC;]

(A) 70% for the 2016-2017 academic year (reporting year only);

(B) 75% for the 2017-2018 academic year;

(C) 80% for the 2018-2019 academic year;

(D) 85% for the 2019-2020 academic year; and

(E) 90% for the 2020-2021 academic year and beyond;

(3) to the extent practicable, as valid data become available and performance standards are developed, the improvement in student achievement of students taught by beginning teachers [for the first three years following certification]; [and]

(4) the results of data collections establishing EPP compliance with SBEC requirements specified in §228.35(f) of this title (relating to Preparation Program Coursework and/or Training), regarding the frequency, duration, and quality of field supervision to candidates completing clinical teaching or an internship [of teachers during their internship year].

(A) The performance standard [is a 95% compliance rate with SBEC requirements] as to the frequency, duration, and required documentation of field supervision shall be: [for each EPP candidate:]

(i) a 95% compliance rate with SBEC requirements for each EPP candidate completing an internship for the 2016-2017 academic year;

(ii) a 95% compliance rate with SBEC requirements for each EPP candidate completing clinical teaching or an internship for the 2016-2017 academic year (reporting year only); and

(iii) a 95% compliance rate with SBEC requirements for each EPP candidate completing clinical teaching or an internship for the 2017-2018 academic year and beyond; and

(B) The performance standard for quality shall be the percentage of candidates who rate the field supervision as "frequently" or "always or almost always" providing the components of structural guidance and ongoing support. The performance standard shall be:

(i) 85% for the 2016-2017 academic year (reporting year only); and

(ii) 90% for the 2017-2018 academic year and beyond; and

(5) the results from a teacher satisfaction survey, in a form approved by the SBEC, of new teachers administered at the end of the first year of teaching under a standard certificate. The performance standard shall be the percentage of teachers who respond that they were sufficiently prepared or well prepared by their EPP. The performance standard shall be set after a pilot study is completed during the 2016-2017 academic year.

(b) Accredited status. An EPP shall be assigned an Accredited status if the EPP has met the accountability performance standards described in subsection (a) of this section and has been approved by the SBEC to prepare, train, and recommend candidates for certification.

(c) Accredited-Not Rated status. An EPP shall be assigned Accredited-Not Rated status upon initial approval to offer educator preparation, until the EPP can be assigned a status based on the performance standards described in subsection (a) of this section. An EPP is fully accredited and may recommend candidates for certification while it is in Accredited-Not Rated status.

(d) Accredited-Warned status.

(1) An EPP shall be assigned Accredited-Warned status if the EPP:

(A) fails to meet the performance standards set by the SBEC for the overall performance of all its candidates on any of the [four performance] indicators set forth in subsection (a) of this section in any one year;

(B) fails to meet the performance standards in any two gender, race, or ethnicity demographic groups on any of the [four performance] indicators set forth in subsection (a) of this section in any one year; or

(C) fails to meet the performance standards for a gender, race, or ethnicity demographic group on any of the [four perfor-

manee] indicators set forth in subsection (a) of this section for two consecutively measured years, regardless of whether the deficiency is in the same demographic group or standard.

(2) An EPP may be assigned Accredited-Warned status if the SBEC determines that the EPP has violated SBEC rules and/or Texas Education Code (TEC), Chapter 21.

(e) Accredited-Probation status.

(1) An EPP shall be assigned Accredited-Probation status if the EPP:

(A) fails to meet the performance standards set by the SBEC for the overall performance of all its candidates on any of the [four performance] indicators set forth in subsection (a) of this section for two consecutively measured years;

(B) fails to meet the performance standards in any three gender, race, or ethnicity demographic groups on any of the [four performance] indicators set forth in subsection (a) of this section in any one year; or

(C) fails to meet the performance standards for a gender, race, or ethnicity demographic group on any of the [four performance] indicators set forth in subsection (a) of this section for three consecutively measured years, regardless of whether the deficiency is in the same demographic group or standard.

(2) An EPP may be assigned Accredited-Probation status if the SBEC determines that the EPP has violated SBEC rules and/or TEC, Chapter 21.

(f) Not Accredited-Revoked status.

(1) An EPP shall be assigned Not Accredited-Revoked status and its approval to recommend candidates for educator certification revoked if it is assigned Accredited-Probation status for three consecutively measured years.

(2) An EPP may be assigned Not Accredited-Revoked status if the EPP has been on Accredited-Probation status for one year, and the SBEC determines that revoking the EPP's approval is reasonably necessary to achieve the purposes of the TEC, §21.045 and §21.0451.

(3) An assignment of Not Accredited-Revoked status and revocation of EPP approval to recommend candidates for educator certification is subject to the requirements of notice, record review, and appeal as described in this chapter.

(4) A revocation of an EPP approval shall be effective for a period of two years, after which a program may reapply for approval as a new EPP pursuant to Chapter 228 of this title (relating to Requirements for Educator Preparation Programs).

(5) Upon revocation of EPP approval, the EPP may not admit new candidates for educator certification, but may complete the training of candidates already admitted by the EPP and recommend them for certification. If necessary, TEA staff and other EPPs shall cooperate to assist the previously admitted candidates of the revoked EPP to complete their training.

(g) Small group exception.

(1) For purposes of accreditation status determination, the performance of an EPP candidate group, aggregated or disaggregated by gender, race, or ethnicity, shall be measured against performance standards described in this chapter in any one year in which the number of individuals in the group exceeds ten [20]. The small group exception does not apply to compliance with the frequency and duration of field supervisor observations.

[(2) For an EPP candidate group disaggregated by gender, ethnicity, and certification field, where the group contains 20 or fewer individuals, the group's performance shall not be counted for purposes of accreditation status determination for that academic year.]

(2) [(3)] For an EPP candidate group, aggregated or [not] disaggregated by gender, race, or ethnicity, [and certification field,] where the group contains ten [20] or fewer individuals, the group's performance shall not be counted for purposes of accreditation status determination for that academic year based on only that year's group performance.

(3) [(4)] If the preceding year's EPP candidate group, aggregated or [not] disaggregated by gender, race, or ethnicity, [and certification field,] contained ten [20] or fewer individuals, that group performance shall be combined with the current [following] year's group performance, and if the two-year cumulated group contains more than ten [20] individuals, then the two-year cumulated group performance must be measured against the standards in that second year.

(4) [(5)] If the two-year cumulated EPP candidate group, aggregated or [not] disaggregated by gender, race, or ethnicity, [and certification field,] contains ten [20] or fewer individuals, then the two-year cumulated group performance shall be combined with the current [following] year's group performance. The three-year cumulated group performance must be measured against the standards in that third year, regardless of how small the cumulated number of group members may be.

(5) [(6)] In any reporting year in which the EPP candidate group, aggregated or [not] disaggregated by gender, race, or [and] ethnicity, [or in which the EPP candidate group, disaggregated by certification field,] does not meet the necessary number of individuals needed to measure against performance standards for that year, any sanction assigned as a result of an accredited-warned or accredited-probation status in a prior year will continue if that candidate group has not met performance standards since being assigned accredited-warned or accredited-probation status. The SBEC [TEA staff] may modify the sanction as the SBEC [TEA staff] deems necessary based on subsequent performance, even though that performance is not measured against performance standards for a rating.

(h) Action plan. An EPP that fails to meet a required performance standard shall develop an action plan addressing the deficiencies and describing the steps the program will take to improve the performance of its candidates, especially regarding the performance standard that was not met. TEA staff may prescribe the information that must be included in the action plan. The action plan must be sent to TEA staff no later than 45 calendar days following notification to the EPP of the failure to meet a performance standard.

[(i) Controlling section. To the extent of any conflict, this section controls over the requirements in §229.24 of this title (relating to Transitional Provisions).]

§229.5. *Accreditation Sanctions and Procedures.*

(a) The State Board for Educator Certification (SBEC) may assign an educator preparation program (EPP) Accredited-Warned or Accredited-Probation status if the SBEC determines that the EPP has violated SBEC rules and/or Texas Education Code, Chapter 21.

(b) If an EPP has been assigned Accredited-Warned or Accredited-Probation status, or if the SBEC determines that additional action is a necessary condition for the continuing approval of an EPP to recommend candidates for educator certification, the SBEC may take any one or more of the following actions, which shall be reviewed by the SBEC at least annually:

(1) require the EPP to obtain technical assistance approved by the Texas Education Agency (TEA) or SBEC;

(2) require the EPP to obtain professional services approved by the TEA or SBEC; and/or

(3) appoint a monitor to participate in the activities of the EPP and report the activities to the TEA or SBEC.

(c) Notwithstanding the accreditation status of an EPP, if the performance of all candidates admitted to an individual certification class or category [field] offered by an EPP fail to meet any of the standards in §229.4(a) of this title (relating to Determination of Accreditation Status) for three consecutive years, the approval to offer that certification class or category [field] shall be revoked. Any candidates already admitted for preparation in that class or category [field] may continue in the EPP and be recommended for certification after program completion, but no new candidates shall be admitted for preparation in that class or category [field] unless and until the SBEC reinstates approval for the EPP to offer that certification class or category [field].

(d) For purposes of determining compliance with subsection (c) [(b)] of this section, candidate performance in individual certification classes or categories [fields] in only the 2016-2017 [2012-2013] academic year and subsequent academic years will be considered. [To the extent of any conflict, this subsection controls over the requirements in §229.21 of this title (relating to Transitional Provisions).]

(e) Performance indicators by gender, race, and ethnic groups shall not be counted for purposes of subsection (c) [(b)] of this section, relating to performance standards for individual certification classes or categories [fields]. If the aggregated number of individuals counted [performance indicators] for a certification class or category [field] is ten [20] or fewer, and the certification class or category fails [performance indicators fail] to meet any of the standards in §229.4(a) of this title, the certification class or category [those performance indicators] shall not count that year, but shall be cumulated and counted in the same manner as provided in §229.4(g) [(e) and (d)] of this title.

(f) An EPP shall be notified in writing regarding any action proposed to be taken pursuant to this section, or proposed assignment of an accreditation status of Accredited-Warning, Accredited-Probation, or Not Accredited-Revoked. The notice shall state the basis on which the proposed action is to be taken or the proposed assignment of the accreditation status is to be made.

(g) All costs associated with providing or requiring technical assistance, professional services, or the appointment of a monitor pursuant to this section shall be paid by the EPP to which the services are provided or required, or its sponsor.

§229.6. Continuing Approval.

(a) The continuing approval of an educator preparation program (EPP) to recommend candidates for educator certification, which shall be reviewed pursuant to §228.10(b) of this title (relating to Approval Process), will be based upon the EPP's accreditation status and compliance with the State Board for Educator Certification (SBEC) rules regarding program-approval components specified in §228.10(a) of this title (relating to Approval Process) [program admissions, operations, coursework, training, recommendation for certification, and the integrity of required data submissions].

(b) After a continuing approval review pursuant to §228.10(b) of this title, if the Texas Education Agency (TEA) staff finds that an EPP is in compliance with SBEC rules and/or Texas Education Code (TEC), Chapter 21, the TEA staff shall issue a proposed recommendation for SBEC to approve the renewal of an EPP. After a continuing approval review pursuant to §228.10(b) of this title or a complaint investigation

pursuant to §228.70 of this title (relating to Complaints and Investigations Procedures), if the TEA [Texas Education Agency (TEA)] staff finds that an EPP has failed to comply with SBEC rules and/or the TEC, Chapter 21, and the EPP does not obtain compliance within the timelines established by TEA staff, the TEA staff shall recommend that the SBEC sanction the EPP [may issue a proposed recommendation for SBEC action relating to the EPP's approval to recommend candidates for educator certification]. The TEA staff may recommend that the [proposed recommendation for] SBEC action [may] include, but is not limited to, public reprimand, revocation of program approval, or the imposition of conditions upon continuing program approval.

(c) TEA staff shall provide notice of the proposed recommendation for SBEC action relating to the EPP's continuing approval to recommend candidates for educator certification in the manner provided by §229.7 of this title (relating to Informal Review of Texas Education Agency Recommendations), and an EPP shall be entitled to an informal review of the proposed recommendation, under the conditions and procedures set out in §229.7 of this title, prior to the submission of the recommendation for action to either the SBEC or the State Office of Administrative Hearings (SOAH). If the EPP fails to request an informal review in a timely manner, the proposed recommendation will become a final recommendation.

(d) Following the informal review, a final recommendation will be issued by the TEA staff. The final recommendation may include changes or additions to the proposed recommendation and such modifications are not subject to another informal review procedure.

(e) If the final recommendation proposes revocation of approval of an EPP to recommend candidates for educator certification, within 14 calendar days of receipt of the final recommendation, the EPP may agree in writing to accept the final revocation without further proceedings or may request that TEA staff schedule the matter for a hearing before an administrative law judge at the SOAH, as provided by §229.8 of this title (relating to Contested Cases for Accreditation Revocation).

(f) If the final recommendation does not propose revocation of approval of an EPP to recommend candidates for educator certification, the final recommendation will be submitted to SBEC for consideration and entry of a final order.

§229.7. Informal Review of Texas Education Agency Recommendations.

(a) Applicability. This section applies only to a notice required under §229.5(f) [§229.5(e)] of this title (relating to Accreditation Sanctions and Procedures) or under §229.6(c) of this title (relating to Continuing Approval) proposing to:

(1) require an educator preparation program (EPP) or a particular class or category [field] of certification offered by an EPP to obtain technical assistance as provided by the Texas Education Code (TEC), §21.0451(a)(2)(A);

(2) require an EPP or a particular class or category [field] of certification offered by an EPP to obtain professional services as provided by the TEC, §21.0451(a)(2)(B);

(3) appoint a monitor for an EPP or a particular class or category [field] of certification offered by an EPP as provided by the TEC, §21.0451(a)(2)(C);

(4) assign a change in [an] accreditation status of Accredited-Warning, Accredited-Probation, or Not Accredited-Revoked, as specified in §229.4 of this title (relating to Determination of Accreditation Status);

(5) issue a public reprimand or impose conditions on the continuing approval of an EPP to recommend candidates for certification pursuant to §229.6(b) [§229.5(e)] of this title;

(6) revoke the approval of an EPP to recommend candidates for certification in a particular class or category [field] of certification; or

(7) revoke the approval of an EPP to recommend candidates for certification.

(b) Notice. Notice of a proposed recommendation for an order or change in accreditation status, subject to this section, shall be made as provided by §229.5(f) [§229.5(e)] and §229.6(c) of this title, and this section.

(1) The notice shall attach or make reference to all information on which the proposed recommendation is based.

(A) Information maintained on the Texas Education Agency (TEA) and State Board for Educator Certification (SBEC) websites may be referenced by providing a general citation to the information.

(B) The TEA and SBEC reports previously sent to the EPP may be referenced by providing the title and date of the report.

(C) On request, the TEA shall provide copies of, or reasonable access to, information referenced in the notice.

(2) The notice shall state the procedures for requesting an informal review of the proposed recommendation or change in accreditation status under this section, including the name and department of the TEA staff to whom a request for an informal review may be addressed.

(3) The notice shall set a deadline for requesting an informal review, which shall not be less than 14 calendar days from the date of receipt of the notice. The notice may be delivered by mail, personal delivery, facsimile, or email.

(c) Request. The chief operating officer or designee of the EPP may request, in writing, an informal review under this section.

(1) The request must be properly addressed to the member of the TEA staff identified in the notice under subsection (b)(2) of this section and must be received by TEA staff on or before the deadline specified in subsection (b)(3) of this section.

(2) The request must set out the reasons the EPP believes the proposed recommendation or change in accreditation status is incorrect, with citations to include supporting evidence. The EPP may submit any written information to TEA as evidence to support its request, without regard to admissibility under the Texas Rules of Evidence. The request for review shall concisely state, in numbered paragraphs:

(A) if alleging the proposed recommendation would violate a statutory provision, the statutory provision violated and the specific facts supporting a conclusion that the statute was violated by the proposed recommendation;

(B) if alleging the proposed recommendation would be in excess of the SBEC's statutory authority, the SBEC's statutory authority and the specific facts supporting a conclusion that the proposed recommendation would be in excess of this authority;

(C) if alleging the proposed recommendation was made through unlawful procedure, the lawful procedure and the specific facts supporting a conclusion that the proposed recommendation was made through unlawful procedure;

(D) if alleging the proposed recommendation is affected by other error of law, the law violated and the specific facts supporting a conclusion that the proposed recommendation violated that law;

(E) if alleging the proposed recommendation is not reasonably supported by a preponderance of the evidence, each finding, inference, or conclusion of the proposed recommendation that is unsupported by a preponderance of the evidence, and the evidence that creates a preponderance against the specific finding, inference, or conclusion at issue;

(F) if alleging the proposed recommendation is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, each finding, inference, conclusion, or proposed recommendation affected and the specific facts supporting a conclusion that each is so affected;

(G) for each violation, error, or defect alleged under subparagraphs (A)-(F) of this paragraph, the substantial rights of the EPP that are prejudiced by such violation, error, or defect;

(H) a concise statement of the relief sought by the EPP (petitioner); and

(I) the name, mailing address, telephone number, facsimile number, and email address of the petitioner's representative.

(3) Failure to comply with the requirements of this subsection may [shall] result in dismissal of the request for informal review.

(d) No review requested. If the TEA staff does not receive the EPP's request for an informal review by the deadline set in accordance with subsection (b)(3) of this section, the proposed recommendation will become a final recommendation and will proceed in accordance with subsection (f) of this section.

(e) Informal review. In response to a request under subsection (c) of this section, TEA staff will review the materials and documents provided by the EPP and issue a final recommendation. The final recommendation may include changes or additions to the proposed recommendation and such modifications are not subject to another informal review.

(f) Final recommendation.

(1) If the final recommendation proposes revocation of approval of an EPP to recommend candidates for educator certification, within 14 calendar days of receipt of the final recommendation, the EPP may agree in writing to accept the final revocation without further proceedings or may request that TEA staff schedule the matter for a hearing before an administrative law judge at the State Office of Administrative Hearings (SOAH), as provided by §229.8 of this title (relating to Contested Cases for Accreditation Revocation).

(2) If the final recommendation does not propose revocation of approval of an EPP to recommend candidates for educator certification, the final recommendation will be submitted to SBEC for consideration of a final order.

(g) Other law. Texas Government Code, Chapter 2001, and the TEC, §7.057, do not apply to an informal review under this section.

§229.8. *Contested Cases for Accreditation Revocation.*

(a) This section applies only to a final recommendation issued under §229.5 of this title (relating to Accreditation Sanctions and Procedures) or §229.6 of this title (relating to Continuing Approval) that proposes revocation of approval and closure of an educator preparation program (EPP) and does not apply to a final recommendation proposing the assignment of Accredited-Warned or Accredited-Probation status or ordering any other sanction, including, without lim-

itation, withdrawing approval to offer a specific certification class or category [field], public reprimand, imposing conditions upon continuing approval, requiring technical assistance, requiring professional services, or appointing a monitor.

(b) If an EPP declines to sign a final recommendation, or if the EPP fails to respond timely to a notice of a proposed recommendation, Texas Education Agency (TEA) staff may proceed with the filing of a contested case with the State Office of Administrative Hearings (SOAH) in accordance with the contested case procedures set out in §§249.19-249.40 of this title, and Texas Government Code, Chapter 2001. ~~[To the extent that a provision of this section conflicts with a rule or practice of the SOAH, this section shall prevail.]~~

(c) Upon the finality of a decision from the State Board for Educator Certification (SBEC) under the Administrative Procedure Act ordering the EPP closed under this subsection in keeping with §249.39 of this title (relating to Final Decisions and Orders), the approval of an EPP to provide educator preparation is:

(1) automatically revoked, void, and of no further force or effect on the effective date of the SBEC [a] final order [decision by the SBEC]; and

(2) automatically modified to remove authorization for an individual certification class or category [field] on the effective date of the SBEC [a] final order [decision by the SBEC].

(d) This section satisfies the hearing requirements of the Texas Education Code, §21.0451(a)(2)(D) and (a)(3).

§229.9. Fees for Educator Preparation Program Approval and Accountability.

An educator preparation program requesting approval and continuation of accreditation status shall pay the applicable fee from the following list.

(1) New educator preparation program application and approval (nonrefundable)--\$9,000.

(2) Five-year continuing approval review visit pursuant to §228.10(b) of this title (relating to Approval Process)--\$4,500.[:]

~~[(A) prior to September 1, 2016--\$1,500; and]~~

~~[(B) after August 31, 2016--\$4,500.]~~

(3) Discretionary continuing approval review visit pursuant to §228.10(b) of this title--\$4,500.

(4) Addition of new certification category [field] or addition of clinical teaching--\$500.

(5) Addition of each new class of certificate--\$1,000.

(6) Applications for out-of-state and out-of-country school sites for field-based experiences, clinical teaching, internships, and practicums--\$500.

(7) Accountability System for Educator Preparation Programs technology fee:

(A) For the 2016-2017 and 2017-2018 academic years--\$55 per admitted candidate; and

(B) For the 2018-2019 academic year and beyond--\$35 per admitted candidate.

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

Earliest possible date of adoption: September 25, 2016

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



19 TAC §229.21

STATUTORY AUTHORITY. The repeal is proposed under the Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; the TEC, §21.041(b)(1), which states that the SBEC shall propose rules that provide for the regulation of educators and the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; the TEC, §21.041(d), which allows the SBEC to propose a rule adopting a fee for the approval or renewal of approval of an educator preparation program (EPP), or for the addition of a certificate or field of certification to the scope of a program's approval. A fee imposed may not exceed the amount necessary, as determined by the SBEC, to provide for the administrative cost of approving, renewing the approval of, and appropriately ensuring the accountability of EPPs; the TEC, §21.0441(c) and (d), which requires the SBEC to adopt rules setting certain admission requirements for EPPs; the TEC, §21.0443, which states that the SBEC shall propose rules to establish standards to govern the approval or renewal of approval of EPPs and certification fields authorized to be offered by an EPP. To be eligible for approval or renewal of approval, an EPP must adequately prepare candidates for educator certification and meet the standards and requirements of the SBEC. The SBEC shall require that each EPP be reviewed for renewal of approval at least every five years. The SBEC shall adopt an evaluation process to be used in reviewing an EPP for renewal of approval; the TEC, §21.045, which states that the board shall propose rules establishing standards to govern the continuing accountability of all EPPs; the TEC, §21.0451, which states that the SBEC shall propose rules for the sanction of EPPs that do not meet accountability standards and shall annually review the accreditation status of each EPP. The costs of technical assistance required under TEC, §21.0451(a)(2)(A), or the costs associated with the appointment of a monitor under TEC, §21.0451(a)(2)(C), shall be paid by the sponsor of the EPP; and the TEC, §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an EPP and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding educator programs in this state available to the public through the SBEC's Internet website.

CROSS REFERENCE TO STATUTE. The proposed repeal implements the TEC, §§21.041(a), (b)(1), and (d), 21.0441(c) and (d), 21.0443, 21.045, 21.0451, and 21.0452.

§229.21. Transitional Provisions.

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 15, 2016.

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CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

The State Board for Educator Certification (SBEC) proposes amendments to 19 TAC §§230.1, 230.11, 230.13, 230.31, 230.33, 230.35, 230.37, 230.41, 230.53, 230.71, 230.73, 230.75, 230.77, 230.79, 230.81, 230.83, 230.91, 230.93, 230.97, 230.101, 230.105, 230.111, and 230.113; new 19 TAC §§230.36, 230.63, 230.65, 230.104, and 230.107; and repeal of 19 TAC §230.15 and §230.39, concerning professional educator preparation and certification. The SBEC rules in 19 TAC Chapter 230 are currently organized as follows: Subchapter A, General Provisions; Subchapter B, General Certification Requirements; Subchapter D, Types and Classes of Certificates Issued; Subchapter E, Educational Aide Certificate; Subchapter F, Permits; Subchapter G, Certificate Issuance Procedures; and Subchapter H, Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States. The subchapters provide for rules that establish guidelines and procedures for certification requirements, fees, permits, educational aides, and assignment criteria relating to professional educator preparation and certification. Chapter 230 serves as a foundation for the practices and procedures related to educator preparation and certification. The seven subchapters include key definitions relevant to educator preparation and certification; provide general eligibility, recommendation and issuance requirements for various types of certificates; outline testing requirements for certification; identify certificate application fees; and confirm the overall process for individuals already certified in other states or countries to obtain Texas certification. The proposed amendments to 19 TAC §§230.1, 230.11, 230.13, 230.31, 230.33, 230.35, 230.37, 230.41, 230.53, 230.71, 230.73, 230.75, 230.77, 230.79, 230.81, 230.83, 230.91, 230.93, 230.97, 230.101, 230.105, 230.111, and 230.113; new 19 TAC §§230.36, 230.63, 230.65, 230.104, and 230.107; and repeal of 19 TAC §230.15 and §230.39 would result from SBEC board input, stakeholder input, and input received from staff at the Texas Education Agency (TEA).

The Texas Education Code (TEC), §21.031, states that the SBEC is established to oversee all aspects of the certification and continuing education of public school educators and to 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.

At the January 2015 SBEC work session, the SBEC members received three presentations on educator quality as it pertains to educator preparation programs (EPPs) in the state of Texas. The Texas Teaching Commission, the Council for the Accreditation of Educator Preparation, and the National Council on Teacher Quality provided state and national perspectives on educator quality in relation to Texas EPPs. SBEC members provided feedback to TEA staff on those presentations. Specifically, as it relates to 19 TAC Chapter 230, the SBEC requested policy options that focus on raising EPP standards, improving teacher prepara-

tion programs, and new and improved ways to train better teachers.

TEA staff conducted an SBEC work session on June 9, 2016, to provide the Board with a shared understanding of the preparation process, to discuss current issues related to educator preparation and teacher quality, and to capture SBEC's perspective on preparation so that TEA can provide the desired support in preparation for possible rule changes.

The TEA staff also convened three face-to-face stakeholder meetings in December 2015 and June 2016 to gather input on the proposed revisions to 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter A, General Provisions; Subchapter B, General Certification Requirements; Subchapter D, Types and Classes of Certificates Issued; Subchapter E, Educational Aide Certificate; Subchapter F, Permits; Subchapter G, Certificate Issuance Procedures; and Subchapter H, Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States. The proposed revisions reflect input received from the SBEC, TEA staff, and TEA staff-convened stakeholder meetings, but also includes additional changes since the draft rule text was shared at the December 2015, April 2016, and June 2016 SBEC meetings.

Following is a description of the proposed revisions.

Subchapter A, General Provisions

The purpose of Subchapter A, General Provisions, is to define key terms that share common meaning across several certification and educator preparation rules within the Texas Administrative Code.

The proposed amendment to 19 TAC §230.1 reflects the addition of terms relevant to general requirements for educator preparation and certification and the removal of terms not applicable to Chapter 230. The goal is to ensure there is common understanding of frequently used terms so that there is accurate and effective communication and alignment throughout the state between EPPs, school districts, educators, candidates for certification, and other stakeholders.

In 19 TAC §230.1, the SBEC proposes adding definitions for *candidate*, *certification class*, *charter school*, *intern certificate*, *probationary certificate*, *standard certificate*, *teacher*, and *Texas Essential Knowledge and Skills*; removing the definitions for *field supervision*, *high-quality professional development*, *internship*, *mentor*, *State Board for Educator Certification*, and *Texas Education Agency staff*; and amending the definitions for *accredited institution of higher education*, *certificate*, *classroom teacher*, *continuing professional education*, *educator*, *educator preparation program*, *initial certification*, and *teacher of record*.

Subchapter B, General Certification Requirements

The purpose of Subchapter B, General Certification Requirements, is to outline general certification requirements applicable to all individuals regardless of the route taken to obtain Texas certification.

Language in 19 TAC §230.11(b)(5)(B) would be amended to clarify that the English language proficiency requirement can be satisfied for individuals coming from territories of the United States, if English was the primary language of instruction at the university where the degree was earned. Regardless of their route to Texas certification, all individuals unable to provide a letter from their university confirming the primary language of instruction

was English would be required to take and pass the Test of English as a Foreign Language--Internet Based Test (TOEFL-ibt). Subsection (b)(7)(F) would be removed since 19 TAC §230.39, Temporary Teacher Certificate, is proposed for repeal in Subchapter D.

Language in 19 TAC §230.13(a)(2) and (b)(3) would be amended to clarify that standard certificate applications must be completed and recommended by the EPP by the application and issuance deadlines for the certificate.

Section 230.15 would be repealed because provisions for the military community are addressed in proposed new 19 TAC Chapter 234, Military Service Members, Military Spouses, and Military Veterans, adopted by the SBEC at the April 2016 meeting.

Subchapter D, Types and Classes of Certificates Issued

The purpose of Subchapter D, Types and Classes of Certificates Issued, is to identify types and classes of certificates issued in Texas. This subchapter also identifies some of the temporary credentials issued as individuals complete requirements to obtain a five-year Texas standard certificate.

Language in 19 TAC §230.31(a)(2) and (3) would be retained to confirm that prior to September 1, 1999, provisional certificates were issued for all classroom teacher subject areas and professional certificates were issued for areas other than classroom teacher; however, both of these certificate types remain valid for life unless suspended, surrendered in lieu of revocation, or revoked by lawful authority as referenced in subsection (b).

To better reflect certification requirements, the SBEC proposes moving educational aide from the list of types of classes of certificates in §230.33(b) to the list of types of certificates in §230.31(a)(8). Proposed subsection (d) would be added to reflect the change from a five-year validity period to a two-year validity period for the educational aide certificate. TEA staff discussed potential changes to the educational aide certificate with the SBEC during the December 2015, February 2016, and April 2016 meetings. While the SBEC acknowledges the important role of the educational aide and that the certificate should remain in place, the SBEC proposes shortening the validity period of the certificate. TEA staff ran data for the 2014-2015 school year that confirmed a total of 227,910 educational aide certificates were issued. Of those, 153,789 certificates were valid for life, while 74,121 educational aide certificates were issued as standard certificates that must currently be renewed every five years. While there were a large number of educational aide certificates issued, employment data from school year 2014-2015 show approximately 53,791 educational aides were actively employed. Of those 53,791 educational aides, only 8,044 (or 18%) had been employed for over two years.

The SBEC proposal to shorten the validity period of the educational aide certificate would address the challenge the TEA faces allocating limited resources to the investigation and prosecution of individuals possessing only educational aide certificates that are either in inactive status and/or are not otherwise being utilized by the individual as a condition of employment by a Texas school district. A significant number of cases involving educational aides (paraprofessionals) accused of wrongdoing result in defaults when filed at the State Office of Administrative Hearings (SOAH). Over the course of the five most recent SBEC meetings, 65 defaults were issued for educational aides making up 39% of the defaults issued. The investigation and prosecution of defaults require the same or more resources as non-default cases.

Shortening the validity period for the educational aide certificate would focus TEA investigative and prosecutorial resources only on those who are actively using the educational aide certificate in a Texas public school.

Proposed new 19 TAC §230.36 would establish a new intern certificate. The concept of the intern certificate was first presented to the SBEC at the April 2016 meeting and was originally intended to replace the probationary certificate. At the time, the SBEC proposes that candidates pass all required examinations (content and pedagogy) for the certification area prior to issuance of the intern certificate to ensure that a teacher of record has demonstrated minimal competence in both pedagogy and content prior to placement in a classroom with only minimal supervision. District and EPP representatives expressed concerns about future plans to increase the testing requirements for issuance of the intern certificate. During the June 2016 SBEC work session and meeting, TEA staff presented a tiered licensure process for certification through an EPP that better reflects the candidate's progress toward full certification and the level of support the candidate receives. This two-tiered licensure structure for EPP candidates included an intern certificate, where prior to issuance, successful completion of all content examinations was required; and a probationary certificate, where prior to issuance, successful completion of all examinations (content and pedagogy) was required. The SBEC proposes a one-year validity period for the intern certificate and a maximum of two, one-year validity periods for the probationary certificate. Probationary certificates would remain in 19 TAC §230.37.

Section 230.37 currently allows EPP candidates to be placed on a probationary certificate and serve as the teacher of record for up to three years. The SBEC proposes limiting the amount of time a candidate can serve on a probationary certificate. Language would be amended in proposed subsection (c)(4) to add intern certificates and reduce the total amount of time allowed from three years to two years. The SBEC recognizes that the proposed change may impact an EPP's timeline on preparing candidates, but finds it better aligns with the SBEC's goals and principles. To ensure that school districts and the TEA are properly notified about candidates serving on an intern or probationary certificate who resign or are terminated from assignments and/or candidates that withdraw or are released from an EPP, EPP notification requirements have been removed from this subchapter and moved to Chapter 228.

Proposed subsection (d) would establish testing requirements for issuance of a probationary certificate and include a transition from testing requirements and options in place prior to September 1, 2017, and testing requirements for issuance of the probationary certificate beginning September 1, 2017. Proposed subsection (d)(2) would require candidates to successfully complete all examinations currently required for issuance of a standard certificate prior to issuance of the probationary certificate in any subject area (i.e., pedagogy, content, and as applicable, oral, written, or sign communication assessments) beginning September 1, 2017. In addition, the proposed amendment would add a requirement for successful completion of the pedagogy and professional responsibilities examination in addition to the required content examinations and would remove the provision in subsection (d)(1) that prior to September 1, 2017, allows individuals to receive the probationary certificate for Grades 7-12 by substituting the required content examination with a minimum number of college hours. The proposed changes to the probationary certificate rules are proposed to ensure that individuals have demonstrated minimal competence in both pedagogy and

content prior to placement in a classroom as the paid teacher of record with only minimal supervision. The proposed testing requirement to qualify for issuance of a probationary certificate would become effective September 1, 2017. Current subsections (d)-(f) would be removed.

The SBEC recognizes the impact of these proposed changes and acknowledges stakeholder feedback on the proposed rule actions and their concerns related to testing requirements prior to issuance of the intern and/or probationary certificate and the potential impact these requirements could have on bilingual certification candidates and certification candidates in other high-need areas. The SBEC carefully considered this issue and proposes the rule actions. The SBEC has continued to focus on the need to ensure that individuals entering classrooms as the teacher of record demonstrate content proficiency to ensure that students have the best opportunity to master academic content. It is particularly critical that students in bilingual or special education classrooms have teachers with the academic knowledge and skills to meet the needs of those students. Although teachers on an intern or probationary certificate would still be receiving training in essential pedagogical skills, the proposal supports the belief that all students deserve teachers who have demonstrated content knowledge. The SBEC understands there are processes in place that allow districts to apply for bilingual exceptions to receive some flexibility from the bilingual program requirements. Creating a tiered licensure structure also would allow for meaningful differentiation for districts in making hiring decisions and EPPs in supporting their intern or probationary teachers.

Section 230.39, Temporary Teacher Certificates, would be repealed due to a lack of district participation for several years and because the TEA no longer issues the Grades 8-12 certificates that aligned with this process.

Language in 19 TAC §230.41, Visiting International Teacher Certificates, would be amended in subsection (a) to remove the reference to the agreement since rules in this subsection provide eligibility and certificate issuance requirements. Proposed subsection (e) would be added to confirm that issuance of the visiting international certificate does not preclude candidates from completing the credentials review process and being issued a one-year certificate if all requirements are met.

Subchapter E, Educational Aide Certificate

The purpose of Subchapter E, Educational Aide Certificate, is to outline the general requirements for the recommendation, issuance, and renewal of educational aide certificates.

The majority of the rules in this subchapter remain the same. Language would be added as proposed 19 TAC §230.53(f) and (g) to confirm that individuals already certified as a classroom teacher would be eligible to serve as an educational aide without obtaining the educational aide certificate unless requested by the employing district and confirm that individuals seeking a higher level of educational aide certificate (i.e., transferring from educational aide I to II or educational aide II to III) would need to complete an online application, pay a fee, and be recommended for the new level of certification by the employing district.

Proposed new 19 TAC §230.63 would address the SBEC proposed change in the validity period for educational aide certificates; provide notification of the proposed change taking effect September 1, 2017; and confirm the elimination of the renewal requirements having to be completed for an expired lower level educational aide certificate when applying and being recommended by the district for a higher level certificate.

Proposed new 19 TAC §230.65 would clarify the new process for reissuance of educational aide certificates by confirming that effective September 1, 2017, all educational aide certificates issued would expire at the end of their validity period and that reissuance of an educational aide certificate would require a new online application, a new recommendation from the employing district, and a new fee paid online. Because holders of educational aide certificates would be required to reapply for new certification each time, the SBEC proposes a fee reduction for issuance of this certificate beginning September 1, 2017. The proposed fee of \$15 every two years is included in the proposed changes to 19 TAC §230.101, Schedule of Fees for Certification Services, in Subchapter G. It is also important to note that all educational aide certificates issued prior to September 1, 2017, would be issued with a five-year validity period, but the certificate would expire at the end of the period and is not subject to renewal. Individuals would be required to reapply for a new educational aide certificate with a two-year validity period. Individuals holding a lifetime educational aide certificate would maintain that certificate.

Subchapter F, Permits

The purpose of Subchapter F, Permits, is to outline the general requirements for the recommendation, issuance, and renewal of emergency permits.

The SBEC proposes returning use of emergency permits back to serving as a temporary credential that provides resolution to a "true emergency" and allows an employing district to fill an immediate need for placement of a teacher into the classroom. Language in 19 TAC §230.71, General Provisions, would be amended to alert districts of proposed changes in issuance of emergency permits. Proposed subsection (b) would be added to indicate that effective with the 2017-2018 school year, emergency permits would be limited to one year of issuance, with no option for renewal. Proposed subsection (c) would be added to confirm that the one-year limitation does not apply to the annual reissuance of emergency permits for Junior Reserve Officer Training Corps (JROTC) instructors or renewals of emergency permits for teachers of students with visual impairments. Language in proposed subsection (d)(1) would be amended to confirm that the superintendent or his designee must take specific steps to determine an individual's qualifications for placement on an emergency permit. Language in proposed subsection (d)(3) would be amended to add "open-enrollment charter school" to expand the type of educational setting where a permit may be initiated for an individual. Language in proposed subsection (h)(3)(A) would be amended to include a proposed change from "deficiency plan" to "certification plan" to better align with EPP terminology. Language in proposed subsection (h)(3)(B) would be amended to add "or higher" after the bachelor's degree reference to confirm a higher degree is acceptable and in proposed subsection (i) to add "pertaining to parental notification." Proposed subsection (j) would be added to confirm individuals issued an intern or probationary certificate are not allowed to also be placed on an emergency permit.

Language in 19 TAC §230.73 would be amended in subsection (d) and proposed subsections (e)-(g) to confirm that the 2016-2017 school year would be a transition year and that rules currently in place for emergency permits, including renewal of permits would remain the same. However, in the 2017-2018 school year, the one-year limit would become effective. The only exceptions to the limited use of emergency permits are for the assignments to teach JROTC and to serve as teachers of students with visual impairments. Districts would continue being

allowed to apply for new emergency permits every year to allow individuals employed in their district to continue serving in the assigned role of JROTC instructor. Districts would also be allowed a maximum of two renewals on emergency permits for assignments to teach students with visual impairments. TEC, §21.0485, requires individuals pursuing the Visually Impaired (VI) Supplemental Certificate to complete an EPP and does not allow them to earn this certificate through the certification by examination route. Individuals assigned to teach students with visual impairments on a permit are already certified educators who must complete requirements through an approved EPP to qualify for issuance of the VI Supplemental Certificate. Teachers of students with visual impairments often serve in itinerant positions that go where the students are at their local school in a district or as part of a cooperative for more rural areas of Texas. These teachers also receive additional support from the Texas School for the Blind and Visually Impaired's statewide mentoring program. Because the statute does not allow individuals to earn certification solely by test passage and due to the specialized and intensive nature of the training requirements for individuals seeking this certificate, the SBEC proposes additional time under the emergency permit for teachers of students with visual impairments. This would allow districts to maintain qualified staff in this specialized area without causing a disruption to the population of students being served.

Language in 19 TAC §230.75(1)(A) would be amended to incorporate associate's degree or more advanced degree reference into the rule text to align with health science certification requirements.

Language in 19 TAC §230.77(c)(1)(B) would be amended to increase the semester credit hour requirement from six to twelve in the subject to be taught. Also, the SBEC proposes changes to subsection (c)(2)(A) to match the increase in semester credit hours in subsection (c)(1)(B). Proposed subsection (c)(2)(C) would incorporate stakeholder feedback to prohibit approval of a temporary classroom assignment permit for an individual teaching more than four class periods with fewer than six semester credit hours in the specific subject area to be taught. Language in subsections (d)-(g) would be amended to incorporate minor edits to update certificate names, align semester credit hour requirements or licensure and experience requirements for certain certificates (e.g., career and technical education areas), and clarify degree requirements.

Language in 19 TAC §230.79(a)(1) and (b)(1) would be amended to clarify application for the emergency permit is an online process. The SBEC also proposes changing "deficiency plan" to "certification plan" in subsections (a)(2)(A) and (b)(4) to better align with EPP terminology. Clarifying language specific to career and technical education assignments based on skill and experience would be added in subsection (b)(2) and proposed paragraph (3).

Language would be amended in 19 TAC §230.81(2) to confirm emergency permits are limited to one year in an assignment, and language in paragraph (3)(B) would be amended to reflect a change in semester credit hour requirements needed for one renewal. Because the proposed change in the emergency permit validity period is not effective until the 2017-2018 school year, the SBEC proposes retaining the renewal provisions in rule to provide districts with guidance until the new emergency permit rules are effective.

The SBEC proposes removing 19 TAC §230.83(b)(3) since there are very few district requests for nonrenewable permits related

to candidates from other states who held the one-year certificate and did not pass the pedagogy and professional responsibilities (PPR) test during the validity period of their one-year certificate. The SBEC is cognizant of concerns expressed by stakeholders that the requirements for placement on emergency permits has been more rigorous for certified educators versus non-certified individuals. Attempts have been made to address this discrepancy by revising the emergency permit rule to treat both populations more fairly while maintaining a balance of meeting needs at the local level and still ensuring the placement of qualified individuals in every classroom.

Subchapter G, Certificate Issuance Procedures

The purpose of Subchapter G, Certificate Issuance Procedures, is to identify the general procedures for issuance of certificates, to confirm the roles of EPPs in the recommendation of their candidates for certification, to highlight the process for dating and issuing certificates and permits, to establish in rule the fees for various certification services, to outline the process for submitting fees for correction of a certificate or permit issued in error, and to identify requirements for issuance of additional certificates based on examination only.

The majority of the rules in this subchapter would remain the same; however, language would be amended in 19 TAC §230.91(a)(1) to confirm that the virtual certificate is considered to be the official record of educator certification in Texas. This online certificate is available on the TEA website and satisfies the TEC, §21.053(a). The SBEC proposes removing the reference to the SBEC board chair signature since TEA stopped printing and mailing paper certificates in January 2011.

Language would be amended in 19 TAC §230.93, Candidates of Approved Educator Preparation Programs, to confirm that an EPP is responsible for recommending candidates for certification by the deadlines for issuance of the certificate. Language would be amended in 19 TAC §230.97(c) to confirm that a fee is required to change the effective date for a certificate or permit.

The SBEC proposes fee changes in 19 TAC §230.101, Schedule of Fees for Certification Services, to support necessary online system updates to implement the proposed rule changes and cover TEA's administrative costs. Language would be amended in subsection (a)(1) to confirm the fee reduction from \$30 to \$15 for the educational aide certificate, effective September 1, 2017, and in subsection (a)(3) to add the intern certificate to the line item and propose a fee increase from \$50 to \$75 for issuance of the probationary or intern certificate. In subsection (a)(6), the SBEC proposes changing "temporary credential" to "one-year certificate" to better reflect what is issued and to align rule text with wording in Subchapter D, Types and Classes of Certificates Issued. In subsection (a)(8), the SBEC proposes increasing the national criminal history check processing fee from \$6 to \$10 to better cover TEA's administrative costs and, in proposed subsection (a)(9), add a fee for reviewing superintendent applications for the substitution of managerial experience for the principal certification requirements. The SBEC's approval of this fee would allow TEA staff to begin the timely review of anticipated requests from individuals to utilize the new process recently established in rule to allow flexibility in obtaining the Superintendent Certificate in accordance to rules outlined in 19 TAC Chapter 242, Superintendent Certificate. The fee references in proposed subsections (a)(10) and (11) would not apply to educational aide certificates effective September 1, 2017; however, the SBEC proposes leaving the current fees in place until they are no longer applicable to the certification process for educa-

tional aides. Language in proposed subsection (a)(18) would be amended to increase the Visiting International Teacher certificate from \$50 to \$75 to better cover TEA's administrative costs.

Proposed new 19 TAC §230.104, Correcting a Certificate or Permit Issued in Error, would confirm in rule the need for payment by an EPP or district to correct a certificate or permit issued in error based on information submitted by the EPP or district. TEA does not charge a fee to individuals, EPPs, or districts, if TEA staff was responsible for the incorrect issuance of a certificate or permit.

The SBEC proposes removing 19 TAC §230.105(2) to allow marketing, health science, and trade and industrial education to the list of certificates eligible to be added under the provision of additional certification by examination. However, because there are legislative requirements that must be met for issuance of the health science certificate, as well as licensure and work experience requirements needed for the trade and industrial education certificate, TEA staff has aligned the test approval process for health science and trade and industrial education to the process already in place for marketing certification through additional certification by examination. Like marketing, candidates seeking the health science and/or trade and industrial education certificate through this route would need to have licensure and wage-earning experience verified through a school district or approved EPP before test approval can be granted.

And finally, proposed new 19 TAC §230.107 would place into rule a process that allows individuals to relinquish a Texas certificate if they no longer wish to have the credential listed as part of their official record of certification. Over the years, educators have requested to relinquish one or more of their approved educator certifications. There is no current rule that addresses this type of request from an educator. The SBEC proposes language in this section that would allow an individual to relinquish the certificate, but also emphasizes that once it is relinquished, it cannot be added back to the official certificate record without the individual completing the requirements for issuance of the certificate (i.e., retaking the applicable test, completing EPP requirements as applicable, reapplying and paying the fee for certificate issuance).

Subchapter H, Texas Educator Certificates Based on Certification and College Credentials from Other States and Territories of the United States

The purpose of Subchapter H, Texas Educator Certificates Based on Certification and College Credentials from Other States and Territories of the United States, is to outline the process for individuals already certified to teach in other states to obtain Texas certification. This subchapter also explains the legislatively mandated comparable tests process that eliminates some of the Texas certification testing requirements for educators already certified to teach in other states.

The majority of the rules in this subchapter would remain the same, but the SBEC proposes a few minor changes. Language in 19 TAC §230.111(a) would be amended to add the word "acceptable" to further describe the certificate or credential that can be submitted for the Texas review of credentials process. Language would be amended in subsection (c) to resolve grammatical issues and clarify that examination and/or certificate renewal requirements pending in another state would not impact an individual's ability to complete the Texas review of credentials process if he or she has met all other requirements for certification in the other state. Language in subsection (d) would be

amended to confirm that a letter from another state department of education responsible for issuance of certification or licensure can be accepted in place of a copy of the actual certificate for purposes of the TEA's review of credentials process. Language would be amended in subsection (e) to confirm that the Texas credentials review process can only be completed based on the areas and grade levels of certification included on the certificate issued by another state department of education.

The SBEC proposes removing 19 TAC §230.113(e) to align with deletion of similar text in the nonrenewable permit section of this chapter. Language in proposed subsection (e) would be amended to confirm that individuals must establish a base classroom teaching certificate before they can add a supplemental certification area to their Texas certificate record. After much consideration and discussion, along with stakeholder input, the SBEC determines it is important to leave territories of the United States in place as part of this subchapter's title, and any concerns regarding English language proficiency for individuals can be addressed directly with the individuals pursuing certification. The general certification requirements outlined in Subchapter B apply to all individuals seeking certification, regardless of the path taken to obtain Texas certification. For this reason, if an individual from a territory of the United States cannot provide proof that English was the primary language of instruction at the university where the bachelor's degree or higher was earned, that individual would be required to take and pass the oral proficiency test approved by the SBEC before a certificate could be issued.

The proposed rule actions would have no additional procedural and reporting implications. The proposed rule actions would have no additional locally maintained paperwork requirements.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed rule actions are in effect there would be additional costs for state government and no additional costs for local government as a result of enforcing or administering the proposed rule actions.

The following fiscal implications are based on costs for state government (TEA) and persons (individuals) for fiscal years (FYs) 2017-2021.

The TEA estimates a total cost for state government at \$398,000 in FY 2017. The TEA estimates an increase in revenues for state government and a cost for individuals at \$317,520 each in FY 2017 and \$504,580 each in each year for FYs 2018-2021.

The TEA estimates personnel costs for state government at \$398,000 to support implementation of Chapter 230 rule changes based on information provided by the TEA Information Technology Services team. This is a rough estimate based on the September 1, 2017 effective date for the majority of the proposed fee changes in 19 TAC §230.101, which assumes all of the work related to the implementation of the proposed rule actions would need to be completed during the 2016-2017 school year. TEA would be using three program support staff already 100% dedicated to the Educator Certification Online System (ECOS) to complete documenting and finalizing of system requirements, development, testing, and moving online system changes into production. Using TEA staff already employed will absorb the personnel costs reflected, but will also require educator certification and testing program staff to forgo all other planned upgrades/improvements to the ECOS, with the exception of necessary and already scheduled maintenance, to accommodate implementation of the proposed rule changes.

The proposed rule actions include several fee changes that will directly impact revenue paid to the state for certification services and direct economic cost to individuals submitting payments for various certification services. The proposed \$4 increase (\$6 to \$10) in fees retained will better cover costs of reviewing criminal history records, subsequent arrest records, and investigating and prosecuting educator misconduct cases and will reflect the increasing caseloads. TEA estimates an approximate increase in revenue of \$317,520 in FY 2017 and \$452,000 in each year for FYs 2018-2021.

Effective September 1, 2017, TEA proposes to stop issuing the five-year educational aide certificate and the on-time and late renewal fees associated with that certificate. TEA anticipates losses of the \$32 certificate fee, \$10 on-time renewal fee, and \$15 late fee will result in an approximate decrease in revenue of \$680,000 in each year for FYs 2018-2021, as it may take that long for all individuals holding a current five-year certificate to reach their expiration date. TEA determined that implementation of the two-year educational aide certificate at \$15, effective September 1, 2017, will allow the TEA to generate an estimated \$360,000 in revenue increase in each year for FYs 2018-2021. The TEA determined that this change in fees for the educational aide certificate will eventually reach a point of being budget neutral and is intended to help mitigate the significant amount of time spent investigating and prosecuting misconduct for educational aides who have not worked in schools for many years.

Creation of a new intern certificate at \$75, effective September 1, 2017, is estimated to produce an increase in revenue of \$326,000 in each year for FYs 2018-2021. TEA recommends aligning the cost of this new certificate with the proposed fee changes for the probationary certificate and the current fee for the standard certificate (\$75). The proposed \$23 fee increase (\$52 to \$75) for the probationary certificate is expected to generate an estimated increase in revenue of \$36,800 in each year for FYs 2018-2021. Proposed fees for these two certificates (intern and probationary) will account for the creation of the tiered licensure system and will align costs with the \$75 fee already established for the standard certificate.

Creation of the new \$160 fee related to the superintendent review of credentials would generate an estimated increase in revenue of \$1,600 in each year for FYs 2018-2021. While TEA anticipates no more than 10 applicants annually, the fee is needed to cover the costs of staff reviewing credentials of individuals who lack a principal certificate, but have managerial experience in schools and want to enter a superintendent preparation program. The experience verified and approved by TEA staff would substitute for having a principal certificate.

Lastly, the proposed \$23 fee increase (\$52 to \$75) will better cover staff time associated with processing visiting international teacher certificates. There is an anticipated increase in revenue of \$6,000 in each year for FYs 2018-2021.

There is no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for the first five-year period the proposed rule actions are in effect the public and student benefit anticipated as a result of the proposed rule actions would be the continuation of rules relating to certification requirements, fees, procedures for testing and certificate issuance, educational aides, and permits for professional educator preparation and certification. The anticipated

economic cost to persons who are required to comply with the proposed rule actions is described earlier under Fiscal Note.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. 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.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins August 26, 2016, and ends September 26, 2016. The SBEC will take registered oral and written comments on the proposed amendments to 19 TAC §§230.1, 230.11, 230.13, 230.31, 230.33, 230.35, 230.37, 230.41, 230.53, 230.71, 230.73, 230.75, 230.77, 230.79, 230.81, 230.83, 230.91, 230.93, 230.97, 230.101, 230.105, 230.111, and 230.113; new 19 TAC §§230.36, 230.63, 230.65, 230.104, and 230.107; and repeal of 19 TAC §230.15 and §230.39 at the October 7, 2016 meeting in accordance with the SBEC board operating policies and procedures. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to sbecrules@tea.texas.gov. All requests for a public hearing on the proposed rule actions 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, 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* on August 26, 2016.

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §230.1

STATUTORY AUTHORITY. The amendment is 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; the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; the TEC, §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; the TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; the TEC, §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; and the TEC, §22.082, which states that the SBEC shall subscribe to the criminal history clearinghouse as provided by the Texas Government Code, §411.0845, and may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific appli-

cant for or holder of a certificate issued under the TEC, Chapter 21, Subchapter B.

CROSS REFERENCE TO STATUTE. The proposed amendment implements the TEC, §§21.041(b)(1) and (2) and (4), 21.044(a), 21.048, 21.050, and 22.082.

§230.1. *Definitions.*

The following words and terms, when used in this chapter, Chapter 232 of this title (relating to General Certification Provisions), and Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates), shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accredited institution of higher education--An institution of higher education that, at the time it conferred the degree, was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating [Cøordination] Board.

(2) Appropriate--Suitable for a particular purpose. The term denotes compliance with State Board for Educator Certification (SBEC) rules and with SBEC procedures and policies posted on the Texas Education Agency website that are related to the stated particular purpose.

(3) Candidate--An individual who has been formally or contingently admitted into an educator preparation program; also referred to as an enrollee or participant.

(4) [~~3~~] Certificate--Any educator credential issued by the State Board for Educator Certification under the authority of the Texas Education Code, Chapter 21, Subchapter B.

(5) Certification class--A certificate, as described in §230.33 of this title (relating to Classes of Certificates), that has defined characteristics and includes the following: superintendent, principal, classroom teacher, school counselor, school librarian, educational diagnostician, reading specialist, and master teacher.

(6) Charter school--A Texas public school operated by a charter holder under an open-enrollment charter school granted either by the State Board of Education (SBOE) or commissioner of education, whichever is applicable, pursuant to Texas Education Code, §12.101, identified with its own county district number.

(7) [~~4~~] Classroom teacher--An educator who is employed by a school or district [approved by the Texas Education Agency or by an open-enrollment charter school approved by the State Board of Education] and who [teaches], not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical education instructional setting. This term does not include an educational [a teacher's aide], Reserve Officers' Training Corps (ROTC) instructors, substitute,] or a full-time [or part-time] administrator.

(8) [~~5~~] Continuing professional education--Professional development required for the renewal of standard and/or lifetime [educator and professional] certificates that is designed to ensure improvement in both the performance of the educator and achievement of his or her students.

(9) [~~6~~] Educator--An individual [A person] who is required to hold a certificate issued under the Texas Education Code, Chapter 21, Subchapter B.

(10) [~~7~~] Educator preparation program--An entity approved by the State Board for Educator Certification to offer training and coursework that must adequately [tø] prepare candidates for [an] educator certification and meet the standards and requirements of the board [certificate].

(11) [~~8~~] Examination--A standardized test or assessment required by statute or State Board for Educator Certification rule that governs an individual's admission to an educator preparation program, certification as an educator, continuation as an educator, or advancement as an educator.

[(9) Field supervision--An educator preparation program is responsible for the supervision of a candidate during student teaching, clinical teaching, internship, or a practicum. The supervision includes monitoring candidates and providing them with constructive feedback to improve their professional performance based on the standards associated with the certificate being sought.]

(12) [~~10~~] Hearing impairment--As defined in the Texas Education Code, §21.048(d)(1), a hearing impairment so severe that the person cannot process linguistic information with or without amplification.

[(11) High-quality professional development--Professional development that meets the requirements of the No Child Left Behind Act of 2001, 20 United States Code, §7801 (2001, as amended) and its subsequent amendments.]

(13) [~~12~~] Initial certification--The first Texas educator certificate for a particular class issued to an individual as specified in §230.33 of this title (relating to Classes of Certificates) [based on participation in an approved educator preparation program].

(14) Intern certificate--A type of certificate issued to a candidate who has passed all required content examinations and is completing requirements for certification through an approved educator preparation program.

[(13) Internship--A one academic year (or 180 school days) supervised educator assignment at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for internships, which may lead to completion of a standard certificate.]

[(14) Mentor--A certified educator who is assigned by the campus administrator and who has completed, within the past three years, mentor training provided by an educator preparation program, regional education service center, campus, or school district. Responsibilities of the mentor include, but are not limited to:]

[(A) guiding, assisting, and supporting the beginning teacher in areas such as acquisition of instructional materials, classroom management, curriculum and instruction, district policy, parent involvement, and student assessment; and]

[(B) providing information to the educator preparation program regarding the progress of the beginning teacher seeking new certification.]

(15) Private school--A non-public school whose educational program has been evaluated by a regional accrediting agency and whose program has met and is maintaining certain educational standards.

(16) Probationary certificate--A type of certificate issued to a candidate who has passed all required examinations and is completing requirements for certification through an approved educator preparation program.

(17) [~~16~~] Professional class--A term that refers to certificates for duties other than classroom teacher (e.g., superintendent, principal, school counselor, school librarian, educational diagnostician, reading specialist, and master teachers).

(18) Standard certificate--A type of certificate issued to an individual who has met all requirements for a given class of certifica-

tion, as specified in §230.33 of this title (relating to Classes of Certificates).

(19) Teacher--An individual who is required to hold a certificate issued under the Texas Education Code, Chapter 21, Subchapter B.

~~[(17) State Board for Educator Certification--The State Board for Educator Certification acting through its voting members in a decision-making capacity.]~~

(20) [(18)] Teacher of record--An educator who is employed by a school or district and who teaches [the majority of the instructional day] in an academic instructional setting or a career and technical instructional setting not less than an average of four hours each day and is responsible for evaluating student achievement and assigning grades.

(21) [(19)] Teacher service record--The official document used to record years of service and days used and accumulated under the state's former minimum sick leave program or the state's current personal leave program.

(22) Texas Essential Knowledge and Skills (TEKS)--The kindergarten-Grade 12 state curriculum in Texas adopted by the State Board of Education and used as the foundation of all state certification examinations.

~~[(20) Texas Education Agency staff--Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's administrative functions and services.]~~

(23) [(21)] Texas school district--A school district accredited and approved by the Texas Education Agency under the Texas Education Code, Chapter 11.

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

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



SUBCHAPTER B. GENERAL CERTIFICATION REQUIREMENTS

19 TAC §230.11, §230.13

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.041(b)(2), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; the TEC, §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; the TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive

examinations for each class of certificate issued by the SBEC; the TEC, §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; and the TEC, §22.082, which states that the SBEC shall subscribe to the criminal history clearinghouse as provided by the Texas Government Code, §411.0845, and may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under the TEC, Chapter 21, Subchapter B.

CROSS REFERENCE TO STATUTE. The proposed amendments implement the TEC, §§21.041(b)(2) and (4), 21.044(a), 21.048, 21.050, and 22.082.

§230.11. General Requirements.

(a) The only credits and degrees acceptable for certification of educators are those earned from and conferred by accredited institutions of higher education. All credit hour requirements for certification are semester credit hours or their equivalent.

(b) An applicant for a Texas educator certificate must:

(1) be at least 18 years of age;

(2) submit to the criminal history review required by the Texas Education Code (TEC) §22.0831, not be disqualified by the TEC, §21.058, §21.060, or other Texas statute, and not be subject to administrative denial pursuant to §249.12 of this title (relating to Administrative Denial; Appeal) or a pending proceeding under Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases);

(3) not be disqualified by federal law;

(4) be willing to support and defend the constitutions of the United States and Texas;

(5) be able to communicate, listen, read, write, and comprehend the English language sufficiently to use it easily and readily in daily communication and teaching. English language proficiency shall be evidenced by one of the following:

(A) completion of an undergraduate or graduate degree at an accredited institution of higher education in the United States;

(B) if an undergraduate or graduate degree was earned at an institution of higher education outside of the United States, including territories of the United States, evidence must be provided under procedures approved by the Texas Education Agency (TEA) staff that the primary language of instruction was English; or

(C) verification of satisfactory scores on an English language proficiency examination(s) approved by the State Board for Educator Certification (SBEC);

(6) successfully complete appropriate examinations prescribed in §230.21 of this title (relating to Educator Assessment) for the educator certificate sought; and

(7) satisfy one or more of the following requirements:

(A) complete the requirements for certification specified in this chapter, Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates), Chapter 239 of this title (relating to Student Services Certificates), Chapter 241 of this title (relating to Principal Certificate), or Chapter 242 of this title (relating to Superintendent

Certificate), and be recommended for certification by an approved educator preparation program;

(B) qualify under Subchapter H of this chapter (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States);

(C) qualify under §230.105 of this title (relating to Issuance of Additional Certificates Based on Examination);

(D) qualify for a career and technical education certificate based on skill and experience specified in §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)); or

(E) qualify under Chapter 245 of this title (relating to Certification of Educators from Other Countries).~~;~~ ~~or~~

~~[(F) qualify for certification under §230.39 of this title (relating to Temporary Teacher Certificates).]~~

§230.13. Standard Certificate Requirements.

(a) Initial standard classroom teacher certificates that are not based on experience and preparation in a skill area shall require:

(1) a bachelor's degree from an accredited institution of higher education;

(2) completion of and recommendation by an approved educator preparation program (EPP) by the application and issuance deadlines for the certificate; and

(3) submission of passing scores on comprehensive examinations prescribed by the State Board for Educator Certification (SBEC) as specified in §230.21 of this title (relating to Educator Assessment).

(b) Standard career and technical education certificates based on experience and preparation in a skill area shall require:

(1) a bachelor's degree from an accredited institution of higher education. In the case of the trade and industrial education certificates, experience may be substituted for a bachelor's degree;

(2) preparation, experience, and/or licensure, certification, or registration in a skill area as described in §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area));

(3) completion of and recommendation by an approved EPP by the application and issuance deadlines for the certificate; and

(4) submission of passing scores on comprehensive examinations prescribed by the SBEC as specified in §230.21 of this title.

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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19 TAC §230.15

STATUTORY AUTHORITY. The repeal is proposed under the Texas Education Code (TEC), §21.041(b)(2), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; the TEC, §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; the TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; the TEC, §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; and the TEC, §22.082, which states that the SBEC shall subscribe to the criminal history clearinghouse as provided by the Texas Government Code, §411.0845, and may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under the TEC, Chapter 21, Subchapter B.

CROSS REFERENCE TO STATUTE. The proposed repeal implements the TEC, §§21.041(b)(2) and (4), 21.044(a), 21.048, 21.050, and 22.082.

§230.15. Certification of Military Service Members, Military Spouses, and Military Veterans.

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

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SUBCHAPTER D. TYPES AND CLASSES OF CERTIFICATES ISSUED

19 TAC §§230.31, 230.33, 230.35, 230.36, 230.37, 230.41

STATUTORY AUTHORITY. The amendments and new section 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; the TEC, §21.031(a), which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; the TEC, §21.031(b), which states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure

that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the TEC, §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; the TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; the TEC, §21.041(b)(5), which requires the SBEC to propose rules that provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to the TEC, §21.052; the TEC, §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; the TEC, §21.051, which provides a requirement that before a school may employ a certification candidate as a teacher of record, the candidate must have completed at least 15 hours of field-based experience in which the candidate was actively engaged at an approved school in instructional or educational activities under supervision; the TEC, §22.0831(c), which provides that the SBEC shall review the national criminal history record information of all applicants for or holders of educator certification; and the TEC, §22.0831(f), which authorizes the SBEC to propose rules to implement the national criminal history record information review of certified educators.

CROSS REFERENCE TO STATUTE. The proposed amendments and new section implement the TEC, §§21.003(a), 21.031, 21.041(b)(1)-(5) and (9), 21.051, and 22.0831(c) and (f).

§230.31. *Types of Certificates.*

(a) "Type of certificate" means a designation of the period of validity for a certificate and includes the following certificate designations:

- (1) standard, as specified in subsection (c) of this section;
- (2) provisional, as specified in subsection (b) of this section;
- (3) professional, as specified in subsection (b) of this section;
- (4) one year, as specified in §230.113 of this title (relating to Requirements for Texas Certificates Based on Certification from Other States or Territories of the United States) and Chapter 245 of this title (relating to Certification of Educators from Other Countries);
- (5) intern, as specified in §230.36 of this title (relating to Intern Certificates);
- (6) [~~(5)~~] probationary, as specified in §230.37 of this title (relating to Probationary Certificates);
- ~~[(6) temporary, as specified in §230.39 of this title (relating to Temporary Teacher Certificates); and]~~
- (7) emergency, as specified in §230.73 of this title (relating to Validity of Emergency Permits); and~~[-]~~
- (8) educational aide, as specified in Subchapter E of this chapter (relating to Educational Aide Certificate).

(b) All provisional and professional educator certificates issued prior to September 1, 1999, shall be valid for the life of the individual unless suspended, surrendered in lieu of revocation, or revoked by lawful authority.

(c) Effective September 1, 1999, the standard certificate shall be issued for all classes of certificates and shall be valid for five years, subject to the requirements of Chapter 232, Subchapter A, of this title (relating to Certificate Renewal and Continuing Professional Education Requirements). The standard certificate is issued to individuals who have met all requirements for a given subject area or class of certification.

(d) Effective September 1, 2017, the educational aide certificate shall be valid for two years. Educational aide certificates issued effective September 1, 2017, will expire at the end of the two-year validity period. Individuals issued an educational aide certificate prior to September 1, 2017, as well as new applicants for the educational aide certificate, will be required to reapply for certification every two years and meet any other requirements for the educational aide certificate as specified in §230.65 of this title (relating to Requirements for Reissuance of Educational Aide Certificates).

§230.33. *Classes of Certificates.*

(a) "Class of certificates" means a certificate with the following characteristics:

- (1) specific job duties or functions associated with the certificate;
- (2) standards established by the State Board for Educator Certification (SBEC) for the issuance of the certificate; and
- (3) comprehensive examination(s) prescribed by the SBEC, as specified in §230.21 of this title (relating to Educator Assessment) [~~for the certificate~~].

(b) Classes of certificates include the following:

- (1) superintendent;
- (2) principal;
- (3) classroom teacher (categories of classroom teaching certificates are described in Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates));
- (4) reading specialist;
- (5) master teacher;
- (6) school librarian;
- (7) school counselor; and
- (8) educational diagnostician. [~~and~~]
- ~~[(9) educational aide.]~~

§230.35. *Development, Approval, Implementation, and Evaluation of Teacher Certification Standards.*

(a) Purpose. The purpose of the certification standards shall be to ensure the highest level of educator preparation and practice to achieve student excellence.

(b) Objectives. The objectives of the certification standards are:

- (1) to establish the knowledge and skills required of an individual seeking certification in a particular subject area;
- (2) to guide the design and delivery of educator preparation programs (EPPs); and

(3) to direct the development of certification examinations and other requirements for issuance of the certificate.

(c) Policy. The State Board for Educator Certification (SBEC) shall appoint an advisory committee to develop and recommend [approve] certification standards for approval that are based on the applicable Texas essential knowledge and skills (TEKS) adopted by the State Board of Education (SBOE) and reflect current research-based practices and knowledge of the developmental stages of learning to promote successful outcomes and academic achievement from Early Childhood-Grade 12.

(d) Development. The SBEC shall develop the certification standards based on information provided by Texas educators, EPP representatives, parents, and citizens. Before approving standards for a certificate, the SBEC shall make the proposed standards available for public comment [from the public, the SBOE, and the commissioner of education].

(e) Implementation. The Texas Education Agency (TEA) staff shall be primarily responsible for implementing the certification standards approved by the SBEC by having certification examinations developed or recommended to the SBEC on the basis of such standards.

(f) Evaluation. The TEA staff shall periodically evaluate approved certification standards based, at a minimum, on any changes to the TEKS or the job functions and duties of the related certificate.

§230.36. Intern Certificates.

(a) General provisions.

(1) Certificate classes. An intern certificate may be issued for any class of certificate except educational aide.

(2) Requirement to hold an intern certificate. A candidate seeking certification as an educator must hold an intern certificate while participating in an internship through an approved educator preparation program (EPP).

(b) Requirements for issuance. An intern certificate may be issued to a candidate seeking certification as an educator who meets the conditions and requirements prescribed in this subsection.

(1) Bachelor's degree. Except as otherwise provided in rules of the State Board for Educator Certification related to certain career and technical education certificates based on skill and experience, the candidate must hold a bachelor's degree or higher from an accredited institution of higher education. An individual who has earned a degree outside the United States must provide an original, detailed report or course-by-course evaluation for all college-level credits prepared by a foreign credential evaluation service recognized by the Texas Education Agency (TEA). The evaluation must verify that the individual holds, at a minimum, the equivalent of a bachelor's degree issued by an accredited institution of higher education in the United States.

(2) General certification requirements. The candidate must meet the general certification requirements prescribed in §230.11 of this title (relating to General Requirements).

(3) Fee. The candidate must pay the fee prescribed in §230.101 of this title (relating to Schedule of Fees for Certification Services).

(4) Fingerprints. The candidate must submit fingerprints in accordance with §232.35(c) of this title (relating to Submission of Required Information) and the Texas Education Code (TEC), §22.0831.

(c) Conditions. The validity and effectiveness of an intern certificate is subject to the following conditions.

(1) Internship. The holder of an intern certificate must be a participant in good standing of an approved Texas EPP, serving in an acceptable, paid internship supervised by the EPP.

(2) Inactive status. An intern certificate will become inactive 30 calendar days after the holder's separation from the school assignment or the EPP. The unexpired term of an intern certificate may be reactivated if the holder satisfies the requirements specified in this section.

(3) Term of an intern certificate. An intern certificate shall be valid for one 12-month period from the date of issuance.

(4) Limit on preliminary certifications and permits. Without obtaining standard certification, an individual may not serve for more than three 12-month periods while holding any combination of the following:

(A) intern certificates, limited to one 12-month period maximum, as described in this subsection;

(B) probationary certificates, limited to two 12-month periods maximum, as specified in §230.37 of this title (relating to Probationary Certificates)

(C) emergency permits as specified in Subchapter F of this chapter (relating to Permits); or

(D) one-year certificates as specified in Subchapter H of this chapter (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States) and Chapter 245 of this title (relating to Certification of Educators from Other Countries).

(5) Reduction in force exception. If an educator is employed under an intern certificate and is terminated or resigns in lieu of termination before the end of the school year due to a reduction in force, that intern term shall not count as one of the three years referenced in paragraph (4) of this subsection.

(d) Testing requirements for issuance of an intern certificate. Beginning September 1, 2017, a candidate must meet the subject matter knowledge requirements for issuance of an intern certificate to serve an internship in a classroom teacher assignment for each subject area to be taught.

(1) To meet the subject matter knowledge requirements to be issued an intern certificate for an internship in a classroom teacher assignment on or after September 1, 2017, a candidate must pass all of the appropriate certification content examination(s), as prescribed in Subchapter C of this chapter.

(2) To meet the subject matter knowledge requirements to be issued an intern certificate for an internship in a career and technical education classroom teacher assignment that is based on skill and experience on or after September 1, 2017, a candidate must satisfy the requirements for that subject area contained in §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)) and pass the appropriate content certification examination(s), as prescribed in Subchapter C of this chapter.

(e) Intern certificate in a certification class other than classroom teacher. An intern certificate may be issued for assignment as a superintendent, principal, reading specialist, master teacher, school librarian, school counselor, and educational diagnostician to an individual who meets the applicable requirements prescribed in subsection (b) of this section and who also meets the requirements prescribed in this subsection.

(1) An applicant for an intern certificate in a certification class other than classroom teacher must meet all requirements established by the recommending EPP, which shall be based on the qualifications and requirements for the class of certification sought and the duties to be performed by the holder of an intern certificate in that class.

(2) The individual must have also been:

(A) accepted and enrolled to participate in a Texas EPP that has been approved to prepare candidates for the certificate sought; and

(B) assigned in the certificate area being sought in a Texas school district, open-enrollment charter school, or, pursuant to §228.35 of this title (relating to Preparation Program Coursework and/or Training), other school approved by the TEA.

(3) The holder of an intern certificate in a certification class other than classroom teacher is subject to all terms and conditions of an intern certificate prescribed in subsection (c) of this section.

§230.37. *Probationary Certificates.*

(a) General provisions.

(1) Certificate classes. A probationary certificate may be issued for any class of certificate except educational aide.

(2) Requirement to hold a probationary certificate. A candidate seeking certification as an educator must hold a probationary certificate while participating in an internship through an approved educator preparation program (EPP).

(b) Requirements for issuance. A probationary certificate may be issued to a candidate seeking certification as an educator who meets the conditions and requirements prescribed in this subsection.

(1) Bachelor's degree. Except as otherwise provided in rules of the State Board for Educator Certification [SBEC] related to certain career and technical education certificates based on skill and experience, the candidate must hold [at least] a bachelor's degree or higher from an accredited institution of higher education. An individual who has earned a degree outside the United States must provide an original, detailed report or course-by-course evaluation of all college-level credits prepared by a foreign credential evaluation service recognized by the Texas Education Agency (TEA). The evaluation must verify that the individual holds, at a minimum, the equivalent of a bachelor's degree issued by an accredited institution of higher education in the United States.

(2) General certification requirements. The candidate must meet the general certification requirements prescribed in §230.11 of this title (relating to General Requirements).

~~[(3) Preparation program and assignment. The candidate's internship assignment must:]~~

~~[(A) be supervised by an approved Texas EPP;]~~

~~[(B) be in the subject area and at the grade level of certification sought or, if applicable, be in an assignment consistent with the professional class certification sought;]~~

~~[(C) take place in a Texas school district, open-enrollment charter school, or other school approved by the Texas Education Agency (TEA) for this purpose pursuant to §228.35(d) of this title (relating to Preparation Program Coursework and/or Training); and]~~

~~[(D) if applicable, commence after the candidate for initial certification has met the pre-internship requirements specified in §228.35(a) and (e) of this title and the Texas Education Code (TEC), §21.051.]~~

~~(3) [(4)] Fee. The candidate must pay the fee prescribed in §230.101 of this title (relating to Schedule of Fees for Certification Services).~~

~~(4) [(5)] Fingerprints. The candidate must submit fingerprints in accordance with §232.35(c) of this title (relating to Submission of Required Information) and the Texas Education Code (TEC) [TEC], §22.0831.~~

(c) Conditions. The validity and effectiveness of a probationary certificate is subject to the following conditions.

(1) Internship. The holder of a probationary certificate must be a participant in good standing of an approved Texas EPP, serving in an acceptable, paid internship supervised by the [an approved] EPP.

~~[(2) Supervision and professional development. An EPP shall provide field supervision, as prescribed in §228.35 of this title, and high-quality professional development throughout the entire term of the internship, including all extensions of the initial term.]~~

~~[(3) Mentor. The EPP shall collaborate with the campus administrator to assign a campus mentor to each intern throughout his or her internship.]~~

~~[(4) Notice. An EPP must immediately notify TEA by email if the holder of a probationary certificate:]~~

~~[(A) resigns or is terminated from the school assignment for which a probationary certificate was issued; or]~~

~~[(B) is discharged or released from the EPP. In this case, the program must also notify the employing school district.]~~

~~(2) [(5)] Inactive status. A probationary certificate will become inactive 30 calendar days after the holder's separation [termination] from the school assignment or the EPP. The unexpired term of a probationary certificate may be reactivated if the holder satisfies the program enrollment and school assignment requirements specified in §228.35 of this title (relating to Preparation Program Coursework and/or Training. [subsection (b)(3) of this section.]~~

~~(3) [(6)] Term of a probationary certificate. A probationary certificate shall be valid for a 12-month period from the date of issuance.~~

~~[(7) Additional terms. A probationary certificate issued to an individual enrolled in a post-baccalaureate or alternative certification program for initial certification, or any program for professional class certification, may be extended for no more than two additional 12-month terms following the expiration of the initial term, subject to the following conditions:]~~

~~[(A) A probationary certificate may be issued for an additional 12-month term only if the Texas EPP recommends the additional term and certifies that the holder is making satisfactory progress toward standard certification.]~~

~~[(B) The EPP must provide supervision to the educator for the full term of any such additional probationary certificate, unless, prior to the expiration of that term, a standard certificate is issued to the educator.]~~

~~(4) [(8)] Limit on preliminary certifications and permits. Without obtaining standard certification, an individual may not serve for more than three 12-month periods while holding any combination of the following:~~

~~(A) intern certificates, limited to one 12-month period maximum, as described in this subsection;~~

(B) [(A)] probationary certificates, limited to two 12-month periods maximum, as described in this subsection;

(C) [(B)] emergency permits as specified in Subchapter F of this chapter (relating to Permits); or

(D) [(C)] one-year certificates as specified in Subchapter H of this chapter (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States) and Chapter 245 of this title (relating to Certification of Educators from Other Countries).

(5) [(9)] Reduction in force exception. If an educator is employed under a probationary certificate and is terminated or resigns in lieu of termination before the end of the school year due to a reduction in force, that probationary term shall not count as one of the ~~two~~ [three] allowed annual probationary terms.

(d) Testing requirements for issuance of a probationary certificate.

(1) Prior to September 1, 2017, a candidate must meet the subject matter knowledge requirements for issuance of a probationary certificate to serve an internship in a classroom teacher assignment for each subject area to be taught:

(A) At the elementary school level, by passing the appropriate content area certification examination(s), as prescribed in Subchapter C of this chapter (relating to Assessment of Educators) that are appropriate to the grade level and subject matter assignment(s) as prescribed in Chapter 231 of this title (relating to Requirements for Public School Personnel Assignments).

(B) At the middle or high school level:

(i) by passing an appropriate content area certification examination(s), including the appropriate pedagogy and professional responsibilities examination as prescribed in Subchapter C of this chapter that are appropriate to the grade level and subject matter assignment(s) as prescribed in Chapter 231 of this title; or

(ii) by completing coursework that complies with the TEC, §21.050, and comprised of not fewer than 24 semester credit hours, including 12 semester credit hours of upper division coursework in the subject area(s) taught; or

(iii) in the case of career and technical education assignments based on skill and experience, by satisfying the requirements for that subject area contained in §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)).

(C) A candidate who is the teacher of record in a special education assignment must meet the appropriate subject matter knowledge requirements prescribed in subparagraph (A) and/or (B) of this paragraph and pass the appropriate special education certification examination(s) as prescribed in Subchapter C of this chapter that are appropriate to the assignment(s) as prescribed in Chapter 231 of this title. If a candidate has not passed the special education supplemental-examination prior to the beginning of an internship, an EPP may permit the internship assignment if:

(i) the EPP has developed a plan to address any deficiencies identified through the candidate's previous attempt(s) on the examination; and

(ii) the EPP implements the plan during the initial internship, an EPP shall not permit an additional internship if all examinations requirements are not met.

(D) A candidate who is in a bilingual education and/or English as a Second Language (ESL) assignment must meet the appropriate subject matter knowledge requirements prescribed in subparagraph (A) and/or (B) of this paragraph and pass the appropriate bilingual education and/or ESL certification examination(s), as prescribed in Subchapter C of this chapter that are appropriate to the assignment(s) as prescribed in Chapter 231 of this title. If a candidate has not passed the bilingual education supplemental examination, ESL supplemental examination, or the bilingual target language proficiency test prior to the beginning of an internship, an EPP may permit the internship if:

(i) the EPP has developed a plan to address any deficiencies identified through the candidate's previous attempt(s) on the examination(s); and

(ii) the EPP implements the plan during the initial internship. An EPP shall not permit an additional internship if all examination requirements are not met.

(2) Beginning September 1, 2017, a candidate must meet all testing requirements for issuance of a probationary certificate.

(A) To meet the subject matter knowledge requirements to be issued a probationary certificate for an internship in a classroom teacher assignment, a candidate must pass the appropriate certification examination(s), including the appropriate pedagogy and professional responsibilities examination, as prescribed in Subchapter C of this chapter.

(B) To meet the subject matter knowledge requirements to be issued a probationary certificate for an internship in a career and technical education classroom teacher assignment that is based on skill and experience, a candidate must satisfy the requirements for that subject area contained in §233.14 of this title and pass the appropriate certification examination(s), including the appropriate pedagogy and professional responsibilities examination, as prescribed in Subchapter C of this chapter.

(e) Probationary certificate in a certification class other than classroom teacher. A probationary certificate may be issued for an assignment as a superintendent, principal, reading specialist, master teacher, school librarian, school counselor, and/or educational diagnostician to an individual who meets the applicable requirements prescribed in subsection (b) of this section and who also meets the requirements prescribed in this subsection.

(1) An applicant for a probationary certificate in a certification class other than classroom teacher must meet all requirements established by the recommending EPP, which shall be based on the qualifications and requirements for the class of certification sought and the duties to be performed by the holder of a probationary certificate in that class.

(2) The individual must have also been:

(A) accepted and enrolled to participate in a Texas EPP that has been approved to prepare candidates for the certificate sought; and

(B) assigned in the certificate area being sought in a Texas school district, open-enrollment charter school, or, pursuant to §228.35 of this title, other school approved by the TEA.

(3) Effective September 1, 2017, to meet the subject matter requirements for issuance of the probationary certificate in a certification class other than classroom teacher, the individual must pass the appropriate examination(s) for that certificate.

(4) The holder of a probationary certificate in a certification class other than classroom teacher is subject to all terms and conditions of an intern certificate prescribed in subsection (c) of this section.

~~[(d) Traditional undergraduate preparation program internship.]~~

~~[(1) A candidate who has completed a bachelor's degree in a traditional teacher certification program at an accredited institution of higher education, but who has failed to meet the testing requirements necessary for issuance of a standard certification, may serve an internship under the supervision of the traditional undergraduate certification program.]~~

~~[(2) Such a candidate may be issued a probationary certificate for a period of one year. The traditional undergraduate certification program may not recommend any extensions of this term.]~~

~~[(e) Subject matter knowledge for classroom teaching assignments.]~~

~~[(1) To obtain a probationary certificate for a classroom teaching assignment, a candidate must demonstrate knowledge of each subject area to be taught:]~~

~~[(A) at the elementary school level (Early Childhood-Grade 6), by passing an appropriate certification examination as prescribed in Subchapter C of this chapter (relating to Assessment of Educators);]~~

~~[(B) at the middle or high school level (Grades 7-12);]~~

~~[(i) by passing an appropriate content area certification examination as prescribed in Subchapter C of this chapter;]~~

~~[(ii) by completing coursework that complies with the TEC, §21.050, and comprised of not fewer than 24 semester credit hours, including 12 semester credit hours of upper division coursework in the subject area taught; or]~~

~~[(iii) in the case of career and technical education assignments based on skill and experience, by satisfying the requirements for that subject area contained in §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)); or]~~

~~[(C) for professional class probationary certificates, by meeting requirements established by the recommending EPP, which shall be based on the qualifications and requirements relating to the class of certification sought and on the duties performed by the holder of a probationary certificate in that class.]~~

~~[(2) The individual in a special education classroom teaching assignment must demonstrate both knowledge of special education and knowledge of each subject to be taught, as follows:]~~

~~[(A) at the elementary school level (Early Childhood-Grade 6);]~~

~~[(i) by passing a certification examination appropriate to the individual's grade level or subject matter assignment, as prescribed in Subchapter C of this chapter; and]~~

~~[(ii) by passing a special education examination; or]~~

~~[(B) at the middle or high school level (Grades 7-12);]~~

~~[(i) by either:]~~

~~[(1) passing a certification examination appropriate to the individual's subject matter assignment, as prescribed in Subchapter C of this chapter; or]~~

~~[(II) completing coursework comprised of not fewer than 24 semester hours, including 12 semester hours of upper division coursework in the subject area taught; and]~~

~~[(ii) by passing a special education examination.]~~

~~[(f) Probationary certificate for professional class certificates. A probationary certificate may be issued for a professional class assignment to an individual who meets the applicable requirements prescribed in subsection (b) of this section and who also meets the requirements prescribed in this subsection.]~~

~~[(1) An applicant for a professional class probationary certificate must meet all requirements established by the recommending EPP, which shall be based on the qualifications and requirements for the class of certification sought and the duties to be performed by the holder of a probationary certificate in that class.]~~

~~[(2) The individual must have been:]~~

~~[(A) accepted and enrolled to participate in a Texas EPP that has been approved to prepare candidates for the certificate sought; and]~~

~~[(B) assigned in the professional class certification area being sought in a Texas school district, open-enrollment charter school, or, pursuant to §228.35 of this title, other school approved by TEA.]~~

~~[(3) The holder of a professional class probationary certificate is subject to all the terms and conditions of a probationary certificate prescribed in subsection (e) of this section.]~~

§230.41. Visiting International Teacher Certificates.

(a) A teacher may be issued a visiting international teacher certificate valid for no more than three school years upon recommendation by a school district participating in an officially recognized foreign teacher exchange program. [The program shall be based upon an agreement made between the State Board for Educator Certification and/or the Texas Education Agency (TEA) and a ministry of education in a foreign country.]

(b) The visiting international teacher certificate will be issued to an individual who meets conditions and requirements presented in this subsection. The individual must:

(1) meet appropriate requirements prescribed in §230.11 of this title (relating to General Requirements);

(2) hold valid teaching credentials from the country of origin based, at a minimum, on the equivalent of a bachelor's degree issued by an institution of higher education in the United States accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board;

(3) demonstrate English language proficiency;

(4) have criminal activity clearance from country of origin;

(5) demonstrate subject matter competence in subject area(s) taught, as defined by the Texas Education Agency (TEA) [TEA] in compliance with federal requirements;

(6) pay appropriate fee prescribed by §230.101 of this title (relating to Schedule of Fees for Certification Services); and

(7) submit fingerprints in accordance with §232.35(c) of this title (relating to Submission of Required Information) and the Texas Education Code, §22.0831.

(c) Participating school districts agree to provide the visiting international teachers with intensive supervision consisting of structured guidance and regular ongoing support through a mentoring program.

(d) The TEA staff shall establish reasonable procedures to implement this section.

(e) Issuance of a visiting international teacher certificate does not prohibit issuance of a one-year certificate following a successful review of credentials, as specified in Chapter 245 of this title (relating to Certification of Educators from Other Countries).

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



19 TAC §230.39

STATUTORY AUTHORITY. The repeal is 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; the TEC, §21.031(a), which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; the TEC, §21.031(b), which states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the TEC, §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; the TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; the TEC, §21.041(b)(5), which requires the SBEC to propose rules that provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to the TEC, §21.052; the TEC, §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; the TEC, §21.051, which provides a requirement that before a school may employ a certification candidate as a teacher of record, the candidate must have completed at least 15 hours of field-based experience in which the candidate was actively engaged at an approved school in instructional or educational activities under supervision; the TEC, §22.0831(c), which provides that the SBEC shall review the national criminal history record information of all applicants for or holders of educator certification; and the TEC, §22.0831(f), which authorizes the SBEC

to propose rules to implement the national criminal history record information review of certified educators.

CROSS REFERENCE TO STATUTE. The proposed repeal implements the TEC, §§21.003(a), 21.031, 21.041(b)(1)-(5) and (9), 21.051, and 22.0831(c) and (f).

§230.39. *Temporary Teacher Certificates.*

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

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SUBCHAPTER E. EDUCATIONAL AIDE CERTIFICATE

19 TAC §§230.53, 230.63, 230.65

STATUTORY AUTHORITY. The amendment and new sections are proposed under the Texas Education Code (TEC), §21.041(a), which allows the State Board for Educator Certification (SBEC) to adopt rules as necessary for its own procedures; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the TEC, §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; and the TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate.

CROSS REFERENCE TO STATUTE. The proposed amendment and new sections implement the TEC, §21.041(a) and (b)(1)-(4).

§230.53. *Procedures in General.*

(a) School district administrators have the authority and responsibility to determine the number of educational aides and level of job performance desired for the operation of the school district. The school district administrator is responsible for preparing accurate job descriptions for each assignment, classifying each assignment, and filling these assignments with individuals certified according to this subchapter.

(b) An appropriate educational aide certificate shall be issued to a qualified individual who is recommended by the employing superintendent or his or her designee and who meets the requirements of this subchapter. The school district shall submit a completed application and recommendation for an educational aide certificate to Texas Education Agency (TEA) staff. The applicant shall pay the designated fee.

(c) The applicant for an educational aide certificate must be able to communicate, listen, read, write, and comprehend the English

language sufficiently to use it easily and readily in daily communication.

(d) An individual with experience in other states must have that experience verified on a teacher service record when he or she is employed in a Texas school district.

(e) An applicant for an educational aide certificate is subject to the provisions in §230.11(b)(1)-(5) of this title (relating to General Requirements).

(f) An individual who holds a valid Texas classroom teaching certificate may serve as an educational aide without obtaining an educational aide certificate.

(g) An individual seeking a higher level of educational aide certificate must submit a completed online application and payment and be recommended for issuance at the higher level by the employing school district.

§230.63. Validity Period of Educational Aide Certificates.

(a) Educational aide certificates issued prior to September 1, 2017, are valid for five years and are not eligible for renewal.

(b) Educational aide certificates issued after August 31, 2017, are valid for two years and are not eligible for renewal.

(c) Effective September 1, 2017, individuals seeking to transfer from one level of educational aide certificate to another level are not required to renew expired educational aide certificates.

§230.65. Requirements for Reissuance of Educational Aide Certificates.

(a) Effective September 1, 2017, educational aide certificates will expire at the end of their validity period and are not subject to renewal.

(b) To be eligible for reissuance of an educational aide certificate following the expiration of an educational aide certificate, a candidate shall submit a new online application and payment and be recommended by the employing school district.

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

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SUBCHAPTER F. PERMITS

19 TAC §§230.71, 230.73, 230.75, 230.77, 230.79, 230.81, 230.83

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner

consistent with the TEC, Chapter 21, Subchapter B; the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; the TEC, §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; and the TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC.

CROSS REFERENCE TO STATUTE. The proposed amendments implement the TEC, §§21.031(a), 21.041(b)(1), (2), and (4), 21.044(a), and 21.048.

§230.71. General Provisions.

(a) In accordance with the provisions of this subchapter, emergency permits are issued under the authority of the State Board for Educator Certification (SBEC).

(b) Effective with the 2017-2018 school year, an emergency permit will limit an individual to one year of service and no renewal will be allowed.

(c) The one-year limitation on permits referenced in subsection (b) of this section does not apply to individuals serving in the position of Junior Reserve Officer Training Corps (JROTC) instructor or teachers of students with visual impairments. As indicated in §230.77(g)(4)(B) of this title (relating to Specific Requirements for Initial Emergency Permits), emergency permits for JROTC instructors must be reissued every year. Emergency permits for visual impairments referenced in §230.77(f)(2)(B) of this title may be renewed a maximum of two years.

(d) [(b)] Under this subchapter, a superintendent or his or her designee who cannot secure an appropriately certified and qualified individual to fill a vacant position may activate an emergency permit for an individual who does not have one of the appropriate credentials required for the assignment as specified in Chapter 231 of this title (relating to Requirements for [Assignment of] Public School Personnel Assignments). The superintendent or his or her designee must:

(1) document locally the efforts the school district or open-enrollment charter school has taken to employ an appropriately [a fully] certified individual in the position for which an emergency permit is activated;

(2) apply for an emergency permit when a vacant position is filled with an uncertified or inappropriately certified individual who will serve as the teacher of record or will serve in the assignment for more than 30 consecutive instructional days. The application must be submitted to the Texas Education Agency (TEA) within 45 instructional days of the date of assignment;

(3) verify that the school district or open-enrollment charter school maintains a support system, has assigned a trained mentor, and will provide release time as needed to assist the individual serving on an emergency permit. (A school district shall not be required to provide a mentor for a degreed, certified teacher assigned on an emergency permit if the teacher has one or more creditable years experience within the school district, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service)); and

(4) verify that the individual for whom the emergency permit is activated has been advised of the SBEC rules regarding permits and permit renewal requirements in this subchapter.

(e) [(e)] A certified teacher must consent to the activation of an emergency permit and be advised of the conditions of the emergency permit. A teacher who refuses to consent to activation of an emergency permit may not be terminated or nonrenewed or otherwise retaliated against because of the teacher's refusal to consent to the activation of the emergency permit. However, a teacher's refusal to consent shall not impair a school district's right to implement a necessary reduction in force or other personnel actions in accordance with local school district or open-enrollment charter school policy.

(f) [(f)] An emergency permit is authorized for the school district or open-enrollment charter school for a specific assignment and is not the property of the individual for whom the emergency permit was activated.

(g) [(g)] If an emergency permit authorized by the SBEC is not used, the school district or open-enrollment charter school shall notify TEA [the Texas Education Agency (TEA)] staff by email.

(h) [(h)] An emergency permit may be authorized on a hardship basis for an individual who does not meet all emergency permit requirements as listed in §§230.75, 230.77, and 230.81 of this title (relating to General Eligibility Requirements for Emergency Permits, Specific Requirements for Initial Emergency Permits, and Renewal Requirements and Procedures) only if approval has been granted and email notification received from the TEA staff. The school district must:

(1) document local conditions requiring the assignment of an individual who does not meet emergency permit requirements;

(2) verify that the deficiencies for the certificate sought do not exceed 36 semester credit hours; and

(3) verify:

(A) that the individual will be enrolled in the first available course listed on the certification [~~deficiency~~] plan; or

(B) registration for the next available administration of the appropriate content specialization portion of the certification examination for an individual who holds a valid Texas classroom teaching certificate and a bachelor's degree or higher from an accredited institution of higher education and is placed in an assignment requiring a different classroom teaching certificate.

(i) [(g)] The school district is not required to comply with the requirements of this subchapter if an uncertified individual is assigned for a certified teacher that will be absent for more than 30 consecutive instructional days due to documented health related reasons and has expressed the intention to return to the assignment. The school district must comply with the Texas Education Code, §21.057, pertaining to parental notification.

(j) Candidates who hold an intern certificate under the provisions of §230.36 of this title (relating to Intern Certificates) or a probationary certificate under the provisions of §230.37 of this title (relating to Probationary Certificates) may not be employed on an emergency permit during the validity of the intern certificate or probationary certificate.

§230.73. *Validity of Emergency Permits.*

(a) The validity date of an emergency permit activated and authorized under this subchapter is specified in §230.97 of this title (relating to Effective Dates of Certificates and Permit Issuance).

(b) An emergency permit is valid for the remainder of the school year for which it is activated and authorized by the State Board for Educator Certification (SBEC). The emergency permit must be submitted to the Texas Education Agency staff within 45 instructional days from the date of assignment.

(c) An emergency permit authorized by the SBEC is valid for service only in the requesting school district and only for the assignments indicated on the emergency permit application.

(d) Effective with the 2017-2018 school year, the [The] employment of an individual on an emergency permit, with the exception of the assignment as a Junior Reserve Officer Training Corps instructor or a teacher of students with visual impairments, may not exceed one [three] school year [years] in the same assignment.

(e) Prior to the 2017-2018 school year, the [The] individual may serve in a specific assignment no more than one [two] additional school year [years] beyond the initial emergency permit. To continue beyond the initial emergency permit year, the individual must comply with the renewal provisions specified in §230.81 of this title (relating to Renewal Requirements and Procedures).

(f) Effective with the 2017-2018 school year, renewal provisions specified in §230.81 of this title will no longer apply for emergency permits, with the exception of teachers of students with visual impairments.

(g) [(e)] Effective with the 2017-2018 school year, to [To] continue employment in the assignment beyond the validity of the initial emergency permit, the individual must hold the appropriate certificate, in accordance with Chapter 231 of this title (relating to Requirements for Public School Personnel Assignments). An individual may not serve as a classroom teacher of record in the Texas school district for more than three school years without obtaining initial, standard certification.

§230.75. *General Eligibility Requirements for Emergency Permits.*
An individual for whom an emergency permit is activated must meet the following criteria.

(1) The individual must hold a bachelor's degree or higher from an accredited institution of higher education.

(A) For a career and technical education assignment requiring certification based on both an associate's or more advanced degree and experience in an occupational area to be taught, such as health science technology education or health science, or a bachelor's degree or higher and experience in the occupational area to be taught such as [health science technology education,] marketing education, [or marketing,] the individual must have completed the degree requirement and have specified work experience.

(B) For a trade and industrial education assignment, the individual must have specified work experience in lieu of a bachelor's degree.

(2) The individual must be at least 18 years of age.

(3) The individual must be able to communicate and understand the English language sufficiently to use it easily and readily in daily communication and teaching, as specified in §230.11 of this title (relating to General Requirements).

(4) The individual must be of good moral character. The State Board for Educator Certification may refuse to authorize an emergency permit for an individual, applying the same standards that would be applied to the administrative denial of an applicant for certification under §249.12 of this title (relating to Administrative Denial; Appeal).

(5) The individual must submit fingerprints in accordance with §232.35(c) of this title (relating to Submission of Required Information) and the Texas Education Code (TEC), §22.0831.

§230.77. *Specific Requirements for Initial Emergency Permits.*

(a) General provisions. An individual for whom an emergency permit is activated must:

(1) have completed the appropriate semester credit hours or equivalent contact hours required for the emergency permit sought as specified in this section, or, for a degreed, certified teacher, have passed the appropriate content specialization portions of the appropriate certification examination required for the target certificate; and

(2) have satisfied the appropriate experience requirement specified in this section for the emergency permit sought.

(b) Assignments to elementary grades (Early Childhood-Grade 6) (general education). The individual must have completed 12 semester credit hours in a combination of subjects directly related to the elementary curriculum, 12 semester credit hours in elementary education, or any combination of these areas of study. Subjects related to the elementary curriculum include, but are not limited to, art, English language arts, health, mathematics, music, physical education, reading, science, social studies, technology applications, and theatre arts.

(c) Assignments to secondary grades (Grades 7-12) (general education).

(1) An emergency permit may be activated for an individual not certified at the secondary level provided the individual has completed:

(A) 24 semester credit hours in the subject to be taught;

or

(B) 24 semester credit hours toward a composite teaching field appropriate for the assignment, including at least twelve [~~six~~] semester credit hours in the subject to be taught.

(2) A Temporary Classroom Assignment Permit (TCAP) may be activated for a teacher certified at the secondary level assigned to a subject area not covered by the certificate. The school district is not required to file the TCAP with the Texas Education Agency staff. The TCAP must be maintained in the school district personnel records.

(A) A TCAP must be activated for each class period taught by an individual who is assigned to one or more class periods in an area not covered by the certificate held. The individual must have completed twelve [~~six~~] semester credit hours in the specific subject area(s) to be taught. In the case of an assignment in mathematics or science, an individual must have completed fifteen semester hours in the specific subject area(s) to be taught. A TCAP may be activated for no more than four class periods.

(B) The TCAP is valid for one school year and is not renewable except in the event that the TCAP was issued for fewer than 90 calendar days before the last day of student instruction in the prior school year.

(C) For assignments that exceed four class periods, or for individuals who have not completed the minimum semester credit hours in the subject area(s) to be taught, approval must be granted by the TEA; however, in no event may an individual with six or fewer semester credit hours in the specific subject area to be taught be approved.

(d) Assignments to all grade levels (Early Childhood-Grade 12) (general education).

(1) An individual must have completed 24 semester credit hours in the subject area to be taught.

(2) This section will apply to all general education subject areas that are available as Early Childhood-Grade 12 certificates.

(e) Assignments to career and technical education programs.

(1) Agriculture, food, and natural resources [~~Agricultural science and technology~~] assignments. An individual must:

(A) hold a bachelor's degree or higher from an accredited institution of higher education; and

(B) have completed 24 semester credit hours in Agriculture, food, and natural resources [~~agricultural science and technology~~] coursework.

(2) Health science [~~technology~~] assignments. An individual must:

(A) hold an associate's degree or more advanced [a bachelor's] degree from an accredited institution of higher education;

(B) be currently licensed, certified, or registered (requiring two years of college education) by a state-authorized or nationally recognized accrediting agency as a professional practitioner in one or more health occupations for which instruction is offered; and

(C) have an approved statement of qualifications verifying two years of full-time employment in an accredited health care facility or agency while holding the license specified in §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)).

(3) Family and consumer sciences assignments. An individual must:

(A) hold a bachelor's degree or higher from an accredited institution of higher education; and

(B) have completed 24 semester credit hours in family and consumer sciences coursework.

(4) Marketing [~~education or marketing~~] assignments. An individual must:

(A) hold a bachelor's degree or higher from an accredited institution of higher education;

(B) have completed 24 semester credit hours in marketing coursework; and

(C) have an approved statement of qualifications verifying two years of full-time wage-earning experience in marketing occupations for which training is offered at the secondary level.

(5) Business and finance [~~education~~] assignments [~~(for any instructional arrangement)~~]. An individual must:

(A) hold a bachelor's degree or higher from an accredited institution of higher education; and

(B) have completed 24 semester credit hours in business and finance coursework.

(6) Trade and industrial education assignments.

(A) Option I. An individual must:

(i) hold a bachelor's degree or higher from an accredited institution of higher education; and

(ii) have an approved statement of qualifications verifying two [~~three~~] years of full-time wage-earning experience earned within the past ten [~~eight~~] years in one or more approved occupations for which instruction is offered. Up to 18 months of the wage-earning experience can be met through a formal documented internship.

(B) Option II. An individual must:

(i) hold an associate's degree from an accredited institution of higher education; and

(ii) have an approved statement of qualifications verifying two [~~three~~] years of full-time wage-earning experience earned within the past ten [~~eight~~] years in one or more approved occupations for which instruction is offered.

(C) Option III. An individual must:

(i) hold a high school diploma, the equivalent of a high school diploma, or higher; and

(ii) have an approved statement of qualifications verifying five years of full-time wage-earning experience earned within the past eight years in one or more approved occupations for which instruction is offered.

(D) Additional requirements.

(i) An individual must hold a current licensure, certification, or registration by a state-authorized [~~state~~] or nationally recognized accrediting agency as a professional practitioner in one or more approved occupations for which instruction is offered. Licensure, certification, or registration by a state-authorized or nationally recognized accrediting agency must be based on a recognized test or measurement or on passing the appropriate National Occupational Competency Testing (NOCTI) assessment.

(ii) A cosmetology teacher must:

(I) have three years of full-time wage-earning experience as a licensed cosmetologist; and

(II) currently be licensed as a cosmetology instructor by the Texas Department of Licensing and Regulation.

(iii) Wage-earning experience must be approved by the certification officer of the approved Texas educator preparation program (EPP).

(f) Assignments for special populations.

(1) English language learners (ELLs).

(A) Bilingual education.

(i) An individual who holds a bachelor's degree or higher from an accredited institution of higher education and is certified at the appropriate level must:

(I) have completed six [~~three~~] semester credit hours in the language of the [~~an~~] approved bilingual education program; or [~~and~~]

(II) [~~have completed six semester credit hours in the language of the target population and~~] demonstrate proficiency in comprehension and expression in the language of the target population by having a passing score on an appropriate State Board for Educator Certification (SBEC)-approved examination.

(ii) An individual who holds a bachelor's degree or higher from an accredited institution of higher education but is not certified must:

(I) meet the requirements for the grade level of assignment, as described in subsections (b)-(d) of this section;

(II) be currently enrolled in an approved Texas EPP for bilingual education; and

(III) have satisfied one of the following requirements:

(-a-) completed 12 semester credit hours in the language of the target population, bilingual education, or a combination of the two subject areas; or

(-b-) demonstrated proficiency in comprehension and expression [~~oral or sign language communication skills~~] in the language of the target population by having a passing score on an appropriate SBEC-approved examination.

(B) English as a second language (ESL). An individual must:

(i) hold [~~be currently certified for the grade level to be taught and must have~~] a bachelor's degree or higher from an accredited institution of higher education; [~~and~~]

(ii) be currently certified for the grade level to be taught; and

(iii) [~~it~~] have satisfied one of the following requirements:

(I) have completed six semester credit hours in an approved ESL program; or

(II) have one creditable year of classroom teaching experience, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service).

(2) Students with special learning needs.

(A) Auditory impairments. An individual must:

(i) hold a bachelor's degree or higher from an accredited institution of higher education;

(ii) have completed six semester credit hours directly related to teaching students with auditory impairments [~~the hearing impaired~~];

(iii) have demonstrated competence in the specific communication method used in the classroom setting with students with auditory impairments; and

(iv) have verified that the employing school district, cooperative, or education service center (ESC) has one or more fully certified teachers for students with auditory impairments available as a mentor and to provide support.

(B) Visual impairments. An individual must:

(i) hold a valid Texas classroom teaching certificate based on a bachelor's degree or higher from an accredited institution of higher education;

(ii) have satisfied the following requirements:

(I) have completed six semester credit hours directly related to teaching students with visual impairments; and

(II) have one creditable year of classroom teaching experience, as defined in Chapter 153, Subchapter CC, of this title;

(iii) have demonstrated competency in literary Braille and basic Nemeth Code by passing the approved Braille examination, holding certification as a literary Braille transcriber by the Library of Congress, or completing one university course in Braille; and

(iv) have verified that the employing school district, cooperative, or ESC has one or more fully certified teachers of students with visual impairments available as a mentor and to provide support.

(C) Home-based instruction or instruction in a hospital class. An individual must:

(i) be currently certified based on a bachelor's degree from an accredited institution of higher education; and

(ii) have one creditable year of teaching experience, as defined in Chapter 153, Subchapter CC, of this title.

(D) Special education (Early Childhood-Grade 12).

(i) An individual who holds a bachelor's degree or higher from an accredited institution of higher education and is certified at the appropriate grade level must:

(I) have completed six semester credit hours directly related to teaching children with special learning needs; or

(II) have one creditable year of classroom teaching experience, as defined in Chapter 153, Subchapter CC, of this title.

(ii) An individual who holds a bachelor's degree or higher from an accredited institution of higher education, but is not certified must:

(I) for elementary assignments (Early Childhood-Grade 6), meet requirements for the level of assignment as stated in subsection (b) of this section and have completed 18 semester credit hours directly related to teaching children with special learning needs; or

(II) for secondary assignments (Grades 7-12), have completed 24 semester credit hours directly related to teaching children with special learning needs.

(g) Assignments for other instructional and support personnel.

(1) School counselor (Early Childhood-Grade 12). An individual must:

(A) hold a bachelor's degree or higher from an accredited institution of higher education;

(B) have completed 24 semester credit hours of graduate-level credit, including 12 semester credit hours in guidance and counseling; and

(C) have two creditable years of classroom teaching experience, as defined in Chapter 153, Subchapter CC, of this title.

(2) Educational diagnostician (Early Childhood-Grade 12). An individual must:

(A) hold a bachelor's degree or higher from an accredited institution of higher education;

(B) have completed 30 semester credit hours of graduate-level credit in the field of education or a related field, including six semester credit hours in tests and measurements, at least three semester credit hours of which emphasized individualized testing;

(C) have completed six semester credit hours directly related to teaching individuals with special learning needs; and

(D) have two creditable years of classroom teaching experience, as defined in Chapter 153, Subchapter CC, of this title.

(3) School librarian (Early Childhood-Grade 12). An individual must:

(A) hold a bachelor's degree or higher from an accredited institution of higher education;

(B) have completed 12 semester credit hours directly related to the basic competencies required of school librarians; and

(C) have two creditable years of classroom teaching experience, as defined in Chapter 153, Subchapter CC, of this title.

(4) Junior Reserve Officer [Officers'] Training Corps (JROTC) [(ROTC)] instructor.

(A) An individual must verify that he or she has satisfied the requirements and been approved to serve by the appropriate military branch [ROTC].

(B) A JROTC [An ROTC] instructor permit may not be renewed, but must be reissued every year.

§230.79. *Procedures for Activation of Initial Emergency Permits.*

(a) For all assignments (except career and technical education assignments based on skill and experience). The employing superintendent or his or her designee or authorized representative must verify the individual's eligibility for the emergency permit as described in §230.75 of this title (relating to General Eligibility Requirements for Emergency Permits) and §230.77 of this title (relating to Specific Requirements for Initial Emergency Permits) and submit online to the Texas Education Agency (TEA) staff the following information within 45 instructional days of assignment:

(1) a completed online emergency permit application;

(2) one of the following:

(A) a certification [deficiency] plan from an approved Texas educator preparation program (EPP) verifying that the individual meets the grade point average requirement for admission to the EPP and a listing of the preparation, student teaching/internship, and/or assessment activities required to obtain certification in the assignment for which the emergency permit application has been submitted; or

(B) verification of registration for the next available and practicable administration of the appropriate content area certification examination(s) [examination] for an individual who:

(i) holds a bachelor's degree or higher from an accredited institution of higher education;

(ii) is already certified in another classroom teaching content area; and

(iii) is placed in an assignment requiring a different classroom teaching certificate; and

(3) the appropriate fee (payable by the school district).

(b) For career and technical education assignments based on skill and experience. The employing superintendent or his or her designee or authorized representative must verify the individual's eligibility for the emergency permit as described in §230.75 and §230.77 of this title and submit online to the TEA staff the following information within 45 instructional days of assignment:

(1) a completed online emergency permit application;

(2) a copy of the individual's statement of qualifications, approved by the certification officer of a Texas EPP [an institution of higher education] approved to prepare career and technical education teachers, verifying appropriate work experience in the occupation or trade area to be taught as specified in §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area));

(3) acceptable license, registration, or certification by a state-authorized or nationally recognized agency in an occupational area appropriate for the assignment;

(4) [(3)] a certification [deficiency] plan from an approved Texas EPP for the career and technical education certificate appropriate for the assignment; and

(5) [(4)] the appropriate fee (payable by the school district).

§230.81. *Renewal Requirements and Procedures.*
General provisions.

(1) The employing superintendent or his or her designee or authorized representative of a school district may renew an emergency permit for the same assignment in the same school district for which the initial emergency permit was activated.

(2) No individual may continue in the same assignment for more than one [three] school year [years] of service on an emergency permit, except as provided in paragraph (4) of this section.

(3) The total of semester credit hours or the equivalent contact hours required to obtain certification appropriate for the assignment shall determine the number of emergency permit renewals for which the individual may be eligible. The following schedule shall determine eligibility for emergency permit renewal.

(A) For six semester credit hours or less plus appropriate examination requirements, an individual is not eligible for renewal.

(B) For seven [7-12] semester credit hours or more plus appropriate examination requirements, an individual is eligible for one renewal.

~~[(C) For more than 12 semester credit hours plus appropriate examination requirements, an individual is eligible for two renewals.]~~

(4) Effective with the 1998-1999 school year, emergency permits used fewer than 90 calendar days may be renewed for one additional year of service, if needed.

(5) The superintendent or his or her designee or authorized representative may renew an emergency permit provided the following requirements and procedures are met.

(A) The emergency permit must be renewed for the same assignment in the same school district.

(B) Official transcripts verifying completion of a minimum of six semester credit hours or documentation of completion of equivalent contact hours toward the appropriate target certificate must be placed in the individual's personnel file.

(C) If the individual has not completed permit renewal requirements as indicated in paragraph (3) of this section, the superintendent or his or her designee must obtain hardship approval from the Texas Education Agency prior to continuation of the assignment.

(D) The appropriate renewal of the emergency permit application must be completed online prior to the beginning date of duties for the current school year.

(E) The school district shall pay the appropriate fee.

§230.83. *Nonrenewable Permits.*

(a) The superintendent or his or her designee of a school district may activate a nonrenewable permit for an individual who has not completed the appropriate examination requirements specified in §230.21 of this title (relating to Educator Assessment).

(b) A nonrenewable permit may be activated for an individual in one or more of the following categories:

(1) an individual who has completed all course and degree requirements of a Texas educator preparation program specified in this chapter except for successful completion of all appropriate examination requirements. Nonrenewable permits activated for individuals in this category expire 12 months from the date of activation; or

(2) an individual who holds a Texas teacher certificate with an effective date before February 1, 1986, but has not revalidated the

certificate for employment purposes by passing an examination specified in this chapter. The individual must not have been employed in a Texas school district since the start of the 1985-1986 school year. A nonrenewable permit activated for an individual in this category expires six months from the date of activation or at the end of the school year, whichever is less; or

~~[(3) an individual who has been issued a one-year certificate under Subchapter H of this chapter (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States), who passed the appropriate content specialization portions of the certification examinations; and who attempted, but did not pass, the pedagogy and professional responsibilities portion of the examination while the one-year certificate was valid. A nonrenewable permit activated for an individual in this category expires 12 months from the date the individual first attempted the pedagogy and professional responsibilities portion of the certification examinations.]~~

(c) A nonrenewable permit may not be activated for an individual in the same assignment area for which another permit had previously been authorized.

(d) The employing superintendent or his or her designee or authorized representative must verify that an individual is eligible for the permit under this section and submit the following information within 45 [60] calendar days of assignment:

(1) an application for a nonrenewable permit completed before the effective date of the assignment; and

(2) the appropriate fee (payable by the school district).

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



SUBCHAPTER G. CERTIFICATE ISSUANCE PROCEDURES

19 TAC §§230.91, 230.93, 230.97, 230.101, 230.104, 230.105, 230.107

STATUTORY AUTHORITY. The amendments and new sections are proposed under the Texas Education Code (TEC), §21.031(a), which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the TEC, §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certifi-

cate is valid; the TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; the TEC, §21.041(b)(5), which requires the SBEC to propose rules that provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to the TEC, §21.052; the TEC, §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; the TEC, §21.041(c), which requires the SBEC to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of the TEC, Chapter 21, Subchapter B; the TEC, §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; the TEC, §21.044(e), which provides the requirements that SBEC rules must specify for a person to obtain a certificate to teach a health science technology education course; the TEC, §21.044(f), which provides that SBEC rules for a person to obtain a certificate to teach a health science technology education course shall not specify that a person must have a bachelor's degree or establish any other credential or teaching experience requirements that exceed the requirements under §21.044(e); the TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; the TEC, §21.0485, which provides that all candidates for a certificate to teach students with visual impairments must complete an approved educator preparation program; the TEC, §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; the TEC, §21.054(a), which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators' continuing education requirements; the TEC, §22.082, which states that the SBEC shall subscribe to the criminal history clearinghouse as provided by the Texas Government Code, §411.0845, and may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under the TEC, Chapter 21, Subchapter B; the TEC, §22.0831(f), which authorizes the SBEC to propose rules to implement the national criminal history record information review of certified educators; and the Texas Occupations Code (TOC), §53.105, which specifies that a licensing authority may charge a person requesting an evaluation under the TOC, Chapter 53, Subchapter D, a fee adopted by the authority. Fees adopted by a licensing authority under the TOC, Chapter 53, Subchapter D, must be in an amount sufficient to cover the cost of administering this subchapter.

CROSS REFERENCE TO STATUTE. The proposed amendments and new sections implement the TEC, §§21.031(a); 21.041(b)(1)-(5) and (9) and (c); 21.044(a), (e) and (f); 21.048; 21.0485; 21.050; 21.054(a); 22.082; and 22.0831(f) and TOC, §53.105.

§230.91. *Procedures in General.*

(a) The State Board for Educator Certification (SBEC), in compliance with SBEC rules, shall issue appropriate certificates to qualified individuals who meet all requirements.

(1) The certificate shall identify the name of the holder, the class, grade levels, ~~and~~ subject areas, and validity periods of all certificates issued, and reflect, if applicable, disciplinary history taken by ~~the certificate, and bear the signature of~~ the SBEC ~~[chair]~~.

(2) A certificate that is issued shall be maintained in a printable format on the Texas Education Agency (TEA) website on behalf of the SBEC.

(b) Permanent records of all certificates, permits, and supporting documentation shall be maintained by the TEA staff.

(c) An applicant for or holder of an educator's certificate shall be responsible for maintaining his or her educator profile with current mailing and email addresses. The applicant for or holder of an educator's certificate must update his or her educator profile within 45 calendar days of the effective date of such change, unless another rule under this title requires earlier notification.

(d) The representation of an individual's certificate status as maintained on the TEA website is considered to be the official record of educator certification. This electronic representation of the certificate satisfies Texas Education Code, §21.053(a), which requires individuals to present their certificate prior to employment by a school district.

§230.93. *Candidates of Approved Educator Preparation Programs.*

An appropriate certificate may be issued to a candidate who completes all requirements of a State Board for Educator Certification-approved educator preparation program (EPP). The candidate must complete the appropriate application and pay the designated fee. The certification officer representing the approved EPP shall submit to the Texas Education Agency staff a recommendation for the issuance of the appropriate certificate, not earlier than the date on which all requirements were completed, and by the recommendation deadlines for issuance of the certificate.

§230.97. *Effective Dates of Certificates and Permit Issuance.*

(a) Issuance date of a certificate.

(1) The date of issuance shall not precede the date all certification requirements are completed.

(2) The issuance date of a certificate recommended by an approved educator preparation program (EPP) shall be the date the recommending EPP verifies that the applicant has satisfied all certification requirements.

(3) A certificate shall not become effective more than 60 calendar days before the Texas Education Agency (TEA) staff receives the application and may not precede the date all certification, degree, and examination requirements are completed.

(4) A certificate shall be valid for the entire month in which it is issued.

(b) Effective date of a permit.

(1) A permit shall become effective on the date of the assignment, provided the TEA staff receives the application within 60 calendar days of the date of the assignment.

(2) If the permit application is completed and signed by the applicant and superintendent or his or her designee on the date teaching duties begin, the application may be kept in the school district's files until all materials for submission are acquired. A permit held by a school district shall not become effective more than 60 calendar days before the TEA staff receives the application.

(3) The school district shall be notified regarding eligibility for the permit. Coverage will not be provided to the school district

for the employment of an individual who is ineligible for the permit requested.

(c) Authority to alter dating procedures. A certificate or permit may become effective more than 60 calendar days before the TEA staff receives an application if the appropriate official or authority documents his or her responsibility for the delay. A fee equal to the fee for the original certificate or permit may be assessed for altering the effective date of a certificate or permit, provided sufficient justification for the correction is provided.

§230.101. Schedule of Fees for Certification Services.

(a) An applicant for a certificate or a school district requesting a permit shall pay the applicable fee from the following list.

(1) Educational [Standard educational] aide certificate:

(A) prior to September 1, 2017--\$30; and

(B) after August 31, 2017--\$15.

(2) Standard certificate--\$75.

(3) Probationary or intern certificate:

(A) prior to September 1, 2017--\$50; and

(B) after August 31, 2017--\$75.

(4) Addition of certification based on completion of appropriate examination--\$75.

(5) Review of a credential issued by a jurisdiction other than Texas (nonrefundable):

(A) prior to September 1, 2016--\$175; and

(B) after August 31, 2016--\$160.

(6) One-year certificate [Temporary credential] based on a credential issued by a jurisdiction other than Texas--\$50.

(7) Emergency permit (nonrefundable)--\$55.

(8) National criminal history check (nonrefundable)--The fee, posted on the Texas Education Agency website, shall include a \$10 processing fee in addition [vary according] to the current cost of fingerprint processing and obtaining national criminal history record information from the Texas Department of Public Safety, its contractors, and the Federal Bureau of Investigation. The same fee will be paid by current certified educators who are subject to a national criminal history check pursuant to the Texas Education Code, §§22.082, 22.0831, and 22.0836.

(9) Review of the superintendent application for the substitution of managerial experience for the principal certificate requirement (nonrefundable)--\$160.

~~[(9) Temporary teacher certificate based on recommendation by an approved Texas school district--\$50.]~~

~~[(10) Review of credentials requiring analysis and research of college or university transcript and degrees for issuance of a temporary certificate (nonrefundable):]~~

~~[(A) prior to September 1, 2016--\$175; and]~~

~~[(B) after August 31, 2016--\$160.]~~

(10) [(11)] On-time renewal of [standard] educational aide certificate:

(A) prior to September 1, 2017--\$10; and

(B) after August 31, 2017--no charge.

~~(11) [(12)] Additional fee for late renewal of [standard] educational aide certificate:~~

~~(A) prior to September 1, 2017--\$5; and~~

~~(B) after August 31, 2017--no charge.~~

(12) [(13)] Reactivation of an inactive [standard] educational aide certificate--\$15.

(13) [(14)] Reinstatement following restitution of child support or student loan repayment for [standard] educational aide certificate--\$20.

~~(14) [(15)] On-time renewal of a standard certificate [(to include any educational aide certificate if held)]--\$20.~~

(15) [(16)] Additional fee for late renewal of a standard certificate--\$10.

(16) [(17)] Reactivation of an inactive standard certificate--\$40; except for an inactivation pursuant to §232.9 of this title (relating to Inactive Status and Late Renewal).

(17) [(18)] Reinstatement following restitution of child support or student loan repayment--\$50.

(18) [(19)] Visiting international teacher certificate--\$75 [50].

(19) [(20)] Request for preliminary criminal history evaluation (nonrefundable)--\$50.

(b) The fee for correcting a certificate or permit when the error is not made by the Texas Education Agency shall be equal to the fee for the original certificate or permit.

§230.104. Correcting a Certificate or Permit Issued in Error.

If a certificate or permit is issued with an incorrect grade level, subject area, or effective date, the recommending entity may request a correction of the certificate or permit by submitting a written request to Texas Education Agency staff and a fee equivalent to the fee for the original certificate or permit. The entity must provide sufficient justification for the correction.

§230.105. Issuance of Additional Certificates Based on Examination.

A teacher who holds a valid provisional, professional, or standard classroom teaching certificate or a valid temporary classroom teaching certificate issued under the provisions of Subchapter H of this chapter (relating to Texas Educator Certificates Based on Certification and College Credentials from Other States or Territories of the United States), or Chapter 245 of this title (relating to Certification of Educators from Other Countries), and a bachelor's degree or higher from an accredited institution of higher education may qualify for an additional teaching field or certification to teach at another level by passing the appropriate certification examination(s) for that subject. The teacher must submit the application to add certification based on an examination during the time the certificate is allowed to be issued by the State Board for Educator Certification. The application for the additional certification must be submitted during the validity period of the appropriate Texas classroom teaching certificate. If a teacher holds multiple teaching certificates, all teaching certificates must be active before adding certification by examination. The rule shall not be used to qualify a classroom teacher for:

(1) initial certification;

~~[(2) career and technical education certification based on skill and experience; with the exception of marketing education or marketing certificates;]~~

(2) [(3)] the Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certificate;

(3) [(4)] another class of certificate, as listed in Subchapter D of this chapter (relating to Types and Classes of Certificates Issued); or

(4) [(5)] certification for which no certification examination has been developed.

§230.107. Requests to Relinquish a Texas Certificate.

An individual who holds a valid provisional, professional, or standard certificate issued under the provisions of this chapter may request removal of a certificate area(s) he or she no longer wishes to hold.

(1) The request to relinquish a certificate must be:

(A) submitted by the certificate holder in writing by mail, personal delivery, facsimile, email, or an electronic notification;

(B) identify the specific certificate area(s) to be removed from the official record of certification; and

(C) include a statement acknowledging his or her understanding that once the certificate area(s) have been removed, they cannot be reinstated.

(2) Certificate holders currently under investigation for a "Priority 1" offense as defined in Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases) are not eligible to relinquish a Texas certificate(s) under provisions of this subchapter and may not unilaterally surrender a certificate without written consent of a Texas Education Agency staff member authorized by the associate commissioner to execute settlements as designated by the State Board for Educator Certification.

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

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SUBCHAPTER H. TEXAS EDUCATOR CERTIFICATES BASED ON CERTIFICATION AND COLLEGE CREDENTIALS FROM OTHER STATES OR TERRITORIES OF THE UNITED STATES

19 TAC §230.111, §230.113

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.040(6), which allows the State Board for Educator Certification (SBEC) authority to develop and implement policies that define responsibilities of the SBEC; the TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; the TEC, §21.041(b)(5), which requires the SBEC to propose rules that provide for the issuance of an educator certificate to a person who holds a similar certifi-

cate issued by another state or foreign country, subject to the TEC, §21.052; the TEC, §21.041(c), which requires the SBEC to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of the TEC, Chapter 21, Subchapter B; the TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC; the TEC, §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; the TEC, §21.052(a), which states that the SBEC may issue a certificate to an educator who holds a degree issued by an institution accredited by a regional accrediting agency or group that is recognized by a nationally recognized accreditation board or a degree issued by an institution located in a foreign country, if the degree is equivalent to a degree described by §21.052(a)(1)(A), holds an appropriate certificate or other credential issued by another state or country, and performs satisfactorily on the examination prescribed under the TEC, §21.048, or, if the educator holds a certificate or other credential issued by another state or country, an examination similar to and at least as rigorous as that described by §21.052(a)(1)(A) administered to the educator under the authority of that state; the TEC, §21.052(b), which states that for purposes of §21.052(a)(2), a person is considered to hold a certificate or other credential if the credential is not valid solely because it has expired; the TEC, §21.052(c), which states that the SBEC may issue a temporary certificate under this section to an educator who holds a degree required by §21.052(a)(1) and a certificate or other credential required by §21.052(a)(2) but who has not satisfied the requirements prescribed by §21.052(a)(3); and the TEC, §21.052(d), which states that a temporary certificate issued under §21.052(c) to an educator employed by a school district that has constructed or expanded at least one instructional facility as a result of increased student enrollment due to actions taken under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687) may not expire before the first anniversary of the date on which the SBEC completes the review of the educator's credentials and informs the educator of the examination or examinations under the TEC, §21.048, on which the educator must perform successfully to receive a standard certificate.

CROSS REFERENCE TO STATUTE. The proposed amendments implement the TEC, §§21.040(6); 21.041(b)(4) and (5) and (c); 21.048; 21.050; and 21.052.

§230.111. General Provisions.

(a) A Texas educator certificate may be issued to an individual who holds a college degree and an acceptable [appropriate] certificate or credential issued by the authorized licensing agency in another state or territory of the United States and who meets appropriate requirements specified in §230.11 of this title (relating to General Requirements) and elsewhere in this subchapter.

(b) The degree held by an applicant from another state or territory of the United States must be equivalent to at least a bachelor's degree or higher issued by an accredited institution of higher education.

(c) The certificate or other credential issued by the authorized licensing agency in another state or territory of the United States may not be a temporary permit, a credential issued by a city or school district, [a specific examination or renewal requirement,] or a certifi-

cate for which academic or other program deficiencies are indicated. Specific examination or renewal requirements shall not be considered academic deficiencies.

(d) A statement, approval letter, or certification entitlement card must be issued by the authorized licensing agency in another state or territory of the United States specifying eligibility for full certification upon employment or completion of specified examination requirements shall have the same standing as a certificate.

(e) The certificate and areas of certification issued by the authorized licensing agency in another state or territory of the United States must be equivalent to a certificate or grade level that is within the early childhood-Grade 12 level and approved by the State Board for Educator Certification (SBEC). Based on the certificates submitted with the application for review of credentials, the [The] Texas Education Agency (TEA) staff shall identify the certification areas for which the applicant qualifies in Texas. The certificate(s) for which the applicant qualifies may be issued by the TEA staff under the authority of the SBEC.

(f) If a Texas examination or certification is scheduled to be eliminated, an individual requesting certification and examination comparability must ensure that the application and all review documentation, including examination [test] scores, are received by TEA staff 60 calendar days before the application submission deadline for the examination and/or certification sought.

§230.113. Requirements for Texas Certificates Based on Certification from Other States or Territories of the United States.

(a) An applicant for a standard Texas certificate based on a certificate issued in accordance with §230.111 of this title (relating to General Provisions) must pass the appropriate examination requirements prescribed in the Texas Education Code (TEC), §21.048(a), and §230.21 of this title (relating to Educator Assessment) or achieve an acceptable level of performance on an examination(s) that have been determined to be similar to and at least as rigorous as that prescribed in the TEC, §21.048(a), and §230.21 of this title that was administered to the applicant under the authority of another state or territory of the United States. The applicant shall verify in a manner determined by the Texas Education Agency staff the level of performance on acceptable examinations administered under the authority of another state or territory of the United States.

(b) If all certification requirements are met except the appropriate examination requirements, the applicant may request issuance of a one-year certificate in one or more certification areas authorized on the out-of-state certificate. An applicant who holds only a student services, principal, or superintendent certificate issued in accordance with Chapter 239 of this title (relating to Student Services Certificates), with the exception of Subchapter E (relating to Master Teacher Certificate); Chapter 241 of this title (relating to Principal Certificate); or Chapter 242 of this title (relating to Superintendent Certificate) may be issued the equivalent Texas certificate. The applicant must verify two creditable years of service in an Early Childhood-Grade 12 public or accredited private school in the specific student services or administrative area sought.

(c) After satisfying all requirements, including all appropriate examination requirements, the applicant is eligible to receive the appropriate standard certificate issued under Subchapter D of this chapter (relating to Types and Classes of Certificates Issued).

(d) An applicant issued a one-year certificate under this section who does not complete the appropriate examination requirements to establish eligibility for a standard certificate during the validity of the one-year certificate, is not eligible for any type of certificate or permit authorizing employment for the same certificate until he or she has

satisfied the appropriate examination requirements. If examination requirements are not met during the validity period of the one-year certificate due to circumstances beyond the control of the educator, the employing school district may request an extension not to exceed one calendar year in length.

~~[(e) An employing superintendent may apply for a nonrenewable permit for a teacher who does not pass the pedagogy and professional responsibilities portion of the certification examinations but does pass the appropriate content specialization portions of the examination during the validity of the one-year certificate. The nonrenewable permit shall be valid for no more than 12 months from the date the individual first attempts the pedagogy and professional responsibilities examination.]~~

(e) ~~[(f)]~~ An applicant shall not be required to complete the content specialization portion of the certification examination in a certification area for which he or she does not seek standard certification unless the examination is required to establish a base classroom teaching certificate. A supplemental certificate, as described in Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates), may not be issued as a standard certificate unless the educator has established a classroom teaching certificate.

(f) ~~[(g)]~~ An applicant issued a one-year certificate under this section who, during or subsequent to the validity of the certificate, establishes eligibility for a standard certificate may apply for:

(1) a new one-year certificate in another certification area based on an acceptable certificate from another state or territory of the United States; or

(2) a second one-year certificate in an area previously authorized on a one-year certificate provided the applicant was not assigned to the area and has not attempted the appropriate examination requirements for that area.

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

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



CHAPTER 231. REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS

The State Board for Educator Certification (SBEC) proposes amendments to 19 TAC §§231.97, 231.241, 231.251, 231.257, 231.365, and 231.611 and new 19 TAC §231.175, concerning requirements for public school personnel assignments. The SBEC rules in 19 TAC Chapter 231 provide guidance to school districts by listing courses by grade level and subject area and identifying the corresponding certificates appropriate for placement into each classroom assignment. The proposed amendments to 19 TAC §§231.97, 231.241, 231.251, 231.257, 231.365, and 231.611 and proposed new 19 TAC §231.175 would identify the appropriate credential for placement in a particular teaching assignment, incorporate courses approved

by the State Board of Education (SBOE), and provide guidance to districts on special education assignments.

The proposed revisions to 19 TAC Chapter 231, Subchapters D-F, would identify the appropriate certificates for placement in particular assignments for Grades 6-12 to teach electives, disciplinary courses, local credit courses, and innovative courses; various assignments for Grades 9-12; and special education-related services personnel assignments.

Subchapter D, Electives, Disciplinary Courses, Local Credit Courses, and Innovative Courses, Grades 6-12 Assignments

Language in 19 TAC §231.97, including the section title, would be amended to delete the reference to magnet course since the Texas Education Agency (TEA) stopped approving magnet courses several years ago. The proposed amendment would also strengthen alignment with the internal processes for approval of innovative courses and confirm the TEA's role in identifying the appropriate certificates for assignments to teach innovative courses.

Subchapter E, Grades 9-12 Assignments

Division 3. Social Studies, Grades 9-12 Assignments. Proposed new 19 TAC §231.175, Personal Financial Literacy, Grades 9-12, would be added to incorporate this new course approved by the SBOE. TEA staff has worked closely with the TEA Curriculum Division to confirm the list of certificates appropriate to ensure the individual has the knowledge and skills necessary to teach the course and be eligible for placement into the assignment.

Division 7. Fine Arts, Grades 9-12 Assignments. Language in 19 TAC §231.241, Art, Music, Theatre, and Dance, Grades 9-12, would be amended to add a reference to a proposed new Dance: Grades 6-12 certificate in subsection (d). The proposed new Dance: Grades 6-12 certificate is included in the proposed amendments to 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, may be found in the Proposed Rules section of this issue of the *Texas Register*. With the addition of the reference to the proposed new certificate, all remaining information under subsection (d) would be renumbered accordingly.

Division 8. Technology Applications, Grades 9-12 Assignments. In response to a citizen petition addressed by the SBEC at the April 2016 meeting, TEA staff has worked closely with the TEA Curriculum Division to confirm the transfer of the reference to "Fundamentals of Computer Science" from 19 TAC §231.251, Computer Science, Grades 9-12, to 19 TAC §231.257, Game Programming and Design or Mobile Application Development, Grades 9-12. This change is an appropriate rulemaking action that accurately addresses the petition and maintains appropriate certification for placement into the assignment. Language in 19 TAC §231.257, including the section title, would also be amended to add "Advanced Placement Computer Science Principles," another course approved by the SBOE that had not yet been incorporated into this chapter.

Division 13. Business Management and Administration, Grades 9-12 Assignments. Subsection (b) in 19 TAC §231.365, Business English, Grades 9-12, would be deleted since TEA staff has confirmed with the TEA Curriculum Division that the reference to the TEA-approved training requirement is no longer needed. The list of certificates appropriate to teach this course provide individuals with the knowledge and skills needed to teach this course.

Subchapter F, Special Education-Related Services Personnel Assignments

The proposed amendment to 19 TAC §231.611, Special Education Teacher, would specify that anyone delivering content instruction would be required to hold one of the special education certificates listed and a valid certificate that matches the subject and grade level of the assignment. The addition of this requirement to also hold a valid certificate parallels the federal requirements for special education that were implemented as part of the highly qualified (HQ) requirements under No Child Left Behind (NCLB). Effective with the 2016-2017 school year, federal requirements are no longer in place and districts must now rely solely on certification rules. Language would clarify that individuals assigned to deliver content instruction in a special education setting be certified in special education and the specific content area being taught to ensure that the individuals have the content knowledge necessary to deliver appropriate content instruction. Numerous districts have expressed a need for guidance from the TEA and flexibility to address the critical staffing shortage area of special education teachers. In addition, language would be included to allow individuals to demonstrate competency through the state's 2010 and 2011 high, objective, and uniform standard evaluation for elementary and secondary special education teachers as suggested by the Texas Council of Administrators of Special Education (TCASE). These proposed changes in rule would be necessary to provide districts the ability to retain teachers already qualified for special education assignments under the federal requirements and ensure that students in special education settings continue to receive the support they need from teachers who have appropriate content knowledge.

The proposed rule actions would have no additional procedural and reporting implications. The proposed rule actions would have no additional locally maintained paperwork requirements.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed rule actions are in effect there would be no additional costs for state and local government as a result of enforcing or administering the proposed rule actions. There is no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for the first five-year period the proposed rule actions are in effect the public and student benefit anticipated as a result of the proposed rule actions would be the ability of districts to continue placing educators into classrooms that are prepared to positively affect the performance of the diverse student population of this state. There is no anticipated economic cost to persons who are required to comply with the proposed rule actions.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. 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.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins August 26, 2016, and ends September 26, 2016. The SBEC will take registered oral and written comments on the proposed amendments to 19 TAC §§231.97, 231.241, 231.251, 231.257, 231.365, and 231.611 and proposed new 19 TAC §231.175 at the October 7, 2016 meeting in accor-

dance with the SBEC board operating policies and procedures. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to sbecrules@tea.texas.gov. All requests for a public hearing on the proposed rule actions 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, 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* on August 26, 2016.

SUBCHAPTER D. ELECTIVES, DISCIPLINARY COURSES, LOCAL CREDIT COURSES, AND INNOVATIVE COURSES, GRADES 6-12 ASSIGNMENTS

19 TAC §231.97

STATUTORY AUTHORITY. The amendment is 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; the 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; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The proposed amendment implements the TEC, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.97. [*Magnet Course*;] *Innovative Course*.

An assignment for an [a Magnet Course or] Innovative Course is allowed with a valid certificate that matches the grade level of the assignment as determined by the Texas Education Agency [or Texas Education Agency approval].

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

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



SUBCHAPTER E. GRADES 9-12 ASSIGNMENTS

DIVISION 3. SOCIAL STUDIES, GRADES 9-12 ASSIGNMENTS

19 TAC §231.175

STATUTORY AUTHORITY. The new section is 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; the 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; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The proposed new section implements the TEC, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.175. *Personal Financial Literacy, Grades 9-12.*

An assignment for Personal Financial Literacy, Grades 9-12, is allowed with one of the following certificates.

(1) Any business certificate.

(2) Grades 6-12 or Grades 9-12--Economics.

(3) Grades 6-12 or Grades 9-12--Social Studies.

(4) Grades 6-12 or Grades 9-12--Social Studies, Composite.

(5) Junior High School (Grades 9-10 only) or High School--Economics.

(6) Junior High School (Grades 9-10 only) or High School--Social Science, Composite.

(7) Secondary Economics (Grades 6-12).

(8) Secondary Social Studies (Grades 6-12).

(9) Secondary Social Studies, Composite (Grades 6-12).

(10) Social Studies: Grades 7-12.

(11) Social Studies: Grades 8-12.

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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DIVISION 7. FINE ARTS, GRADES 9-12 ASSIGNMENTS

19 TAC §231.241

STATUTORY AUTHORITY. The amendment is 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; the 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; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The proposed amendment implements the TEC, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.241. *Art, Music, Theatre, and Dance, Grades 9-12.*

(a) An assignment for Art, Grades 9-12, is allowed with one of the following certificates.

- (1) All-Level Art.
- (2) Art: Early Childhood-Grade 12.
- (3) Grades 6-12 or Grades 9-12--Art.
- (4) Junior High School (Grades 9-10 only) or High School--Art.
- (5) Secondary Art (Grades 6-12).

(b) An assignment for Music, Grades 9-12, is allowed with one of the following certificates.

- (1) All-Level Music.
- (2) Grades 6-12 or Grades 9-12--Music.
- (3) Junior High School (Grades 9-10 only) or High School--Music.
- (4) Music: Early Childhood-Grade 12.
- (5) Secondary Music (Grades 6-12).

(c) An assignment for Theatre, including Musical Theatre, Grades 9-12, is allowed with one of the following certificates.

- (1) All-Level Speech/Drama.
- (2) All-Level Speech Communications/Theatre Arts (Prekindergarten-Grade 12).
- (3) All-Level Theatre Arts (Prekindergarten-Grade 12).
- (4) Grades 6-12 or Grades 9-12--Theatre Arts.
- (5) Junior High School (Grades 9-10 only) or High School--Drama.
- (6) Junior High School (Grades 9-10 only) or High School--Speech and Drama.
- (7) Secondary Theatre Arts (Grades 6-12).

(8) Theatre: Early Childhood-Grade 12.

(d) An assignment for Dance for Fine Arts credit, Grades 9-12, is allowed with one of the following certificates.

- (1) Dance: Grades 8-12.
- (2) Dance: Grades 6-12.
- (3) [~~2~~] Grades 6-12 or Grades 9-12--Dance.
- (4) [~~3~~] Junior High School (Grades 9-10 only) or High School--Dance.
- (5) [~~4~~] Secondary Dance (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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DIVISION 8. TECHNOLOGY APPLICATIONS, GRADES 9-12 ASSIGNMENTS

19 TAC §231.251, §231.257

STATUTORY AUTHORITY. 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; the 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; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The proposed amendments implement the TEC, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.251. *Computer Science, Grades 9-12.*

An assignment for [~~Fundamentals of Computer Science~~]; Computer Science I, II, and III; Digital Forensics; or Robotics Programming and Design, Grades 9-12, is allowed with one of the following certificates.

- (1) Computer Science: Grades 8-12.
- (2) Grades 6-12 or Grades 9-12--Computer Information Systems.
- (3) Junior High School (Grades 9-10 only) or High School--Computer Information Systems.

(4) Secondary Computer Information Systems (Grades 6-12).

§231.257. *Fundamentals of Computer Science; Advanced Placement Computer Science Principles; Game Programming and Design or Mobile Application Development, Grades 9-12.*

An assignment for Fundamentals of Computer Science; Advanced Placement Computer Science Principles; Game Programming and Design or Mobile Application Development, Grades 9-12, is allowed with one of the following certificates.

- (1) Computer Science: Grades 8-12.
- (2) Grades 6-12 or Grades 9-12--Computer Information Systems.
- (3) Junior High School (Grades 9-10 only) or High School--Computer Information Systems.
- (4) Secondary Computer Information Systems (Grades 6-12).
- (5) Technology Applications: Early Childhood-Grade 12.
- (6) Technology Applications: Grades 8-12.

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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DIVISION 13. BUSINESS MANAGEMENT AND ADMINISTRATION, GRADES 9-12 ASSIGNMENTS

19 TAC §231.365

STATUTORY AUTHORITY. The amendment is 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; the 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; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The proposed amendment implements the TEC, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.365. *Business English, Grades 9-12.*

[(a)] An assignment for Business English, Grades 9-12, is allowed with one of the following certificates.

- (1) Any business or office education certificate.
- (2) Business and Finance: Grades 6-12.
- (3) Business Education: Grades 6-12.
- (4) English Language Arts and Reading: Grades 7-12.
- (5) English Language Arts and Reading: Grades 8-12.
- (6) Grades 6-12 or Grades 9-12--English.
- (7) Grades 6-12 or Grades 9-12--English Language Arts, Composite.
- (8) Junior High School (Grades 9-10 only) or High School--English.
- (9) Junior High School (Grades 9-10 only) or High School--English Language Arts, Composite.
- (10) Secondary English (Grades 6-12).
- (11) Secondary English Language Arts, Composite (Grades 6-12).

[(b)] All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2013-2014 school year.]

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

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SUBCHAPTER F. SPECIAL EDUCATION-RELATED SERVICES PERSONNEL ASSIGNMENTS

19 TAC §231.611

STATUTORY AUTHORITY. The amendment is 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; the 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; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The proposed amendment implements the TEC, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.611. *Special Education Teacher.*

(a) Subject to the requirements in subsection (c) of this section, an assignment for Special Education Teacher is allowed with one of the following certificates. If an individual is providing content instruction in a special education classroom setting, a valid certificate that matches the subject and grade level of the assignment is also required, or the individual must demonstrate competency through the state's 2010 and 2011 high, objective, and uniform standard evaluation for elementary and secondary special education teachers.

- (1) Blind School (Texas State School for the Blind and Visually Impaired only).
- (2) Deaf and Severely Hard of Hearing.
- (3) Deaf School (Texas State School for the Deaf only).
- (4) Deaf-Blind.
- (5) Deficient Vision.
- (6) Early Childhood Education for Handicapped Children (Infants-Grade 6 only).
- (7) Elementary Generic Special Education.
- (8) Emotionally Disturbed.
- (9) Generic Special Education.
- (10) Hearing Impaired.
- (11) High School--Generic Special Education.
- (12) Language and/or Learning Disabilities.
- (13) Mentally Retarded.
- (14) Physically Handicapped.
- (15) School Speech-Language Pathologist.
- (16) Secondary Generic Special Education (Grades 6-12) (Grades 6-12 only).
- (17) Severely and Profoundly Handicapped.
- (18) Severely Emotionally Disturbed and Autistic.
- (19) Special Education Supplemental (Valid at grade level and subject area of the base certificate).
- (20) Special Education: Early Childhood-Grade 12.
- (21) Speech and Hearing Therapy.
- (22) Speech and Language Therapy.
- (23) Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12.
- (24) Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12.
- (25) Visually Handicapped.

(b) The certificates specified in subsection (a) of this section are appropriate for a special education assignment in Prekindergarten-Grade 12 except where otherwise noted.

(c) The employing school district should make every effort to secure educators trained in the specialized skills and knowledge needed to serve the special needs of the children. If a staff member does not have the skills and knowledge needed for the assignment, the school

district is responsible for making provisions for the person to acquire the necessary skills and knowledge.

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

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CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §§233.5, 233.8, 233.10, 233.14

The State Board for Educator Certification (SBEC) proposes amendments to 19 TAC §§233.5, 233.8, 233.10, and 233.14, concerning categories of classroom teaching certificates. The SBEC rules in 19 TAC Chapter 233 establish the general categories of classroom teaching certificates, specific grade levels and subject areas of classroom certificates, and the general area(s) of assignments that may be taught by the holder of each certificate. The proposed amendments to 19 TAC §§233.5, 233.8, 233.10, and 233.14 would update the list of courses eligible to be taught with these certificates, identify any additional requirements to obtain certification, provide guidance to districts on special education assignments, and establish a new Dance: Grades 6-12 certificate.

The Texas Education Code (TEC), §21.041(b)(2), authorizes the SBEC to adopt rules that specify the classes of educator certificates to be issued, including emergency certificates.

The proposed amendments to 19 TAC Chapter 233 would amend language to expand the list of courses eligible to be taught by holders of specific certificates, would provide guidance to districts on special education assignments, and would establish a new standard certificate for Dance: Grades 6-12.

§233.5. *Technology Applications and Computer Science*

Language would be amended in subsection (c) to expand the list of courses referenced as eligible to be taught by individuals with computer science certification. Texas Education Agency (TEA) staff has worked closely with the TEA Curriculum Division to confirm holders of the computer science certificate have the knowledge and skills necessary to teach the following courses for Grades 9-12: Computer Science I, II, and III; Digital Forensics; Robotics Programming and Design; Fundamentals of Computer Science; Advanced Placement Computer Science Principles; Game Programming and Design; and Mobile Application Development.

§233.8. *Special Education*

The proposed amendment to subsection (a) would specify that anyone delivering content instruction in a special education setting would be required to hold a special education certificate and a valid classroom certificate that matches the subject and grade level of the assignment. The addition of this requirement to also

hold a valid classroom certificate parallels the federal requirements for special education that were implemented as part of the highly qualified (HQ) requirements under No Child Left Behind (NCLB). Effective with the 2016-2017 school year, federal requirements are no longer in place and districts must now rely solely on certification rules. The proposed amendment would clarify that individuals assigned to deliver content instruction in a special education setting be certified in special education and the specific content area being taught. Numerous districts have expressed a need for guidance from the TEA and flexibility to address the critical staffing shortage of special education teachers.

In addition, language would be included to allow individuals to demonstrate competency through the state's 2010 and 2011 high, objective, and uniform standard evaluation for elementary and secondary special education teachers as suggested by The Texas Council of Administrators of Special Education. These proposed changes in rule would be necessary to provide districts the ability to retain teachers already qualified for special education assignments under the federal requirements and ensure that students in special education settings continue to receive the support they need from teachers who have appropriate content knowledge. The proposed revisions to 19 TAC Chapter 231, Requirements for Public School Personnel Assignments, which would also address eligibility for placement into special education assignments, may be found in the Proposed Rules section of this issue of the *Texas Register*. The proposed change to 19 TAC §231.611 would include identical language.

§233.10. *Fine Arts*

Proposed new subsection (e) would add the new certificate for Dance: Grades 6-12. Language had previously been amended in subsection (d) to specify that Dance, Middle School 1-3 courses for Grades 6-8 would be taught by the holder of a Dance: Grades 8-12 certificate. Language in subsection (d) would be added to establish a deadline of August 31, 2018, for candidates to complete all requirements for issuance of the last group of Dance: Grades 8-12 certificate the SBEC will issue and a deadline of October 30, 2018, for candidates and educator preparation programs to submit completed applications to the TEA.

The proposed assignment for the new Dance: Grades 6-12 certificate may be found in the Proposed Rules section of this issue of the *Texas Register* proposing revisions to 19 TAC Chapter 231, Requirements for Public School Personnel Assignments, to ensure courses approved by the State Board of Education were included in SBEC rules and that the rules identified the appropriate teaching certificate needed for these course assignments. Initially, there were no plans to develop a new certification examination when the SBEC approved rule changes to allow the Dance: Grades 8-12 certificate to satisfy the requirement to teach Dance, Middle School 1-3 courses for Grades 6-8. However, now that a new certification examination for Dance: Grades 6-12 will be available in early 2017, a new Dance: Grades 6-12 certificate would need to be added. The proposed amendment would allow Dance: Grades 8-12 certificate holders who are currently placed in assignments to teach Dance, Middle School 1-3 courses for Grades 6-8 to remain eligible for that assignment; however, once the Dance: Grades 6-12 examination and the Dance: Grades 6-12 certificate are available in 2017, all individuals interested in teaching Dance, Middle School 1-3 courses for Grades 6-8 must hold the Dance: Grades 6-12 certificate.

§233.14. *Career and Technical Education (Certificates requiring experience and preparation in a skill area)*

Language would be amended in subsection (h)(1) to add Health Science Technology Education: Grades 8-12, Health Science: Grades 6-12, and Trade and Industrial Education: Grades 6-12 to the list of career and technical education certificates eligible to pursue under the route of certification by examination. The requirements for Health Science certification mandated in the TEC must still be met, but individuals with the required licensure and years of experience that already hold classroom certification in another area will have a new option for pursuing this certification. TEA staff understands the increased demand on districts to provide trade and industrial education (TIE) classes and the ongoing challenges that districts continue to face with staffing individuals for TIE assignments. While it remains critical that individuals assigned to teach TIE courses know their trade and have experience in the area, the proposed amendment would offer more flexibility in obtaining TIE certification for individuals already certified in another classroom certificate area. Prior to receiving approval to take the Trade and Industrial Education Pedagogy and Professional Responsibilities test, individuals must obtain support from a district to verify they have the appropriate work experience and licensure for the specific trade. The proposed changes regarding health science technology education, health science, and TIE may be found in the Proposed Rules section of this issue of the *Texas Register* proposing revisions to 19 TAC Chapter 230, Professional Educator Preparation and Certification, that would address the list of certificates eligible to be obtained through additional certification by examination.

In addition, language in §233.14(f) would be modified to remove dates that would have passed by the effective date of the proposed amendments.

The proposed amendments would have no additional procedural and reporting implications. The proposed amendments would have no additional locally maintained paperwork requirements.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed amendments are in effect there would be no additional costs for state and local government as a result of enforcing or administering the proposed amendments. There is no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. 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 continued issuance of classroom teaching certificates to eligible individuals. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. 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.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins August 26, 2016, and ends September 26, 2016. The SBEC will take registered oral and written comments on the proposed amendments to 19 TAC §§233.5, 233.8, 233.10, and 233.14 at the October 7, 2016,

meeting in accordance with the SBEC board operating policies and procedures. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to sbecrules@tea.texas.gov. 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, 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* on August 26, 2016.

STATUTORY AUTHORITY. 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; the TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; the TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; the TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the TEC, §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; the TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; the TEC, §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; the TEC, §21.044(e), which provides the requirements that SBEC rules must specify for a person to obtain a certificate to teach a health science technology education course; the TEC, §21.044(f), which provides that SBEC rules for obtaining a certificate to teach a health science technology education course shall not specify that a person must have a bachelor's degree or establish any other credential or teaching experience requirements that exceed the requirements under TEC, §21.044(e); and the TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC. TEC, §21.048(a), also specifies that the commissioner of education shall determine the satisfactory level of performance required for each certification examination and require a satisfactory level of examination performance in each core subject covered by the generalist certification examination.

CROSS REFERENCE TO STATUTE. The proposed amendments implement the TEC, §§21.003(a), 21.031, 21.041(b)(1)-(4) and (6), 21.044(e) and (f), and 21.048(a).

§233.5. *Technology Applications and Computer Science.*

(a) **Technology Applications: Grades 8-12.** The Technology Applications: Grades 8-12 certificate may be issued no earlier than June 1, 2001. The holder of the Technology Applications: Grades 8-12 certificate may teach Technology Applications in Grade 8 and the following technology applications courses in Grades 9-12: desktop publishing, digital graphics/animation, multimedia, video technology, web mastering, and independent study in technology applications. A candidate must meet the requirements for a Technology Applications: Grades 8-12 certificate by August 31, 2018. All applications must be complete and received by the Texas Education Agency by October 30, 2018.

(b) **Technology Applications: Early Childhood-Grade 12.** The Technology Applications: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2002. The holder of the Technology Applications: Early Childhood-Grade 12 certificate may teach the technology applications curriculum in prekindergarten, kindergarten, and Grades 1-12, with the exception of Computer Science I and II.

(c) **Computer Science: Grades 8-12.** The Computer Science: Grades 8-12 certificate may be issued no earlier than June 1, 2001. The holder of the Computer Science: Grades 8-12 certificate may teach Computer Science I, [and] II, and III in Grades 8-12 and the following courses in Grades 9-12: Digital Forensics, Robotics Programming and Design, Fundamentals of Computer Science, Advanced Placement Computer Science Principles, Game Programming and Design, and Mobile Application Development.

§233.8. *Special Education.*

(a) **Special Education: Early Childhood-Grade 12.** The Special Education: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2003. The holder of the Special Education: Early Childhood-Grade 12 certificate may teach at any level of a basic special education instructional program serving eligible students 3-21 years of age, unless otherwise specified in §89.1131 of this title (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel). If an individual is providing content instruction in a special education classroom setting, a valid certificate that matches the subject and grade level of the assignment is also required, or the individual must demonstrate competency through the state's 2010 and 2011 high, objective, and uniform standard evaluation for elementary and secondary special education teachers.

(b) **Special Education Supplemental.** The Special Education Supplemental certificate may be issued no earlier than September 1, 2003. The holder of the Special Education Supplemental certificate may teach in a special education instructional program serving eligible students at the same grade levels and in the content area(s) of the holder's base certificate, unless otherwise specified in §89.1131 of this title.

(c) **Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12.** The Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12 certificate is eligible to teach at any level in a special education instructional program serving eligible students, unless otherwise specified in §89.1131 of this title.

(d) **Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12.** The Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certificate is eligible to teach at any level in a special education instructional program serving eligible students, unless otherwise specified in §89.1131 of this title.

§233.10. *Fine Arts.*

(a) Music: Early Childhood-Grade 12. The Music: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2004. The holder of the Music: Early Childhood-Grade 12 certificate is eligible to teach music in a prekindergarten program, in kindergarten, and in Grades 1-12.

(b) Art: Early Childhood-Grade 12. The Art: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the Art: Early Childhood-Grade 12 certificate is eligible to teach art in a prekindergarten program, in kindergarten, and in Grades 1-12.

(c) Theatre: Early Childhood-Grade 12. The Theatre: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the Theatre: Early Childhood-Grade 12 certificate is eligible to teach theatre in a prekindergarten program, in kindergarten, and in Grades 1-12. The holder of the Theatre: Early Childhood-Grade 12 certificate is also eligible to teach Musical Theatre, Grades 9-12.

(d) Dance: Grades 8-12. The Dance: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Dance: Grades 8-12 certificate is eligible to teach all dance courses in Grades 8-12. The holder of the Dance: Grades 8-12 certificate is also eligible to teach Dance, Middle School 1-3 courses for Grades 6-8. A candidate must meet the requirements for a Dance: Grades 8-12 certificate by August 31, 2018. All applications must be complete and received by the Texas Education Agency by October 30, 2018.

(e) Dance: Grades 6-12. The Dance: Grades 6-12 certificate may be issued no earlier than March 1, 2017. The holder of the Dance: Grades 6-12 certificate is eligible to teach all dance courses in Grades 6-12.

§233.14. *Career and Technical Education (Certificates requiring experience and preparation in a skill area).*

(a) All individuals seeking a career and technical education certificate specified in this section must have the required number of years of qualified work experience and preparation in a skill area approved in accordance with the provisions of subsection (h) of this section prior to issuance of the certificate and assignment in a Texas school.

(b) Marketing Education: Grades 8-12. The Marketing Education: Grades 8-12 certificate may be issued no earlier than September 1, 2005. A candidate must meet the requirements for a Marketing Education: Grades 8-12 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 Marketing Education: Grades 8-12 certificate is eligible to teach all marketing education courses in Grades 8-12. A candidate for the Marketing Education: Grades 8-12 certificate must:

(1) hold a bachelor's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board (THECB); and

(2) have two years of full-time wage-earning experience in a marketing occupation as specified in subsection (h) of this section.

(c) Marketing: Grades 6-12. The Marketing: Grades 6-12 certificate may be issued no earlier than September 1, 2014. The holder of the Marketing: Grades 6-12 certificate is eligible to teach all marketing courses in Grades 6-12. A candidate for the Marketing: Grades 6-12 certificate must:

(1) hold a bachelor's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB; and

(2) have two years of full-time wage-earning experience in a marketing occupation as specified in subsection (h) of this section.

(d) Health Science Technology Education: Grades 8-12. A standard Health Science Technology Education: Grades 8-12 certificate shall be based on experience and academic preparation in the skill area. A candidate must meet the requirements for a standard Health Science Technology Education: Grades 8-12 certificate by August 31, 2017. All applications must be complete and received by the TEA by October 30, 2017.

(1) The standard Health Science Technology Education: Grades 8-12 certificate shall require the following:

(A) an associate or more advanced degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB;

(B) current licensure, certification, or registration by a nationally recognized accrediting agency as a health professions practitioner; and

(C) approval, by the certification officer of an approved educator preparation program (EPP), of two years of wage-earning experience using the licensure requirement described in subparagraph (B) of this paragraph.

(2) The standard Health Science Technology Education: Grades 8-12 certificate curricula shall be based on the standards approved by the State Board for Educator Certification. A candidate for this certificate must pass the appropriate certification examinations.

(e) Health Science: Grades 6-12 certificate. The standard Health Science: Grades 6-12 certificate may be issued no earlier than September 1, 2014. A standard Health Science: Grades 6-12 certificate shall be based on experience and academic preparation in the skill area.

(1) The standard Health Science: Grades 6-12 certificate shall require the following:

(A) an associate or more advanced degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB;

(B) current licensure, certification, or registration by a nationally recognized accrediting agency as a health professions practitioner; and

(C) approval, by the certification officer of an approved EPP, of two years of full-time wage-earning experience using the licensure requirement described in subparagraph (B) of this paragraph.

(2) The standard Health Science: Grades 6-12 certificate curricula shall be based on the standards approved by the State Board for Educator Certification. A candidate for this certificate must pass the appropriate certification examinations.

(f) Trade and Industrial Education: Grades 8-12 certificate. A standard Trade and Industrial Education: Grades 8-12 certificate shall be based on academic preparation and experience in the skill areas to be taught and completion of specified pedagogy and professional responsibilities training. [A candidate must meet the requirements for a standard Trade and Industrial Education: Grades 8-12 certificate by

August 31, 2016. All applications must be complete and received by the TEA by October 30, 2016.]

(1) The standard Trade and Industrial Education: Grades 8-12 certificate shall require the following academic preparation and wage-earning experience.

(A) Option I. An individual must:

(i) hold a bachelor's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB; and

(ii) have two years of full-time wage-earning experience within the past ten years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP approved to prepare teachers for the Trade and Industrial Education: Grades 8-12 certificate. Up to 18 months of the wage-earning experience can be met through a formal documented internship.

(B) Option II. An individual must:

(i) hold an associate degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB; and

(ii) have two years of full-time wage-earning experience within the past ten years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP approved to prepare teachers for the Trade and Industrial Education: Grades 8-12 certificate.

(C) Option III. An individual must:

(i) hold a high school diploma or the equivalent; and

(ii) have five years of full-time wage-earning experience within the past eight years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP approved to prepare teachers for the Trade and Industrial Education: Grades 8-12 certificate.

(2) The standard Trade and Industrial Education: Grades 8-12 certificate shall require current licensure, certification, or registration by a nationally recognized accrediting agency based on a recognized test or measurement. If the licensure, certification, or registration is not based on a recognized test or measurement, then passing the appropriate National Occupational Competency Testing Institute (NOCTI) assessment is required. A cosmetology teacher must hold a current cosmetology instructor license issued by the Texas Department of Licensing and Regulation.

(3) An individual must complete one year of creditable classroom teaching experience, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service), on an emergency permit or probationary certificate in the specific area of trade and industrial education.

(4) The holder of a standard or provisional Trade and Industrial Education: Grades 8-12 certificate or Vocational Trades and Industry certificate may be approved for additional trade and industrial education assignments provided he or she meets the required number of years of wage-earning experience as indicated in this subsection. Work experience must be approved according to the provisions of this subsection. The EPP must submit a statement of qualifications to the Texas Education Agency (TEA) within 60 calendar days of approval.

(g) Trade and Industrial Education: Grades 6-12 certificate. The certificate may be issued no earlier than September 1, 2014. A standard Trade and Industrial Education: Grades 6-12 certificate shall be based on academic preparation and experience in the skill areas to be taught and completion of specified pedagogy and professional responsibilities training.

(1) The standard Trade and Industrial Education: Grades 6-12 certificate shall require the following academic preparation and wage-earning experience.

(A) Option I. An individual must:

(i) hold a bachelor's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB; and

(ii) have two years of full-time wage-earning experience within the past ten years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP approved to prepare teachers for the Trade and Industrial Education: Grades 6-12 certificate. Up to 18 months of the wage-earning experience can be met through a formal documented internship.

(B) Option II. An individual must:

(i) hold an associate degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB; and

(ii) have two years of full-time wage-earning experience within the past ten years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP approved to prepare teachers for the Trade and Industrial Education: Grades 6-12 certificate.

(C) Option III. An individual must:

(i) hold a high school diploma or the equivalent; and

(ii) have five years of full-time wage-earning experience within the past ten years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP approved to prepare teachers for the Trade and Industrial Education: Grades 6-12 certificate.

(2) The standard Trade and Industrial Education: Grades 6-12 certificate shall require current licensure, certification, or registration by a nationally recognized accrediting agency based on a recognized test or measurement. If the licensure, certification, or registration is not based on a recognized test or measurement, then passing the appropriate NOCTI assessment is required. A cosmetology teacher must hold a current cosmetology instructor license issued by the Texas Department of Licensing and Regulation.

(3) An individual must complete one year of creditable classroom teaching experience, as defined in Chapter 153, Subchapter CC, of this title, on an emergency permit or probationary certificate in the specific area of trade and industrial education.

(4) The holder of a standard or provisional Trade and Industrial Education: Grades 6-12 certificate or Vocational Trades and Industry certificate may be approved for additional trade and industrial education assignments provided he or she meets the required number of years of wage-earning experience as indicated in this subsection. Work experience must be approved according to the provisions of this subsection. The EPP must submit a statement of qualifications to the TEA within 60 calendar days of approval.

(h) Career and technical education certificates. Approval of career and technical education certificates in this section shall be based on prior experience and preparation in a skill area.

(1) Prospective career and technical education teachers shall submit a statement of qualifications detailing prior experience and skill area preparation to the EPP approved to prepare teachers for the career and technical education certificate sought. The certification officer of the EPP shall review the applicant's statement of qualifications to determine whether the applicant meets the appropriate approval criteria specified in this subsection. In the case of an educator who otherwise qualifies for certification by examination in Marketing Education: Grades 8-12, ~~and~~ Marketing: Grades 6-12, Health Science Technology Education: Grades 8-12, Health Science: Grades 6-12, or Trade and Industrial Education: Grades 6-12, the review and approval of required work experience may be performed by a certified school administrator.

(2) Under this subsection, 12 months of wage-earning experience consisting of at least 40 hours per week shall equal one year of full-time experience. Wage-earning experience consisting of less than 40 hours, but at least 20 hours per week, shall be calculated at a 50% rate in determining years of full-time experience. Wage-earning experience consisting of less than 20 hours per week shall not be considered acceptable in determining full-time experience.

(3) Postsecondary and proprietary school teaching experience in the specific occupational area for which the candidate is seeking certification may be counted on a year-for-year basis in lieu of on-the-job experience. Proprietary schools must be accredited or otherwise approved by the Texas Workforce Commission. Recency of experience requirements must be met, as well as current licensure, certification, or registration by a state or nationally recognized accrediting agency.

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

Filed with the Office of the Secretary of State on August 15, 2016.

TRD-201604156

Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: September 25, 2016

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



CHAPTER 247. EDUCATORS' CODE OF ETHICS

19 TAC §247.1, §247.2

The State Board for Educator Certification (SBEC) proposes amendments to 19 TAC §247.1 and §247.2, concerning the educators' code of ethics. The SBEC rules in 19 TAC Chapter 247 establish the purpose and scope of the Educators' Code of Ethics and standard practices for Texas educators. The proposed amendment to 19 TAC §247.1 would make conforming changes to correctly refer to the titles of cross-referenced sections from 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases. The proposed amendment to 19 TAC §247.2 would implement the Every Student Succeeds Act (ESSA) and would make it a violation of the Educators' Code

of Ethics for an educator to be intoxicated on school property or during school activities when students are present.

The proposed amendment to 19 TAC §247.1 would conform the titles of cross-referenced sections in 19 TAC Chapter 249 to the new titles of those sections following recent revisions to Chapter 249.

The proposed amendment to 19 TAC §247.2(1)(M) is intended to prohibit educators from being under the influence of alcohol while working as educators. Without language explicitly prohibiting educators from being under the influence of alcohol, it has been difficult for the SBEC to penalize educators who exhibit symptoms of alcohol intoxication while working as educators, but are not witnessed actually drinking on campus.

The proposed amendment that would add new 19 TAC §247.2(1)(N) is intended to implement the ESSA, 20 United States Code, §7926 (2015), which requires state educational agencies that receive federal funds to adopt rules that prohibit school employees from assisting other school employees from obtaining new jobs if the individual knows or has probable cause to believe that the individual seeking a job has engaged in sexual misconduct regarding a minor or student.

The proposed amendments would have no additional procedural and reporting implications. The proposed amendments would have no additional locally maintained paperwork requirements.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed amendments are in effect there would be no additional costs for state and local government as a result of enforcing or administering the proposed amendments. There is no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. 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 definitions and standards of professional conduct more closely reflecting the expectations of the citizens of the state and the SBEC. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. 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.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins August 26, 2016, and ends September 26, 2016. The SBEC will take registered oral and written comments on the proposed amendments to 19 TAC §247.1 and §247.2 at the October 7, 2016, meeting in accordance with the SBEC board operating policies and procedures. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to sbecrules@tea.texas.gov. 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, 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* on August 26, 2016.

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which charges the State Board for Educator Certification (SBEC) with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.041(a), which authorizes the SBEC to adopt rules as necessary to implement its procedures; and TEC, §21.041(b)(1), (7), and (8), which give the SBEC rulemaking authority to regulate educators, provide for disciplinary proceedings against educators, and create and enforce an educator's code of ethics; and 20 United States Code, §7926 (ESSA), which requires state educational agencies to adopt rules prohibiting school employees from assisting another school employee in obtaining a new job, if the school employee seeking employment has engaged in illegal sexual misconduct with a student or minor.

CROSS REFERENCE TO STATUTE. The proposed amendments implement the TEC, §21.031(a) and §21.041(a) and (b)(1), (7), and (8); and 20 United States Code, §7926 (ESSA).

§247.1. *Purpose and Scope; Definitions.*

(a) In compliance with the Texas Education Code, §21.041(b)(8), the State Board for Educator Certification (SBEC) adopts an Educators' Code of Ethics as set forth in §247.2 of this title (relating to Code of Ethics and Standard Practices for Texas Educators). The SBEC may amend the ethics code in the same manner as any other formal rule.

(b) The Texas educator shall comply with standard practices and ethical conduct toward students, professional colleagues, school officials, parents, and members of the community and shall safeguard academic freedom. The Texas educator, in maintaining the dignity of the profession, shall respect and obey the law, demonstrate personal integrity, and exemplify honesty and good moral character. The Texas educator, in exemplifying ethical relations with colleagues, shall extend just and equitable treatment to all members of the profession. The Texas educator, in accepting a position of public trust, shall measure success by the progress of each student toward realization of his or her potential as an effective citizen. The Texas educator, in fulfilling responsibilities in the community, shall cooperate with parents and others to improve the public schools of the community. This chapter shall apply to educators and candidates for certification.

(c) The SBEC is solely responsible for enforcing the Educators' Code of Ethics for purposes related to certification disciplinary proceedings. The Educators' Code of Ethics is enforced through the disciplinary procedure set forth in Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases) pursuant to the purposes stated therein.

(d) As provided in §249.5 of this title (relating to Purpose; Policy Governing Disciplinary Proceedings), the primary goals the SBEC seeks to achieve in educator disciplinary matters are:

- (1) to protect the safety and welfare of Texas schoolchildren and school personnel;
- (2) to ensure educators and applicants are morally fit and worthy to instruct or to supervise the youth of the state; and
- (3) to fairly and efficiently resolve educator disciplinary proceedings at the least expense possible to the parties and the state.

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

(1) Abuse--Includes the following acts or omissions:

(A) mental or emotional injury to a student or minor that results in an observable and material impairment in the student's or minor's development, learning, or psychological functioning;

(B) causing or permitting a student or minor to be in a situation in which the student or minor sustains a mental or emotional injury that results in an observable and material impairment in the student's or minor's development, learning, or psychological functioning;

(C) physical injury that results in substantial harm to a student or minor, or the genuine threat of substantial harm from physical injury to the student or minor, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline; or

(D) sexual conduct harmful to a student's or minor's mental, emotional, or physical welfare.

(2) Applicant--A party seeking issuance, renewal, or reinstatement of a certificate from the Texas Education Agency staff or the State Board for Educator Certification.

(3) Code of Ethics--The Educators' Code of Ethics codified in this chapter.

(4) Complaint--A written statement submitted to the Texas Education Agency staff that contains essential facts alleging improper conduct by an educator, applicant, or examinee, the complainant's verifiable contact information, including full name, complete address, and phone number, which provides grounds for sanctions.

(5) Contested case--A proceeding under this chapter in which the legal rights, duties, and privileges related to a party's educator certificate are to be determined by the State Board for Educator Certification and/or the State Office of Administrative Hearings commencing when a petition is properly served under this chapter.

(6) Disciplinary proceedings--Any matter arising under this chapter or Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases) that results in a final order or finding issued by the Texas Education Agency staff, the State Office of Administrative Hearings, or the State Board for Educator Certification relating to the legal rights, duties, privileges, and status of a party's educator certificate.

(7) Educator--A person who is required to hold a certificate issued under the Texas Education Code, Chapter 21, Subchapter B.

(8) Endanger--Exposure of a student or minor to unjustified risk of injury or to injury that jeopardizes the physical health or safety of the student or minor without regard to whether there has been an actual injury to the student or minor.

(9) Good moral character--The virtues of a person as evidenced by patterns of personal, academic, and occupational behaviors that, in the judgment of the State Board for Educator Certification, indicate honesty, accountability, trustworthiness, reliability, and integrity. Lack of good moral character may be evidenced by the commission of crimes relating directly to the duties and responsibilities of the education profession as described in §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), or by the commission of acts involving moral turpitude, but conduct that evidences a lack of good moral character is not necessarily limited to such crimes or acts.

(10) Intentionally--An educator acts intentionally, or with intent, with respect to the nature of his or her conduct or to a result of his or her conduct when it is his or her conscious objective or desire to engage in the conduct or cause the result.

(11) Knowingly--An educator acts knowingly, or with knowledge, with respect to the nature of his or her conduct or to circumstances surrounding his or her conduct when he or she is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his or her conduct when he or she is aware that the conduct is reasonably certain to cause the result.

(12) Minor--A person under 18 years of age.

(13) Moral turpitude--Improper conduct, including, but not limited to, the following: dishonesty; fraud; deceit; theft; misrepresentation; deliberate violence; base, vile, or depraved acts that are intended to arouse or to gratify the sexual desire of the actor; drug or alcohol related offenses as described in §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); or acts constituting abuse or neglect under the Texas Family Code, §261.001.

(14) Neglect--The placing or leaving of a student or minor in a situation where the student or minor would be exposed to a substantial risk of physical or mental harm.

(15) Recklessly--An educator acts recklessly, or is reckless, with respect to circumstances surrounding his or her conduct or the results of his or her conduct when he or she is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur.

(16) Sanction--A disciplinary action by the State Board for Educator Certification, including a restriction, reprimand, suspension, revocation of a certificate, or a surrender in lieu of disciplinary action.

(17) State Board for Educator Certification--The State Board for Educator Certification acting through its voting members in a decision-making capacity.

(18) State Board for Educator Certification member(s)--One or more of the members of the State Board for Educator Certification, appointed and qualified under the Texas Education Code, §21.033.

(19) Student--A person enrolled in a primary or secondary school, whether public, private, or charter, regardless of the person's age, or a person 18 years of age or younger who is eligible to be enrolled in a primary or secondary school, whether public, private, or charter.

(20) Texas Education Agency staff--Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's administrative functions and services.

(21) Worthy to instruct or to supervise the youth of this state--Presence of those moral, mental, and psychological qualities that are required to enable an educator to render the service essential to the accomplishment of the goals and mission of the State Board for Educator Certification policy and this chapter.

§247.2. *Code of Ethics and Standard Practices for Texas Educators.*

Enforceable Standards.

(1) Professional Ethical Conduct, Practices and Performance.

(A) Standard 1.1. The educator shall not intentionally, knowingly, or recklessly engage in deceptive practices regarding official policies of the school district, educational institution, educator preparation program, the Texas Education Agency, or the State Board for Educator Certification (SBEC) and its certification process.

(B) Standard 1.2. The educator shall not knowingly misappropriate, divert, or use monies, personnel, property, or equipment committed to his or her charge for personal gain or advantage.

(C) Standard 1.3. The educator shall not submit fraudulent requests for reimbursement, expenses, or pay.

(D) Standard 1.4. The educator shall not use institutional or professional privileges for personal or partisan advantage.

(E) Standard 1.5. The educator shall neither accept nor offer gratuities, gifts, or favors that impair professional judgment or to obtain special advantage. This standard shall not restrict the acceptance of gifts or tokens offered and accepted openly from students, parents of students, or other persons or organizations in recognition or appreciation of service.

(F) Standard 1.6. The educator shall not falsify records, or direct or coerce others to do so.

(G) Standard 1.7. The educator shall comply with state regulations, written local school board policies, and other state and federal laws.

(H) Standard 1.8. The educator shall apply for, accept, offer, or assign a position or a responsibility on the basis of professional qualifications.

(I) Standard 1.9. The educator shall not make threats of violence against school district employees, school board members, students, or parents of students.

(J) Standard 1.10. The educator shall be of good moral character and be worthy to instruct or supervise the youth of this state.

(K) Standard 1.11. The educator shall not intentionally or knowingly misrepresent his or her employment history, criminal history, and/or disciplinary record when applying for subsequent employment.

(L) Standard 1.12. The educator shall refrain from the illegal use or distribution of controlled substances and/or abuse of prescription drugs and toxic inhalants.

(M) Standard 1.13. The educator shall not be under the influence of alcohol or consume alcoholic beverages on school property or during school activities when students are present.

(N) Standard 1.14. The educator shall not assist another educator, school employee, contractor, or agent in obtaining a new job as an educator or in a school, apart from the routine transmission of administrative and personnel files, if the educator knows or has probable cause to believe that such person engaged in sexual misconduct regarding a minor or student in violation of the law.

(2) Ethical Conduct Toward Professional Colleagues.

(A) Standard 2.1. The educator shall not reveal confidential health or personnel information concerning colleagues unless disclosure serves lawful professional purposes or is required by law.

(B) Standard 2.2. The educator shall not harm others by knowingly making false statements about a colleague or the school system.

(C) Standard 2.3. The educator shall adhere to written local school board policies and state and federal laws regarding the hiring, evaluation, and dismissal of personnel.

(D) Standard 2.4. The educator shall not interfere with a colleague's exercise of political, professional, or citizenship rights and responsibilities.

(E) Standard 2.5. The educator shall not discriminate against or coerce a colleague on the basis of race, color, religion, national origin, age, gender, disability, family status, or sexual orientation.

(F) Standard 2.6. The educator shall not use coercive means or promise of special treatment in order to influence professional decisions or colleagues.

(G) Standard 2.7. The educator shall not retaliate against any individual who has filed a complaint with the SBEC or who provides information for a disciplinary investigation or proceeding under this chapter.

(3) Ethical Conduct Toward Students.

(A) Standard 3.1. The educator shall not reveal confidential information concerning students unless disclosure serves lawful professional purposes or is required by law.

(B) Standard 3.2. The educator shall not intentionally, knowingly, or recklessly treat a student or minor in a manner that adversely affects or endangers the learning, physical health, mental health, or safety of the student or minor.

(C) Standard 3.3. The educator shall not intentionally, knowingly, or recklessly misrepresent facts regarding a student.

(D) Standard 3.4. The educator shall not exclude a student from participation in a program, deny benefits to a student, or grant an advantage to a student on the basis of race, color, gender, disability, national origin, religion, family status, or sexual orientation.

(E) Standard 3.5. The educator shall not intentionally, knowingly, or recklessly engage in physical mistreatment, neglect, or abuse of a student or minor.

(F) Standard 3.6. The educator shall not solicit or engage in sexual conduct or a romantic relationship with a student or minor.

(G) Standard 3.7. The educator shall not furnish alcohol or illegal/unauthorized drugs to any person under 21 years of age unless the educator is a parent or guardian of that child or knowingly allow any person under 21 years of age unless the educator is a parent or guardian of that child to consume alcohol or illegal/unauthorized drugs in the presence of the educator.

(H) Standard 3.8. The educator shall maintain appropriate professional educator-student relationships and boundaries based on a reasonably prudent educator standard.

(I) Standard 3.9. The educator shall refrain from inappropriate communication with a student or minor, including, but not limited to, electronic communication such as cell phone, text messaging, email, instant messaging, blogging, or other social network communication. Factors that may be considered in assessing whether the communication is inappropriate include, but are not limited to:

(i) the nature, purpose, timing, and amount of the communication;

(ii) the subject matter of the communication;

(iii) whether the communication was made openly or the educator attempted to conceal the communication;

(iv) whether the communication could be reasonably interpreted as soliciting sexual contact or a romantic relationship;

(v) whether the communication was sexually explicit; and

(vi) whether the communication involved discussion(s) of the physical or sexual attractiveness or the sexual history, activities, preferences, or fantasies of either the educator or the student.

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 15, 2016.

TRD-201604157

Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: September 25, 2016

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



CHAPTER 249. DISCIPLINARY PROCEEDINGS, SANCTIONS, AND CONTESTED CASES

SUBCHAPTER B. ENFORCEMENT ACTIONS AND GUIDELINES

19 TAC §249.14, §249.17

The State Board for Educator Certification (SBEC) proposes amendments to 19 TAC §249.14 and §249.17, concerning disciplinary proceedings, sanctions, and contested cases. The SBEC rules in 19 TAC Chapter 249 establish guidelines and procedures for conducting investigations and disciplinary actions relating to educator misconduct. The proposed amendment to 19 TAC §249.14(d) would conform the rule on superintendent reporting to SBEC with changes to the Texas Education Code (TEC), §21.006, as a result of House Bill (HB) 1783, 84th Texas Legislature, Regular Session, 2015. The proposed amendment to 19 TAC §249.14(h) would include inappropriate communications with a student and inappropriate educator-student relationships and boundaries to the behaviors by an educator toward students that qualify as "Priority 1" conduct for purposes of investigation priority, investigative notices, and sanction authority. The proposed amendment to 19 TAC §249.17 would create a mandatory minimum sanction for an educator who tests positive for, possesses, or is under the influence of drugs or alcohol on campus. The proposed amendment would also require permanent revocation for an educator who injures a student, but is not immune from disciplinary action.

The proposed amendment to 19 TAC §249.14(d) is intended to update the rule to meet the requirements of amendments to TEC, §21.006, enacted by HB 1783, 84th Texas Legislature, Regular Session, 2015. The changes are intended to eliminate any discrepancy between the statute and the rule and to prevent confusion about when a superintendent or director must report to the SBEC.

The proposed amendment to 19 TAC §249.14(h) is intended to clarify the breadth of "soliciting or engaging in sexual conduct or a romantic relationship with a student or minor" by explicitly stating that inappropriate communication, inappropriate professional educator-student relationships, and boundaries are all included as "Priority 1" misconduct. Inappropriate professional educator-student relationships and boundaries and inappropriate communication with a student or minor are violations of the Educators' Code of Ethics, 19 TAC §247.2(3)(H) and (I). To ensure the health, safety, and welfare of students and minors, the SBEC must prioritize investigations and immediately place investigation notices on the certificates of all educators who are alleged to have engaged in any form of an inappropriate relationship between the educator and students or minors, including inappropriate communications and inappropriate educator-student boundaries.

The proposed amendment to 19 TAC §249.14(k) would expand the reasons for which Texas Education Agency (TEA) staff may toll the time limit for removal of an investigative notice on the certificate of an educator under investigation to include administrative investigations and administrative enforcement litigation. This would allow TEA staff to avoid redundant parallel investigations and thereby preserve resources by waiting for a related administrative investigation conducted by another division of TEA or another state or federal agency to conclude before determining how to proceed with the SBEC investigation of the educator.

The proposed amendment to 19 TAC §249.17(d)(2)(A) would increase the length of time in advance of the start of school that an educator would have to give written notice of resignation to the school district in order to have the advance notice count as a mitigating factor in a disciplinary action for contract abandonment. The increased notice period for mitigation acknowledges that two weeks is not sufficient time for a school district to find a replacement teacher before the start of the next school year and prevents an educator from getting a lesser penalty when the educator's contract abandonment leaves the school district without reasonable time to find a replacement.

The proposed amendment to 19 TAC §249.17(d)(3)(C), (e)(4), and relettered (i) are intended to clarify that for determining penalty, the SBEC treats default cases the same as cases following a contested case hearing at the State Office of Administrative Hearings (SOAH). This reflects the majority of SBEC precedent in final orders arising from both default cases and contested cases. The proposed amendment is, therefore, not intended to increase penalties in default cases, but to ensure fairness and predictability in SBEC decisions regarding default cases.

The proposed amendment would add a new subsection (h) to 19 TAC §249.17 that would create a mandatory minimum sanction of a one-year suspension and required completion of a drug or alcohol treatment program for educators who are subject to sanction for testing positive for drugs or alcohol, or are in possession of drugs or alcohol, while on a school campus. This mandatory minimum is intended to give clear guidance to staff at TEA and administrative law judges at SOAH regarding appropriate penalties in such cases and to ensure fairness and predictability in SBEC decisions regarding such cases.

The proposed amendment to relettered 19 TAC §249.17(i) would add intentional, knowing, or reckless injury to a student or minor from which the educator is not immune under TEC, §22.0512, to the list of conduct for which permanent revocation is the mandatory penalty. The proposed amendment parallels the elements of

the criminal charge of felony injury to a child because the majority of cases for which the SBEC has ordered permanent revocation in the past have involved criminal charges of injury to a child. The proposed amendment is intended to reflect the extreme danger that such conduct presents to students and to ensure fairness and predictability in SBEC decisions regarding such cases.

The proposed amendments would have no additional procedural and reporting implications. The proposed amendments would have no additional locally maintained paperwork requirements.

FISCAL NOTE. Ryan Franklin, associate commissioner for educator leadership and quality, has determined that for the first five-year period the proposed amendments are in effect there would be no additional costs for state and local government as a result of enforcing or administering the proposed amendments. There is no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. 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 continued effective regulation and discipline of certified educators to ensure that certified educators are qualified, safe, and worthy to instruct the students of Texas. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. 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.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins August 26, 2016, and ends September 26, 2016. The SBEC will take registered oral and written comments on the proposed amendments to 19 TAC §249.14 and §249.17 at the October 7, 2016, meeting in accordance with the SBEC board operating policies and procedures. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to sbecrules@tea.texas.gov. 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, 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* on August 26, 2016.

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.006(a)-(c), (f), and (g), which set reporting requirements for when superintendents and directors have to inform State Board for Educator Certification (SBEC) regarding an educator's criminal record, termination, or resignation. The statute requires the superintendent or director to inform SBEC not later than the seventh day after the superintendent knows any of the following has occurred: (1) an educator has a criminal history that the superintendent learned about other than through the standard criminal history background check; (2) an educator's employment is terminated based on evidence that the educator committed certain misconduct; or (3) an educator

resigned and there is evidence that the educator may have engaged in misconduct; the TEC, §21.006, also gives SBEC authority to make rules as necessary and to sanction an educator who fails to make a required report; the TEC, §21.007, which requires the SBEC to propose rules that provide for a procedure for placing a public notice of alleged misconduct on an educator's certificate immediately when the educator is alleged to have committed misconduct that presents a risk to the health, safety, or welfare of a student or minor. The TEC, §21.007, also allows the SBEC to determine what types of misconduct would present such a risk; the TEC, §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; the TEC, §21.035, which states that Texas Education Agency (TEA) staff provides administrative functions and services for SBEC and gives SBEC the authority to delegate to either the commissioner of education or to TEA staff the authority to settle or otherwise informally dispose of contested cases involving educator certification; the TEC, §21.041(a), which authorizes the SBEC to adopt rules as necessary to implement its procedures; the TEC, §21.041(b)(1), (7), and (8), which give the SBEC rulemaking authority to regulate educators, specify requirements for the issuance and renewal of an educator certificate, provide for disciplinary proceedings against educators, and create and enforce an educator's code of ethics; the TEC, §21.058, which requires SBEC to revoke an educator's certificate if the educator is convicted of certain felony offenses or offenses that require the defendant to register as a sex offender, and the victim of the offense was under 18 years old; the TEC, §21.060, which sets out crimes that relate to the education profession and authorizes the SBEC to sanction or refuse to issue a certificate to any person who has been convicted of one of these offenses; the TEC, §§21.105(c), 21.160(c), and 21.210(c), which give SBEC authority to sanction an educator who has a continuing, term, or probationary contract and who resigns without good cause; the TEC, §22.085, which allows the SBEC to sanction educators who fail to fire or to refuse to hire an applicant when the educator knew or should have known from the background check that the employee had a criminal record reflecting certain offenses and requires a superintendent to certify to the commissioner of education that the school district is in compliance with this section; the TEC, §22.087, which requires a superintendent to report to SBEC if the superintendent knows of information showing that an educator or an applicant for an educator certificate has criminal history that is not reflected in the criminal history information provided by the Texas Department of Public Safety in response to a background check; and the TEC, §57.491(g), which requires the SBEC to refuse to renew the certificate of any educator who is in default on student loan payments; the Texas Government Code, §2001.058, which sets out the powers and duties of the State Office of Administrative Hearings and other state agencies with regard to contested case proceedings; and the Texas Occupations Code, §§53.021(a), 53.022-53.025, 53.051, and 53.052, which give the SBEC the authority to automatically suspend, revoke, or disqualify a person from receiving an educator certificate if the person has been convicted of certain offenses.

CROSS REFERENCE TO STATUTE. The proposed amendments implement the TEC, §§21.006(a)-(c), (f), and (g); 21.007; 21.031(a); 21.035; 21.041(a) and (b)(1), (4), (7), and (8); 21.058; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.085; 22.087; and 57.491(g); Texas Government Code, §2001.058; and Texas Occupations Code, §§53.021(a), 53.022-53.025, 53.051, and 53.052.

§249.14. Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition.

(a) The Texas Education Agency (TEA) staff may obtain and investigate information concerning alleged improper conduct by an educator, applicant, examinee, or other person subject to this chapter that would warrant the State Board for Educator Certification (SBEC) denying relief to or taking disciplinary action against the person or certificate.

(b) Complaints against an educator, applicant, or examinee must be filed in writing.

(c) The TEA staff may also obtain and act on other information providing grounds for investigation and possible action under this chapter.

(d) A person who serves as the superintendent of a school district or the director of an open-enrollment charter school, private school, regional education service center, or shared services arrangement may notify the SBEC of any educator misconduct that the person believes in good faith may be subject to sanctions under this chapter and/or Chapter 247 of this title (relating to Educators' Code of Ethics). However, under any of the following circumstances, a person who serves in such a position shall promptly notify the SBEC in writing by filing a report with the TEA staff within seven calendar days of the date the person knew ~~first obtains or has knowledge~~ of those circumstances, and may be subject to sanctions for failure to do so, pursuant to §249.15(b)(4) of this title (relating to Disciplinary Action by State Board for Educator Certification):

(1) that an applicant for or a holder of a certificate has a reported criminal history;

(2) that a certificate holder was terminated from employment based on evidence ~~a determination~~ that he or she committed any of the following acts:

(A) sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor;

(B) was involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor;

(C) ~~[(B)]~~ possessed, transferred, sold, or distributed a controlled substance;

(D) ~~[(C)]~~ illegally transferred, appropriated, or expended school property or funds;

(E) ~~[(D)]~~ attempted by fraudulent or unauthorized means to obtain or to alter any certificate or permit that would entitle the individual to be employed in a position requiring such certificate or permit or to receive additional compensation associated with a position;

(F) ~~[(E)]~~ committed a crime, any part of such crime having occurred on school property or at a school-sponsored event; or

(G) ~~[(F)]~~ solicited or engaged in sexual conduct or a romantic relationship with a student or minor;

(3) that a certificate holder has submitted a notice of resignation and that there exists evidence ~~[that would support a finding]~~ that he or she committed one of the acts specified in paragraph (2) of this subsection.

(A) Before accepting an employee's resignation that, under this paragraph, requires a person to notify the SBEC by filing a report with the TEA staff, the person shall inform the certificate holder in writing that such a report will be filed and that sanctions against his or her certificate may result as a consequence.

(B) A person required to comply with this paragraph shall notify the governing body of the employing school district before filing the report with the TEA staff.

(C) A superintendent or director of a school district shall complete an investigation of an educator if there is reasonable cause to believe the educator may have engaged in misconduct described in paragraph (2)(A) of this subsection despite the educator's resignation from district employment before completion of the investigation; or

(4) any other circumstances requiring a report under the Texas Education Code (TEC), §21.006.

(e) Pursuant to the TEC, §21.006(c) and (h), a report filed under subsection (d) of this section must include the name or names of any student or minor who is the victim of abuse or unlawful conduct by an educator and shall, at a minimum, describe in detail the factual circumstances requiring the report and identify the subject of the report by providing the following available information: name and any aliases; certificate number, if any, or social security number; last known mailing address and home and daytime phone numbers; all available contact information for any alleged victim or victims; and name or names and any available contact information of any relevant witnesses to the circumstances requiring the report. Pursuant to the Family Educational Rights and Privacy Act (FERPA), 20 United States Code, §1232g(a)(4), and the federal regulations interpreting it at 34 Code of Federal Regulations, §99.3, education records that are protected by FERPA must be records that are directly related to a student, and the term "education records" does not include records that relate to a school employee in his or her capacity as a school employee. A person who is required to file a report under subsection (d) of this section but fails to do so timely is subject to sanctions under this chapter.

(f) If a school district board of trustees learns of a failure by the superintendent of the district or a district principal to provide a notice required under the Texas Code of Criminal Procedure (TCCP), §15.27(a), (a-1), or (b), the board of trustees shall report the failure to the SBEC. If the governing body of a private primary or secondary school learns of a failure by the principal of the school to provide a notice required under the TCCP, §15.27(e), and the principal holds a certificate issued under the TEC, Chapter 21, Subchapter B, the governing body shall report the failure to the SBEC.

(g) The TEA staff shall not pursue sanctions against an educator who is alleged to have abandoned his or her TEC, Chapter 21, contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c), subject to the limitations imposed by the TEC, §21.4021(g), unless the board of trustees of the employing school district:

(1) submits a written complaint to the TEA staff within 30 calendar days after the effective date of the educator's separation from employment from the school district. For purposes of this section, unless the school district and the educator have a written agreement to the contrary, the effective date of separation from employment is the first day that, without district permission, the educator fails to appear for work under the contract;

(2) renders a finding that good cause did not exist under the TEC, §§21.105(c)(2), 21.160(c)(2), or 21.210(c)(2). This finding constitutes prima facie evidence of the educator's lack of good cause, but is not a conclusive determination; and

(3) submits the following required attachments to the written complaint:

(A) the educator's resignation letter, if any;

(B) the agreement with the educator regarding the effective date of separation from employment, if any;

(C) the educator's contract; and

(D) school board meeting minutes indicating a finding of "no good cause" (if the board does not meet within 30 calendar days of the educator's separation from employment, the minutes may be submitted within 10 calendar days after the next board meeting).

(h) To efficiently administer and implement the SBEC's purpose under this chapter and the TEC, the TEA staff may set priorities for the investigation of complaints based on the severity and immediacy of the allegations and the likelihood of harm posed by the subject of the investigation. All cases accepted for investigation shall be assigned one of the following priorities.

(1) Priority 1: conduct that may result in the placement of an investigative notice pursuant to the TEC, §21.007, and subsection (i) of this section because it presents a risk to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague, including, but not limited to, the following:

(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; and

(L) conduct that involves inappropriate communication with a student as described in §247.2(3)(I) of this title (relating to Code of Ethics and Standard Practices for Texas Educators), inappropriate professional educator-student relationships and boundaries, or otherwise soliciting or engaging in sexual conduct or a romantic relationship with a student or minor.

(2) Priority 2: any sanctionable conduct that is not Priority 1 conduct under paragraph (1) of this subsection. An investigative notice will not be placed on an educator's certification records on the basis of an allegation of Priority 2 conduct. The TEA staff may change a case's priority at any time based on information received. Priority 2 conduct includes, but is not limited to, the following:

(A) any conduct constituting a misdemeanor criminal offense or testing violation that is not Priority 1 conduct;

(B) contract abandonment; and

(C) code of ethics violations that do not constitute Priority 1 conduct.

(i) After accepting a case for investigation, if the alleged conduct indicates a risk to the health, safety, or welfare of a student or minor, as described in subsection (h)(1) of this section, the TEA staff shall immediately place an investigative notice on the certificate holder's certification records stating that the certificate holder is currently under investigation. The placement of such an investigative notice must fol-

low the procedures set forth in subsection (j)(1) of this section. After accepting a case for investigation, if the alleged conduct indicates a risk to the health, safety, or welfare of a parent of a student, fellow employee, or professional colleague, as described in subsection (h)(1) of this section, the TEA staff may place an investigative notice on the certificate holder's certification records stating that the certificate holder is currently under investigation. The placement of an investigative notice must follow the procedures set forth in subsection (j)(2) of this section.

(j) The following procedures must be followed for placing an investigative notice on the educator's certification records.

(1) At the time of placing an investigative notice on an educator's certification records for alleged conduct that indicates a risk to the health, safety, or welfare of a student or minor, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.

(A) Within ten calendar days of placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.91 of this title (relating to Procedures in General).

(B) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct, which forms the basis for the investigative notice, and shall provide the certificate holder the opportunity to show cause within ten calendar days why the notice should be removed from the educator's certification records.

(2) Prior to placing an investigative notice on an educator's certification records for alleged conduct that indicates a risk to the health, safety, or welfare of a parent of a student, fellow employee, or professional colleague, as described in subsection (h)(1) of this section, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.

(A) At least ten calendar days before placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.91 of this title.

(B) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct, which forms the basis for the investigative notice, and shall provide the certificate holder the opportunity to show cause within ten calendar days why the notice should not be placed on the educator's certification records.

(3) The TEA staff shall determine whether or not to remove or place an investigative notice on the educator's certification records, taking into account the educator's response, if any, to the letter notifying the certificate holder of the investigation.

(k) An investigative notice is subject to the following time limits.

(1) An investigative notice may remain on the certification records of a certificate holder for a period not to exceed 240 calendar days.

(2) The TEA staff may toll this time limit if information is received indicating that there is a pending criminal or administrative matter related to the alleged act of misconduct that gives rise to the investigative notice. For purposes of this subsection, a criminal or administrative matter includes an audit by a state or federal agency, an arrest, an investigation, related litigation or other enforcement action brought by a state or federal administrative agency, or a prosecution by a criminal law enforcement agency. Upon receiving notice that the criminal

or administrative matter has been resolved the tolling period shall end. As part of its procedure, the TEA staff will attempt to make bimonthly (once every two months) contact with the [a law enforcement] agency where a related matter [criminal investigation] is pending to determine whether the related matter [criminal investigation] has been closed or otherwise resolved.

(3) The TEA staff may toll this time limit if the matter is referred for a contested case hearing, upon agreement of the parties, or while the matter is pending action by the SBEC on a proposed agreed order.

(l) The TEA staff shall remove an investigative notice from an educator's certification records:

(1) when a case's final disposition occurs within the time limits established in subsection (k) of this section; or

(2) when the time limits for an investigative notice have been exceeded, if:

(A) the certificate holder has made a written demand to the TEA staff that the investigative notice be removed because the time limits have been exceeded; and

(B) the TEA staff has failed to refer the matter to the State Office of Administrative Hearings for a contested case hearing within 30 calendar days from the date of receipt of the written demand to remove the investigative notice.

(m) Only the TEA staff may file a petition seeking sanctions under §249.15 of this title. Prior to filing a petition, the TEA staff shall mail to the certificate holder affected by written notice of the facts or conduct alleged to warrant the intended action and shall provide the certificate holder an opportunity to show compliance with all requirements of law.

§249.17. *Decision-Making Guidelines.*

(a) Purpose. The purpose of these guidelines is to achieve the following objectives:

(1) to provide a framework of analysis for the Texas Education Agency (TEA) staff, the presiding administrative law judge (ALJ), and the State Board for Educator Certification (SBEC) in considering matters under this chapter;

(2) to promote consistency in the exercise of sound discretion by the TEA staff, the presiding ALJ, and the SBEC in seeking, proposing, and making decisions under this chapter; and

(3) to provide guidance for the informal resolution of potentially contested matters.

(b) Construction and application. This section shall be construed and applied so as to preserve SBEC members' discretion in making final decisions under this chapter. This section shall be further construed and applied so as to be consistent with §249.5(b) of this title (relating to Purpose; Policy Governing Disciplinary Proceedings) and this chapter, the Texas Education Code (TEC), and other applicable law, including SBEC decisions and orders.

(c) Consideration. The following factors may be considered in seeking, proposing, or making a decision under this chapter:

- (1) the seriousness of the violation;
- (2) whether the misconduct was premeditated or intentional;
- (3) attempted concealment of misconduct;
- (4) prior misconduct and SBEC sanctions;

(5) the potential danger the conduct poses to the health and welfare of students;

(6) the effect of the prior conduct upon any victims of the conduct;

(7) whether sufficient time has passed and sufficient evidence is presented to demonstrate that the educator or applicant has been rehabilitated from the prior conduct;

(8) the effect of the conduct upon the educator's good moral character and ability to be a proper role model for students;

(9) whether the sanction will deter future violations; and

(10) any other relevant circumstances or facts.

(d) Contract abandonment.

(1) Good cause. The following factors may be considered good cause when an educator is reported to have abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c):

(A) serious illness or health condition of the educator or close family member of the educator;

(B) relocation to a new city as a result of change in employer of the educator's spouse or partner who resides with the educator; or

(C) significant change in the educator's family needs that requires the educator to relocate or to devote more time than allowed by current employment.

(2) Mitigating factors. The following factors may be considered in seeking, proposing, or making a decision under this chapter regarding an educator who has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c):

(A) educator gave written notice to school district 30 days [~~two weeks~~] or more in advance of the first day of instruction for which the educator will not be present;

(B) educator assisted school district in finding a replacement educator to fill the position;

(C) educator continued to work until the school district hired a replacement educator;

(D) educator assisted in training the replacement educator;

(E) educator showed good faith in communications and negotiations with school district; or

(F) educator provided lesson plans for classes following educator's resignation.

(3) Mandatory minimum sanction for contract abandonment. An educator subject to sanction, who has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c) in a case where the factors listed in paragraph (1) or (2) of this subsection do not apply, may not receive a sanction of less than:

(A) suspension for one year from the first day that, without district permission, the educator failed to appear for work under the contract, provided that the educator has not worked as an educator during that year and the case is resolved within that one year through an agreed final order; or

(B) suspension for one year from either the effective date of an agreed final order resolving the case or an agreed future date at the beginning of the following school year, if the educator has worked as an educator after abandoning the contract; or

(C) suspension for one year from the date that the SBEC adopts an order that becomes final following a default under §249.35 of this title (relating to Disposition Prior to Hearing; Default) or a contested case hearing at the State Office of Administrative Hearings (SOAH).

(e) Mandatory minimum sanction for felony-level conduct. An educator subject to sanction, who is court-ordered to complete a period of deferred adjudication or community supervision for a felony-level criminal offense under state or federal law, may not receive a sanction of less than:

(1) suspension for a period concurrent with the term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has not been employed as an educator during the period of deferred adjudication or community supervision; or

(2) suspension beginning on the effective date of an agreed final order for a period extending beyond the end of the educator's deferred adjudication or community supervision but may be less than the initial court-ordered term of deferred adjudication or community supervision, if the case is resolved through an agreed final order prior to the educator completing deferred adjudication or community supervision and the educator has been employed as an educator during the period of deferred adjudication or community supervision; or

(3) suspension beginning on the effective date of an agreed final order for a period at least half as long as the initial court-ordered term of deferred adjudication or community supervision, if the case is resolved through an agreed final order after the educator has completed deferred adjudication or community supervision; or

(4) suspension for a period equal to the term of deferred adjudication or community supervision that the criminal court initially ordered but beginning from the date of the final board decision, if the case is resolved through a final board decision following a contested case hearing at the SOAH or a default under §249.35 of this title.

(f) Mandatory minimum sanction for misdemeanor-level conduct. If an educator is subject to sanction, and a court has ordered the educator to complete a period of deferred adjudication, community supervision, or pretrial diversion for a misdemeanor-level criminal offense under state or federal law, the educator may not receive a sanction of less than an inscribed reprimand.

(g) Mandatory minimum sanction for test security violation. An educator who intentionally manipulates the results or violates the security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, may not receive a sanction of less than suspension for one year from the effective date of an agreed final order or a final board decision following a contested case hearing at the SOAH.

(h) Mandatory minimum sanction for drugs and alcohol on school campus. An educator who is subject to sanction because the educator has tested positive for drugs or alcohol while on school campus, was under the influence of drugs or alcohol on school campus, or was in possession of drugs or alcohol on school campus may not receive a sanction of less than a one-year suspension and required completion of a drug or alcohol treatment program.

(i) [(h)] Mandatory permanent revocation or denial. Notwithstanding subsection (c) of this section, the SBEC shall permanently revoke the teaching certificate of any educator or permanently deny the application of any applicant if, after a contested case hearing or a default under §249.35 of this title, it is determined that the educator or applicant:

- (1) engaged in any sexual contact or romantic relationship with a student or minor;
- (2) solicited any sexual contact or romantic relationship with a student or minor;
- (3) possessed or distributed child pornography;
- (4) was registered as a sex offender;
- (5) committed criminal homicide;
- (6) transferred, sold, distributed, or conspired to possess, transfer, sell, or distribute any controlled substance, the possession of which would be at least a Class A misdemeanor under the Texas Health and Safety Code, Chapter 481, on school property;
- (7) intentionally, knowingly, or recklessly causes bodily injury to a student or minor when the conduct of the educator or applicant is not immune from disciplinary proceedings by TEC, §22.0512; or
- (8) ~~(7)~~ committed any offense described in the TEC, §21.058.

(j) ~~(i)~~ Sanctioned misconduct in another state. The findings of fact contained in final orders from any other state jurisdiction may provide the factual basis for SBEC disciplinary action. If the underlying conduct for the administrative sanction of an educator's certificate or license issued in another state is a violation of SBEC rules, the SBEC may initiate a disciplinary action regarding the educator's Texas educator certificate and impose a sanction as provided under this chapter.

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

Filed with the Office of the Secretary of State on August 15, 2016.
 TRD-201604158
 Cristina De La Fuente-Valadez
 Director, Rulemaking, Texas Education Agency
 State Board for Educator Certification
 Earliest possible date of adoption: September 25, 2016
 For further information, please call: (512) 475-1497

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 354. MEMORANDA OF UNDERSTANDING

31 TAC §354.2, §354.5

The Texas Water Development Board (TWDB) proposes to repeal 31 Texas Administrative Code (TAC) §354.2 and §354.5.

BACKGROUND AND SUMMARY OF THE FACTUAL ISSUES FOR THE PROPOSED REPEAL.

The TWDB proposes to repeal §354.2, relating to financing and construction of an international wastewater treatment facility in Nuevo Laredo, Tamaulipas, Mexico, because the (MOU) between the TWDB and the International Boundary and Water Commission has expired by its own terms.

The TWDB also proposes to repeal §354.5, relating to coordinated reviews between the TWDB and the Texas Commission on Environmental Quality (TCEQ), because the Letter of Agreement has been superseded.

DISCUSSION OF THE PROPOSED REPEAL.

Section 354.2 is proposed to be repealed due to fulfillment of the conditions of the MOU. By its terms, the MOU was to be in effect for five years after the last units of the wastewater treatment facility began operations. The Nuevo Laredo International Wastewater Treatment Plant began operations in 1996, and the final phase was completed in January 2000.

Since September 21, 1992, the TWDB and TCEQ, formerly the Texas Natural Resource Conservation Commission, have coordinated the reviews related to the design criteria for public water systems and wastewater facility construction in a Letter of Agreement (LOA or Agreement). The existing Agreement in §354.5 has been superseded and the new Agreement reflecting the current interaction between the TWDB and the TCEQ during the coordinated review of water supply projects seeking financing from the TWDB is proposed elsewhere in this issue of the *Texas Register*.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS.

The Chief Financial Officer has determined that there will be no fiscal implications for state or local governments as a result of the proposed repeals. For the first five years the repeals are in effect, there is no expected additional cost to state or local governments.

The repeal of these rules is not expected to result in reductions in costs to either state or local governments. There is no change in costs because there are no direct costs associated with the proposed repeals. These repeals are not expected to have any impact on state or local revenues. These repeals do not require any increase in expenditures for state or local governments as a result of administering the repeals. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these repeals.

PUBLIC BENEFITS AND COSTS.

The Chief Financial Officer also has determined that for each year of the first five years the proposed repeals are in effect, there will be no impact to the public.

LOCAL EMPLOYMENT IMPACT STATEMENT.

The board has determined that a local employment impact statement is not required because the proposed repeals do not adversely affect a local economy in a material way for the first five years that the proposed repeals are in effect because they will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these repeals. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the repeals as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION.

The board reviewed the proposed repeals in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the repeals are not subject to Texas Government Code §2001.0225 because they do not

meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of these repeals is to remove an MOU that has been fulfilled and an LOA that has been superseded.

Even if the proposed repeals were major environmental rules, Texas Government Code §2001.0225 still would not apply to this repeal because Texas Government Code §2001.0225 only applies to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. These repeals do not meet any of these four applicability criteria because they: 1) do not exceed any standard set by a federal law; 2) do not exceed an express requirement of state law; 3) do not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) are not proposed solely under the general powers of the agency, but rather proposed under authority of Water Code §6.101 and §6.104. Therefore, these proposed repeals do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT.

The board evaluated these proposed repeals and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these repeals is to remove a Memorandum of Understanding that has been fulfilled and has expired by its own terms and a Letter of Agreement that has been superseded.

The board's analysis indicates that Texas Government Code Chapter 2007 does not apply to these proposed repeals because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). Nevertheless, the board further evaluated these proposed repeals and performed an assessment of whether they constitute a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of these proposed repeals would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed repeals do not affect a landowner's rights in private real property because the repeals do not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the proposed repeals do not constitute a taking under Texas Government Code Chapter 2007.

SUBMISSION OF COMMENTS.

Comments on the proposed rulemaking will be accepted until 30 days following publication in the *Texas Register* and may be submitted to Mr. Les Trobman, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231 or rulescomments@twdb.texas.gov or by fax to (512) 475-2053.

STATUTORY AUTHORITY.

This repeal is proposed under the authority of Texas Water Code §6.101 and §6.104.

Cross reference to statute: Texas Water Code §6.101 and §6.104.

§354.2. *Memorandum of Understanding Between the Texas Water Development Board and the International Boundary & Water Commission.*

§354.5. *Letter of Agreement between the Texas Water Development Board and the Texas Natural Resource Conservation Commission.*

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 12, 2016.

TRD-201604109

Les Trobman

General Counsel

Texas Water Development Board

Earliest possible date of adoption: September 25, 2016

For further information, please call: (512) 463-7686



31 TAC §§354.2, 354.5, 354.7 - 354.15

The Texas Water Development Board (TWDB) proposes adding new 31 Texas Administrative Code (TAC) §§354.2, 354.5, and 354.7 - 354.15 to incorporate into rule Memoranda of Understanding (MOUs) and similar agreements between the TWDB and other state agencies. Existing 31 TAC §354.2 and §354.5 are proposed for repeal elsewhere in this issue of the *Texas Register*.

BACKGROUND AND SUMMARY OF THE FACTUAL ISSUES FOR THE PROPOSED RULES.

§354.2. *Memorandum of Understanding Between the Office of the Governor and the Texas Water Development Board.*

The Office of the Governor (OOG) and the TWDB executed an MOU authorizing the TWDB to administer emergency appropriations under Texas Government Code Chapter 401, Subchapter D.

The provisions of the MOU require the TWDB to administer up to \$6.8 million in the Disaster Contingency Account, General Revenue Account 0453, to enhance existing flood notification systems and make funds available to state and local entities for floodplain management. The proposed rule describes the MOU that went into effect on December 10, 2015 and will expire on August 31, 2017, or upon expenditure of all available funds.

§354.5. *Letter of Agreement Between the Texas Water Development Board and the Texas Commission on Environmental Quality.*

Since September 21, 1992, the TWDB and the Texas Commission on Environmental Quality (TCEQ) have coordinated reviews related to the design criteria for public water systems and wastewater facility construction in a Letter of Agreement (LOA or Agreement). This Agreement, which was executed on July 1, 2015, replaces all prior and existing LOAs in effect with the TCEQ and its predecessor agencies and accurately reflects the current interaction between the TWDB and the TCEQ during coordinated review of water supply projects seeking financing from the TWDB. The existing §354.5 is being proposed for repeal elsewhere in this issue of the *Texas Register*.

§354.7. Letter of Agreement Between the Railroad Commission of Texas and the Texas Water Development Board.

The Railroad Commission of Texas (RRC) and the TWDB executed an LOA regarding access to linen maps owned by the RRC that will be used by the TWDB to identify and designate regional brackish groundwater production zones as mandated by the 84th Legislature. The proposed rule describes the LOA that went into effect on February 25, 2016.

§354.8. Memorandum of Understanding Between the Texas Water Development Board and the Texas Department of Information Resources.

The TWDB and the Texas Department of Information Resources (DIR) executed an MOU for electronic and information resources accessibility web scanning services. The MOU provides that DIR, through a third-party service provider, will conduct no-cost monthly accessibility scans of pages on the TWDB website and provide scan reports to TWDB and DIR. The proposed rule describes the MOU that went into effect on March 30, 2015 and continues until terminated by either of the parties or on termination of the underlying agreement with the third-party service provider.

§354.9. Memorandum of Understanding Between the Public Utility Commission of Texas and the Texas Water Development Board.

The TWDB executed an MOU with the Public Utility Commission of Texas (PUCT) to maintain a public online map viewer. The MOU provides that the Texas Natural Resources Information System (TNRIS), a TWDB division, will maintain the existing public online map viewer with data collection and assistance from the PUCT. The proposed rule describes the MOU that went into effect on May 18, 2016 and will terminate on August 31, 2017 unless a two-year renewal option is exercised.

§354.10. Memorandum of Agreement Between the Texas Water Development Board, the Texas Parks and Wildlife Department and the Texas Commission on Environmental Quality.

The TWDB, the Texas Parks and Wildlife Department (TPWD) and the TCEQ executed an MOA to establish an Instream Flow Studies Coordinating Committee. The proposed rule describes the MOA that went into effect on October 17, 2002 and continues until terminated by 30-day written notice of intent to cancel by any of the participating agencies.

§354.11. Memorandum of Agreement Between the Texas Water Development Board and the Texas General Land Office.

The TWDB and the Texas General Land Office (GLO) executed an MOA to coordinate the installation and operation of the Texas Coastal Ocean Observation Network. The proposed rule describes the MOA that went into effect on September 22, 2003

and continues until terminated by either party on 30-day written notice.

§354.12. Memorandum of Agreement Between the Texas Water Development Board and the Texas Commission on Environmental Quality.

The TWDB and the TCEQ executed an MOA to coordinate program responsibilities related to groundwater conservation district management planning approval, review and oversight. The proposed rule describes the MOA that went into effect on September 17, 2007 and continues until terminated by either party on 30-day written notice.

§354.13. Memorandum of Agreement Between the Texas Water Development Board and the Texas Board of Professional Geoscientists.

The TWDB and the Texas Board of Professional Geoscientists (TBPG) executed an MOA to coordinate information regarding complaints under and potential violations of the Texas Geoscience Practice Act. The proposed rule describes the MOA that went into effect on June 13, 2014 and continues until rescinded by either agency.

§354.14. Agreement Between the Texas Water Development Board and the Texas Department of Transportation.

The TWDB and the Texas Department of Transportation (TxDOT) entered into an Agreement for Right of Entry and Temporary Use of Highway Right of Way effective March 31, 2005 and continuing until terminated by either party on 30-day written notice. The Agreement allows TWDB access to property under the jurisdiction of TxDOT in order to monitor water wells and outlines the conditions of such access and advance notice required.

§354.15. Agreement Between the Texas Water Development Board and the Texas Comptroller of Public Accounts.

The TWDB and the Texas Comptroller of Public Accounts (Comptroller) entered into an Agreement in Furtherance of Transparency Initiative on April 4, 2014. The Agreement provides for TWDB to share debt and financial liability information with the Comptroller and outlines the terms of use for the information.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS.

The Chief Financial Officer has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. The intent of the rulemaking is to adopt by rule the MOUs and similar agreements as required by Texas Water Code §6.104. There is no change in costs because there are no direct costs associated with the proposed rules. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

PUBLIC BENEFITS AND COSTS.

The Chief Financial Officer also has determined that for each year of the first five years the proposed rulemaking is in effect, there will be no impact to the public.

LOCAL EMPLOYMENT IMPACT STATEMENT.

The board has determined that a local employment impact statement is not required. The proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect because they will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION.

The board reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225 because none of the proposed rules meets the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to adopt by rule the MOUs and similar agreements as required by Texas Water Code §6.104.

Even if the proposed rules were major environmental rules, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed any standard set by a federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather is also proposed under authority of Texas Water Code §6.101 and §6.104. Therefore, these proposed rules do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT.

The board evaluated these proposed rules and performed an analysis of whether they constitute a taking under Texas Government Code Chapter 2007. The specific purpose of these rules is to adopt by rule the MOUs and similar agreements between the Texas Water Development Board and various state agencies.

The board's analysis indicates that Texas Government Code Chapter 2007 does not apply to these proposed rules because this rulemaking is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). Nevertheless, the board further evaluated these proposed rules and performed an assessment of whether they constitute a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden or restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the proposed rules do not constitute a taking under Texas Government Code Chapter 2007.

SUBMISSION OF COMMENTS.

Comments on the proposed rulemaking will be accepted until 30 days following publication in the *Texas Register* and may be submitted to Mr. Les Trobman, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231 or rulescomments@twdb.texas.gov or by fax to (512) 475-2053.

STATUTORY AUTHORITY.

These new rules are proposed under Texas Water Code §6.101, which gives the TWDB authority to adopt rules, and §6.104, which requires the TWDB to adopt by rule any memorandum of understanding between the TWDB and any other state agency.

Cross reference to statute: Texas Water Code §6.101 and §6.104.

§354.2. Memorandum of Understanding Between the Office of the Governor and the Texas Water Development Board.

(a) SECTION I. RECITALS.

(1) WHEREAS, pursuant to Texas Government Code §401.065, the Governor by interagency contract may authorize an agency of the executive branch of state government to administer emergency appropriations under Texas Government Code Chapter 401, Subchapter D; and

(2) WHEREAS, the Texas Water Development Board has authority under Texas Water Code, Section 6.190 to enter into this agreement; and

(3) WHEREAS, on November 5, 2015, the Governor determined that an emergency exists affecting the health, public safety, and economic prosperity of Texans with respect to flood notification systems and floodplain management planning; and

(4) WHEREAS, the Texas Comptroller of Public Accounts (the Comptroller) has endorsed use of funds in the Disaster Contingency Account, General Revenue Account 0453, as statutorily allowable for purposes of preparing for a disaster, including installing a network of stream gages to enhance existing flood notification systems and making funds available to state and local entities for floodplain management; and

(5) WHEREAS, on November 16, 2015, the Comptroller certified that the full cash balance of the special account, \$6.8 million, is available for appropriation; and

(6) WHEREAS, on November 16, 2015, the Texas Legislative Budget Board (LBB) approved the appropriation of the full balance of the special account for enhancing flood notification systems and improving state and local floodplain management;

(7) WHEREAS, on November 17, 2015, the Governor filed with the Secretary of State and the LBB a copy of the Governor's original certification and the returned certification containing the Comptroller's endorsement.

(8) NOW THEREFORE, the Texas Water Development Board (TWDB) and the Office of the Governor (OOG) hereby enter into this Memorandum of Understanding (MOU) for the purposes set forth herein.

(b) SECTION II. PARTIES. This MOU is made and entered into between the TWDB, an agency of the State of Texas, and the OOG, also an agency of the State of Texas.

(c) SECTION III. PURPOSE.

(1) The purpose of this MOU is to make available to TWDB an appropriation of up to \$6.8 million in the Disaster Contingency Account, General Revenue Account 0453, for installing a network of stream gages to enhance existing flood notification systems and making funds available to state and local entities for floodplain management ("the emergency funding"), under the authority provided by House Bill 1, Rider 3, Acts of the 84th Texas Legislature, Trusteed Programs Within the Office of the Governor.

(2) The Parties will work together to accomplish the transfer of funds from the OOG to the TWDB.

(d) SECTION IV. PERIOD OF PERFORMANCE. This MOU will become effective upon signature by the parties and will terminate on August 31, 2017.

(e) SECTION V. PERFORMANCE.

(1) OOG RESPONSIBILITIES. The OOG shall be responsible for making available up to \$6.8 million in the Disaster Contingency Account, General Revenue Account 0453, for administration by the TWDB during the biennium ending on August 31, 2017 for installing a network of stream gages to enhance existing flood notification systems and making funds available to state and local entities for floodplain management.

(2) TWDB RESPONSIBILITIES.

(A) The TWDB shall be responsible for administering the emergency funding made available under this MOU for installing a network of stream gages to enhance existing flood notification systems and making funds available to state and local entities for floodplain management.

(B) The TWDB shall be responsible for administering the emergency funding in accordance with applicable state laws, programmatic requirements and agency rules.

(C) The TWDB shall ensure that the applicable provisions for grant contracts or procurement contracts made under the emergency funding comply with the relevant state or federal laws.

(D) The TWDB shall report to the OOG, at least quarterly, on the status of the administration of the emergency funding, including financial reporting on the usage of the emergency funds.

(E) The TWDB shall hold a stakeholder meeting(s), as directed by the OOG.

(f) SECTION VI. TERMINATION. This MOU shall terminate on August 31, 2017, or upon expenditure of all available appropriated funds unless otherwise terminated earlier by the parties.

(g) SECTION VII. GENERAL PROVISIONS.

(1) Duty to Maintain Records; Records Retention. TWDB shall maintain adequate records to support its administration of the emergency funding. TWDB shall maintain such records as are deemed necessary by the OOG and auditors of the State of Texas or the United States, or such other persons or entities designated by the OOG, to ensure proper accounting for all costs and performances related to this MOU, for a period of seven (7) years after the end of this MOU.

(2) Access to Records and Right to Audit; State Auditor. TWDB shall grant access to all records, of any kind, relevant to this project to OOG, auditors of the State of Texas, or such other persons or entities designated by OOG for the purposes of inspecting, auditing, evaluating or copying by the OOG, the State of Texas or such other authorized persons or entities designated by the OOG. All records, shall be subject to examination or audit by the OOG, auditors of the State of Texas, or such other persons or entities designated by the OOG in accordance with all applicable state and federal laws, regulations or directives. TWDB will direct any grantee or subcontractor with regard to this project to likewise permit access to, inspection of, and reproduction of all records of TWDB's grantee(s) or subcontractor(s). In addition to and without limitation on the other audit provisions of this MOU, pursuant to Section 2262.154 of the Texas Government Code, the State Auditor's Office may conduct an audit or investigation of TWDB or any of its grantees or subcontractors receiving funds from the TWDB for the project. The acceptance of funds by TWDB or any other entity or person directly under this MOU or indirectly through a grant or subcontract is acceptance of the authority of the State Auditor's Office, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. Under the direction of the Legislative Audit Committee, TWDB or other entity that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. TWDB further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. TWDB shall ensure that this paragraph regarding audit rights and the requirement to cooperate is included in any grant or subcontract it awards for this project.

(3) Texas Public Information Act. Information, documentation and other material in connection with this MOU or any resulting grant contract or subcontract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the Public Information Act). TWDB acknowledges that information created or exchanged in connection with this MOU is subject to the PIA, and TWDB agrees that information not otherwise excepted from disclosure under the PIA, will be available in a format that is accessible by the public at no additional charge to the state and agrees to require this provision in any grant or subcontract awarded for this project. TWDB will cooperate with OOG in the production of documents or information responsive to a request for information.

(4) Funding Limitation. TWDB agrees that nothing in this MOU will be interpreted to create an obligation or liability of the OOG in excess of the funds delineated in this MOU. TWDB agrees that funding for this MOU is subject to the actual receipt by the OOG of funds appropriated to the OOG. TWDB agrees that the funds, if any, received from the OOG are limited by the term of each state biennium and by

specific appropriation authority to and the spending authority of the OOG for the purpose of this MOU. TWDB agrees that notwithstanding any other provision of this MOU, if the OOG is not appropriated the funds or if the OOG does not receive the appropriated funds for this project, or if the funds appropriated to the OOG for this project are required to be reallocated to fund other state programs or purposes, the OOG is not liable to pay the TWDB any remaining balance on this MOU.

(5) Amendment. This MOU may only be amended by written agreement between the parties.

(h) The effective date of this MOU is the last date shown signed below.

(i) Dated December 10, 2015.

§354.5. Letter of Agreement Between Texas Water Development Board and Texas Commission on Environmental Quality.

(a) INTRODUCTION

(1) The Texas Water Development Board (TWDB) provides financial assistance for the construction, acquisition, or improvement of water supply projects, and therefore performs engineering reviews and analyses of water supply projects constructed with state or federal funds administered by the TWDB. The Texas Commission on Environmental Quality (Commission) through its regulatory authority conducts a similar review and analyses of the water supply projects financed by the TWDB.

(2) Since September 21, 1992, the TWDB and the Commission have coordinated the reviews related to the design criteria for public water systems and wastewater facility construction in a Letter of Agreement (LOA or Agreement). The LOA was last revised June 20, 2001 to reflect changes in statute related to the review of wastewater facilities. This Agreement is implemented to replace all prior and existing LOAs in effect with the Commission and its predecessor agencies, and to accurately reflect the current interaction between the TWDB and the Commission during the coordinated review of water supply projects seeking financing from the TWDB.

(b) SCOPE OF AGREEMENT

(1) The TWDB will review submitted "Plans and Specifications," as defined herein, for water supply projects seeking financing from the TWDB in a manner that will satisfy the Commission's requirements related to the design of public water systems.

(2) The Commission agrees to accept TWDB review of Plans and Specifications in lieu of its review for certain water facilities as described under the "Coordinations" section herein.

(c) DEFINITIONS. "Plans and Specifications" means construction drawings and construction specifications, and engineering design calculations required by Commission rules on design criteria for public water systems. The term also includes construction contract change orders.

(d) LIMITS AND EXCLUSIONS.

(1) This Letter of Agreement is applicable only to projects that receive financing from the TWDB and require coordination with the Commission.

(2) Only the Commission may grant conditional approvals and variances to its requirements relating to the review and processing of Plans and Specifications for public water facilities.

(3) The TWDB's review and administration of a water supply project will not serve as an approval of an application for any permit, which is regulated by the Commission.

(e) COORDINATIONS.

(1) The TWDB will coordinate the review of Plans and Specifications with the Commission on water supply projects financed by the TWDB that involve the construction of, or improvements to, surface water treatment plants, public water supply wells, new interconnections, disinfection, and treatment projects. For these water supply projects, the TWDB and Commission agree to rely on the TCEQ Letter of Approval of Plans and Specifications for design criteria.

(2) Plans and Specifications for other water supply projects financed by the TWDB will be reviewed only by the TWDB. The TWDB will review Plans and Specifications of water supply projects for public water systems financed by the TWDB to ensure satisfaction of the Commission's requirements related to public water systems and provide TCEQ a courtesy copy of the TWDB approval for compliance purposes.

(3) For all water supply projects reviewed for financing by the TWDB requiring coordination with the Commission, the TWDB will prepare a single document signifying the TWDB's approval of the underlying Plans and Specifications. The TWDB will send one (1) copy of its approval document to the applicant and one (1) copy of its approval document to the Commission.

(4) Following approval of all water supply project Plans and Specifications, the TWDB will proceed, in accordance with applicable rules and requirements, with construction monitoring.

(f) EXECUTION, ADOPTION, AND MODIFICATION. This Agreement is effective when signed by the designated representatives of both the TWDB and Commission. This Agreement is subject to approval of the Board of the TWDB. This Agreement may be modified by mutual and written consent of the parties.

(g) DURATION. The Agreement shall continue in full force and effect until cancelled or superseded by either party. The party requesting cancellation shall give 90-days written notice of intent to cancel and shall advise the other party in writing of the reasons for cancellation.

(h) SEVERANCE PROVISION. Should any one or more provisions of this Agreement be held to be null, void, or for any reason without force or effect, such provision(s) shall be construed as severable from the remainder of this Agreement and shall not affect the validity of all other provisions of this Agreement, which shall remain in full force and effect.

(i) IN WITNESS THEREOF the parties hereto cause this Letter of Agreement to be duly executed.

(j) Signed on July 1, 2015.

§354.7. Letter of Agreement Between the Railroad Commission of Texas and the Texas Water Development Board.

(a) This Letter of Agreement ("LOA") is made effective as of the date below and is made by and between the Railroad Commission of Texas ("RRC"), an agency of the State of Texas, and the Texas Water Development Board ("TWDB"), an agency of the State of Texas.

(b) WHEREAS, the RRC owns linen maps used by the RRC Groundwater Advisory Unit ("GAU") to record oil and gas related groundwater regulatory determinations, geophysical log locations, geologic cross-section locations, and other geologic information;

(c) WHEREAS, the linen maps were purchased in the 1950s and 1960s from various vendors and/or mapping companies, which may or may not still be in existence;

(d) WHEREAS, House Bill 30, 84th Texas Legislature, Regular Session, tasked the TWDB with identifying, designating, and reporting on regional brackish groundwater production zones;

(e) WHEREAS, the RRC desires to share the linen maps with TWDB for purposes of fulfilling the legislature's above-referenced mandate.

(f) NOW, THEREFORE, in consideration of the foregoing, the RRC and the TWDB express their understanding and agreement as follows:

(1) The RRC will load copies of all GAU linen maps onto an external hard drive provided by the TWDB. The TWDB will then move the GAU linen map files to a limited-access folder on the TWDB server.

(2) The TWDB acknowledges that the linen maps were created by entities/persons other than the RRC and may be copyrighted material.

(3) The TWDB agrees to use the images of the linen maps as "read only," for inspection and research purposes in line with the legislature's mandate.

(4) The TWDB agrees that printing, photocopying, taking pictures, or using any other method of copying the images of the linen maps may constitute copyright infringement.

(5) The TWDB agrees that disseminating the external hard drive, copies of the external hard drive, or copies of the images of the linen maps on the external hard drive to any other entity, agency, or person outside of the TWDB is prohibited.

(6) The TWDB agrees that it will inform any third-party contractors working on the project that the linen maps may be copyrighted material and that printing, photocopying, taking pictures, or using any other method of copying images of the linen maps and/or disseminating the external hard drive or copies of the external hard drive to any other entity, agency, or person outside of the TWDB is prohibited.

(7) The TWDB acknowledges that noncompliance with any terms and conditions of this LOA, either by the TWDB or by any third-party contractor hired by the TWDB, may result in copyright infringement.

(g) In witness whereof, the Railroad Commission of Texas and the Texas Water Development Board have approved this LOA on the 25th day of February 2016, as evidenced by the signatures below.

§354.8. Memorandum of Understanding for Inclusion in DIR's WCAG 2.0 Web Accessibility Scanning Program.

(a) This MEMORANDUM OF UNDERSTANDING (MOU) is entered into by and between the governmental entities shown below as Agreement Parties, pursuant to the authority granted and in compliance with the provisions of Texas Government Code, Chapter 771, the Interagency Cooperation Act, and Chapter 2054, Subchapter M, Access to Electronic and Information Resources by Individuals with Disabilities.

(b) Agreement Parties.

(1) Receiving Agency: Texas Water Development Board, 1700 N. Congress Ave., Austin, Texas 78701.

(2) Performing Agency: Department of Information Resources (DIR), 300 W. 15th Street, Suite 1300, Austin, Texas 78701.

(c) Scope.

(1) This Memorandum of Understanding (MOU) is entered into by and between the Texas governmental entities shown above as Agreement Parties. The Department of Information Resources (DIR) will provide to the receiving agency the services described in this MOU for electronic and information resources (EIR) accessibility web scanning services. DIR has contracted with a third-party provider to perform accessibility scans on a monthly basis. Initially, the scans will be performed by SiteImprove pursuant to contract DIR-ITS-SITEIMPROVE-001.

(2) There is no charge to the receiving agency for the services provided by DIR. The term of this MOU begins on the date of the last party to sign and will end upon termination of the underlying agreement with the third-party service provider, or anytime at the discretion of DIR. If the receiving agency elects to terminate these services at any time prior to the expiration of the MOU, the receiving agency will provide DIR with a minimum of ten (10) days prior written notice. This MOU may be amended by mutual agreement of the parties. Any amendment must be in writing.

(d) Program Overview.

(1) The WCAG 2.0 Web Accessibility Scanning Program is conducted as part of the State of Texas initiatives in support of Texas government statutes and administrative rules regarding EIR accessibility for people with disabilities. This document describes the services to be provided to Texas Water Development Board (TWDB) by DIR for accessibility scanning of a subset of the receiving agency's public web pages.

(2) The purpose of the program is to assist the agency in making its public websites accessible for all Texas citizens, including people with disabilities, and sets forth the responsibilities for each party. There is NO cost to agencies for this service.

(e) Objectives and Benefits of the Program.

(1) The primary objective of the program is to assist agencies in making their public websites accessible for all Texas citizens including people with disabilities, and in support of meeting WCAG 2.0 web accessibility technical standards which are expected to be integrated into Texas Administrative Codes (TAC) Chapter 206 and 213 once they have been adopted as part of the revisions to US Section 508 of the Rehabilitation act of 1973. The use of this service will allow agencies to:

(A) Increase accessibility compliance levels of agency public websites

(B) Obtain precise, critical accessibility information about a subset of an agency's live public website that might not otherwise be available/affordable

(C) Use the reported information and supporting resources to remediate identified accessibility issues

(D) Mitigate risk to the state by demonstrating progress and initiative toward creating an inclusive IT environment

(E) Lay the groundwork for agencies to establish accessibility baselines, goals, and metrics to track progress

(2) The service also scans for and reports on:

(A) Broken links, Misspellings, and Consistency issues

(B) Website availability and performance

(C) Search Engine Optimization (SEO) issues

(f) Description of Services.

(1) Beginning at the home page of an agency's website, approximately 150 pages will be scanned monthly for accessibility issues using the Worldwide Web Consortium (W3C) Web Content Accessibility Guidelines 2.0 (WCAG 2.0) technical standards. PDF documents on a website discovered during the scan will also be checked for accessibility. It should be noted that automated testing (web scanning) tools/services do not currently have the ability to test for all WCAG 2.0 accessibility criteria and that manual testing using assistive technologies should also be performed on a subset of the scanned pages to validate full compliance to this standard.

(2) Agencies will be scheduled into the scan environment after a signed MOU has been received by DIR. Once the receiving agency is included in the scanned environment, scans will be performed monthly, until terminated by either party.

(3) DIR will work with the receiving agency's EIR Accessibility Coordinator to set up and validate scanned pages to ensure data is accurate.

(4) Agency EIR Accessibility Coordinators will receive a login ID to access their agency's detailed reports residing on DIR's secure area of the vendor's (SiteImprove) server. Agencies will also be able to add additional users of the tool.

(5) The receiving agency's accessibility coordinator will be notified when each monthly scan is complete and reports are available for viewing.

(6) Agency reports will provide summary and detailed information on accessibility and other information for the agency's scanned pages and PDFs, including:

(A) Number of pages with errors

(B) Error types, locations, and code snippets where the errors occurred

(C) Support information with resources and techniques for remediating the identified errors

(D) Broken links, misspellings, and consistency issues

(E) Website availability and performance

(F) Search Engine Optimization (SEO) issues

(7) Self-paced training resources on use of the service user interface will be made available from the vendor.

(g) Scan Results, Data Ownership, and Sharing.

(1) Scan results are owned by the receiving agency.

(2) The receiving agency will have access to only the data applicable to itself.

(3) DIR will have viewing access to all data included in the scan for use in statewide analysis and metrics so that it can:

(A) assist agencies with questions related to scan results

(B) aggregate results to identify common issues and track progress at the enterprise level

(4) DIR will not share individual agency results with third parties, unless written approval by authority within the agency is provided.

(5) In the event of public information or legislative requests, requestors will be referred to participating agencies or responded to jointly in collaboration with DIR.

(h) Tasks and Activities. Below is a table of the tasks and activities associated with agency start up and ongoing program activities.

(1) Task/Activity: Execution of MOU; Performers: DIR/Agency

(2) Task/Activity: Provide initial scanning date to agency; Performers: DIR/Agency

(3) Task/Activity: Contact agency EIR Accessibility Coordinator to inform them of agency scan initiation; Performers: DIR

(4) Task/Activity: Provide login credentials to agency to facilitate agency review of results; Performers: DIR/Service Vendor

(5) Task/Activity: Perform initial scan; Performers: Service Vendor

(6) Task/Activity: Analyze results and tune settings; Performers: DIR/Agency/Service Vendor

(7) Task/Activity: Validate results; Performers: Agency

(8) Task/Activity: Integrate site into monthly scans; Performers: Service Vendor

(9) Task/Activity: Websites will be sampled monthly. Agencies receive new scan reports after each completed scan and works with appropriate staff to remediate; Performers: Agency/Service Vendor;

(10) Task/Activity: Answer results questions and provide user support; Performers: DIR/Service Vendor.

(i) Contacts.

(1) DIR Contacts:

(A) PRIMARY CONTACT: Jeff Kline, Statewide EIR Accessibility Coordinator, 512-463-3248, Jeff.Kline@dir.texas.gov.

(B) SECONDARY CONTACT: Deborah Hujar, Director of Planning, Policy, and Governance, 512-463-6117, Deborah.Hujar@dir.texas.gov

(2) Agency Contacts:

(A) EIR ACCESSIBILITY COORDINATOR: Matt Erickson, 512-410-6602, matt.erickson@twdb.texas.gov

(B) IRM: Wendy Barron, 512-463-7862, wendy.barron@twdb.texas.gov

(C) ADDITIONAL CONTACT: Darrell Tompkins, Manager of IT Security & Systems Infrastructure, 512-463-9921, Darrell.tompkins@twdb.texas.gov

(j) Certifications. The undersigned Parties hereby certify that:

(1) The matters specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of state government;

(2) This MOU serves the interest of efficient and economical administration of state government; and

(3) The services, supplies, or materials in this MOU are not required by Section 21, Article 16 of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

(4) The Agreement Parties execute this MOU to be effective upon the date of the last party to sign.

(5) Dated March 30, 2015.

§354.9. Memorandum of Understanding Between the Public Utility Commission of Texas and the Texas Water Development Board.

(a) This Memorandum of Understanding (MOU) is entered into between the Public Utility Commission of Texas (PUCT), 1701

N. Congress Ave., Austin, TX 78701, an agency of the state of Texas, and the Texas Water Development Board (TWDB), 1700 N. Congress, Austin, TX 78701, also an agency of the State of Texas.

(b) The parties assert that each has the authority to enter into this agreement under Texas Government Code §771.003. The TWDB is authorized by Texas Water Code §§6.104 and 6.190 to enter into this agreement.

(c) The TWDB and the PUCT hereby enter into this agreement to maintain a basic public online map viewer.

(d) The TWDB, through its Texas Natural Resources Information Systems (TNRIS) division, agrees that it will:

(1) Maintain the existing public online map viewer for the electric Certificate of Convenience and Necessity (CCN) boundaries as allowed by the Department of Information Resources (DIR) and dependent upon Data Center Services (DCS) exemption policies

(2) Manage and update existing PUCT data and data feeds as requested by the PUCT and mutually agreed by the parties

(3) Support data exchange needs of the PUCT through PUCT's ArcGIS online application

(4) Maintain the confidentiality of any data for which the submitting party asserts confidentiality as required by law

(5) Provide training to PUCT staff on use of the system up to two four-hour training sessions per year. Additional training will be offered to assist the PUCT staff develop the capacity to support the application as needed.

(e) The PUCT agrees that it will:

(1) Locate, acquire, and collect data for TNRIS to use in creating the GIS layers

(2) Assist in automating the data exchange as needed

(3) Notify TNRIS of any information that may be considered confidential

(f) TWDB is not responsible for verification of data provided by PUCT.

(g) This agreement does not constitute a basis for financial obligations or expenditures. Each agency will expend its own funds in fulfillment of this agreement.

(h) This agreement is effective on the date that the last party executes this document and terminates on August 31, 2017 with an option to renew for an additional two-year period. This agreement may be amended as needed, upon written agreement by both parties. This agreement may be terminated by either party on 30 days written notice.

(i) The parties hereby agree to be bound by this Memorandum of Understanding as indicated by their signatures below.

(j) Dated May 18, 2016.

§354.10. Memorandum of Agreement Between the Texas Water Development Board, Texas Parks and Wildlife Department, and Texas Commission on Environmental Quality Relating to Instream Flow Studies.

(a) WHEREAS, Senate Bill 2, as enacted by the 77th Legislature, Regular Session, provided important responsibilities to the above-referenced agencies with regard to studies of instream flows through year 2010;

(b) WHEREAS, it is extremely important that the studies authorized by the 77th Legislature be accomplished in an effective and efficient manner that maximizes the utilization of available resources;

(c) WHEREAS, the Texas Water Development Board (Board) is authorized by Section 6.190 of the Texas Water Code to enter into this agreement, the Texas Commission on Environmental Quality (Commission) is authorized by Section 5.229 of the Texas Water Code to enter into this agreement, and the Texas Parks and Wildlife Department (Department) is authorized by Section 11.0171 of the Texas Parks & Wildlife Code to enter into this agreement;

(d) WHEREAS, the results of the instream flow studies, the subject of this Memorandum of Agreement, shall be considered by the respective agencies in performance of their statutory duties and responsibilities. Nothing in this agreement restricts the use of the studies by the agencies in their statutory discretion, duties, and responsibilities;

(e) NOW, THEREFORE BE IT RESOLVED that the Board, Commission and Department do hereby make the following operating agreement regarding studies of instream flows as required by Section 16.059 of the Texas Water Code (Collection of Instream Flow Data; Conduct of Studies).

(f) COORDINATING COMMITTEE

(1) An Instream Flow Studies Coordinating Committee (Committee) shall be established as a three-member Committee comprised of the Executive Administrator of the Board and the Executive Directors of the Department and the Commission, or their designees.

(2) The representative from the Board shall serve as chairperson of the Committee from the effective date of this agreement until August 31, 2003.

(3) Thereafter, the chairperson shall serve a one-year term and the chair shall be rotated annually, as agreed upon by the Committee, from the Board's representative to the Department's representative, and thence to the Commission's representative.

(4) The Committee shall meet at least annually and may meet more often as necessary and agreed upon by the Committee.

(g) DUTIES AND RESPONSIBILITIES

(1) The purpose of the Committee is to provide the overall policy, direction, and guidance for the completion of the instream flow studies authorized by the 77th Legislature.

(2) The Committee shall approve a programmatic work Plan by December 31, 2002, which shall include the following:

(A) a list of the priority segments to be studied and interim deadlines for publications;

(B) the scope of the studies;

(C) the assignment of agency responsibilities in conducting the studies;

(D) the timeframes in which the studies or parts of the studies are to be completed; and

(E) the general methods used to conduct the studies.

(3) The Committee shall ensure that resources of the agencies are utilized effectively and efficiently to accomplish the studies. To assist the Committee, each agency shall also designate lead staff to equally share oversight of the program studies, to maximize in-house capabilities of personnel and equipment, and to minimize costs to the state. The Committee shall also consider inviting cities, river authorities, water districts, other political subdivisions of the state, universities, and federal water agencies to cooperate with and participate in the conduct of these studies whenever practicable.

(4) The Committee shall establish an Interagency Science Team (Team) composed of staff scientists and engineers assigned to

work on the studies by the agencies and their cooperators. The Team shall assist the Committee by drafting study plans and scopes of work, by supervising and facilitating contracts, and by conducting and reporting on the priority studies identified in the Work Plan.

(5) For all contracts by any agency for work to be performed in furtherance of the Work Plan, the Team shall draft the study plans and scopes of work and provide recommendations for contract facilitation prior to the agency's presentation of the contract to its board, commission, or other agency official possessing the authority to approve such contracts.

(6) The Committee shall ensure that a productive data and information exchange is accomplished among the agencies. Also, the parties hereto do each agree to promptly furnish, free of charge, any and all correspondence, memorandums, study reports, contracts, data and any other information relating to instream flow studies that may hereafter be requested by any of the parties hereto and which are not privileged and confidential under law.

(7) The Committee shall attempt to reach unanimous agreement on all decisions made in exercising its duties and responsibilities under this agreement, but in no event shall the failure of the Committee to reach a unanimous agreement on a decision frustrate or deter the intent, direction or purpose of this agreement or the duties and responsibilities of the Committee as defined hereunder.

(8) The Committee shall attempt to resolve technical disputes by seeking consensus from the Interagency Science Team. The Committee may direct Team members to meet specifically for the purpose of resolving professional differences in order to reach a compromise solution, and to report that solution back to the Committee.

(9) To assist the agencies in performing a scientifically sound program, the Committee shall appoint an independent Scientific Advisory Group to review and comment on study methods and plans prepared by the Team. The number and composition of the Scientific Advisory Group is at the discretion of the Committee and may vary from time to time.

(10) The Committee may also resolve interagency disputes by seeking the advice of their governing bodies.

(h) NON-BINDING CLAUSE. Nothing in this agreement shall preclude any of the agencies from executing interagency contracts, operating agreements, establishing other committees, or otherwise utilizing available resources to achieve specific statutorily assigned responsibilities regarding instream flow studies not related to Section 16.059 of the Texas Water Code.

(i) ENTIRE CONTRACT. The agencies agree that this Memorandum of Agreement contains all the agreements with regard to the contents and that no oral agreements shall be recognized or shall in any way modify this Agreement. This Agreement may be modified only by agreement signed by parties to this Agreement.

(j) EFFECTIVE DATE. This Memorandum of Agreement shall be effective when signed by all of the agencies and shall terminate 30 days from the date of written notice of intent to cancel this agreement by any of the agencies.

(k) IN WITNESS WHEREOF the agencies have caused this Agreement to be executed in triplicate originals, each of which shall constitute an original document.

(l) Dated October 17, 2002.

§354.11. Memorandum of Agreement Between the General Land Office and the Texas Water Development Board.

(a) WHEREAS, the 73rd Texas Legislature established the Texas Coastal Ocean Observation Network (TCOON) as a cooperative project of Texas A&M University-Corpus Christi (TAMU), Lamar University, the Texas Water Development Board (TWDB), and the Texas General Land Office (GLO) to collect data on natural processes affecting the Texas coast for the purpose of studying, planning for, and managing human uses of the coast as affected by natural processes; and

(b) WHEREAS, the participating state entities have been authorized to coordinate the operation of the TCOON with the National Oceanic and Atmospheric Administration (NOAA), other appropriate federal entities, and private entities; and

(c) WHEREAS, the National Ocean Service (NOS), a division of NOAA, has established "NATIONAL STANDARDS AND PROCEDURES" for the measurement of sea levels and tidal datums; and

(d) WHEREAS, the GLO has entered into an agreement with TAMU for the operation and maintenance of the equipment and for data collection; and

(e) WHEREAS, the TWDB and the GLO desire to ensure TCOON compliance with NOS standards and procedures in order to provide an accurate determination of tidal datums, boundaries of coastal public land, and sea level fluctuations along the Texas coast;

(f) NOW THEREFORE in consideration of the benefits to the State of Texas, the parties hereby agree as follows:

(1) The parties will jointly coordinate all aspects of the installation and operation of the TCOON, including coastal site selections and technical operating procedures, in order to ensure the accuracy of the collected data.

(2) This Memorandum of Agreement shall be effective September 1, 2005, and shall remain in effect unless terminated by either party upon thirty (30) days' written notice.

(g) The GLO certifies that it has the authority to enter into this Memorandum of Agreement by virtue of the authority granted in Section 31.051, TEX. NAT. RES. CODE and Chapter 771, TEX. GOV'T CODE.

(h) The TWDB certifies that it has the authority to enter into this Memorandum of Agreement by virtue of the authority granted in Section 6.190, TEX. WATER CODE and Chapter 771, TEX. GOV'T CODE.

(i) Dated September 28, 2005

§354.12. Memorandum of Agreement Between the Texas Water Development Board and the Texas Commission on Environmental Quality Regarding Groundwater Conservation District Management Plan Approval and Enforcement.

(a) This memorandum of agreement (MOA) between the Texas Water Development Board (TWDB) and Texas Commission on Environmental Quality (TCEQ) which sets forth the coordination of program responsibilities related to groundwater conservation district management, planning, approval, review, and oversight. This MOA is intended to clarify and outline the necessary coordination required for the agencies to document their respective duties, responsibilities, and functions as provided under Chapter 36 of the Texas Water Code.

(b) Definitions.

(1) Approval. The approval of a groundwater conservation district's adopted management plan as administratively complete by the Executive Administrator of the TWDB as required under §36.1072 of the Texas Water Code.

(2) Enforcement actions. Formal commission actions to achieve groundwater management by a groundwater conservation district as identified under §36.303 through §36.308 of the Texas Water Code including:

(A) issuing an order requiring the district to take certain actions or refrain from taking certain actions;

(B) dissolving the district's board of directors in accordance with §§36.305 and 36.307 of the Texas Water Code;

(C) requesting the Attorney General to bring suit for the appointment of a receiver to collect assets and carry on the business of the district; or

(D) dissolving the district in accordance with §§36.304, 36.305, and 36.308 of the Texas Water Code.

(3) Executive Administrator. The Executive Administrator of the TWDB or a designated representative.

(4) Executive Director. The Executive Director of the TCEQ or a designated representative.

(5) Executive Director's Preliminary Report or EDPR. A pleading filed by the Executive Director which, when issued and served under this title, seeks an enforcement order against a respondent. EDPR is further defined in 30 TAC Chapter 70, Subchapter C (relating to Enforcement Referrals to the State Office of Administrative Hearings).

(6) Groundwater conservation district (or district). Any district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, that has the authority to regulate the spacing of water wells, the production from water wells, or both.

(7) Management Plan. The comprehensive plan developed and adopted by the groundwater conservation district under §36.1071 of the Texas Water Code and subject to approval by the Executive Administrator of the TWDB under §36.1072 of the Texas Water Code that addresses groundwater management goals, performance standards, and objectives which specifies actions, procedures, performance, and avoidance that are or may be necessary to effect the plan.

(c) Interrelated Responsibilities and Jurisdictions of the TCEQ and TWDB.

(1) The TCEQ. The TCEQ has exclusive jurisdiction over the creation of groundwater conservation districts pursuant to §36.011 of the Texas Water Code, for maintaining records of groundwater conservation district confirmation election results under §36.017(e) of the Texas Water Code, for maintaining records of groundwater conservation district directors registered with the TCEQ pursuant to §36.054(e) of the Texas Water Code, and has a right of supervision over groundwater conservation districts pursuant to §12.081 of the Texas Water Code.

(A) The TCEQ is responsible for taking certain enforcement action under §36.303 of the Texas Water Code if a groundwater conservation district board of directors fails to submit a management plan, fails to receive approval of its management plan under §36.1072 of the Texas Water Code, or fails to submit or receive approval of an amendment to the management plan under §36.1073 of the Texas Water Code. The TCEQ may not take enforcement action against a district under §36.303 of the Texas Water Code until either:

(i) the board of directors of a district has failed to submit a management plan or amendment of its plan by the required date;

(ii) the board of directors of a district has failed to submit a revised management plan (or subsequent amendment of a

management plan) within 180 days of receiving notice from the executive administrator that the management plan (or subsequent amendment of a management plan) has not been approved and the district has not appealed the executive administrator's decision to the TWDB;

(iii) the date the TWDB has taken final action withholding approval of a management plan (or a subsequent amendment of a management plan) if the district has appealed the Executive Administrator's decision to the TWDB; or

(iv) a district court in Travis County has taken final action withholding approval of a management plan (or a subsequent amendment of a management plan) if the district has appealed the TWDB's decision to a court.

(B) The TCEQ is responsible for taking certain enforcement actions under §36.303 of the Texas Water Code if a petition requesting an inquiry related to groundwater conservation district planning or management in a groundwater management area is not dismissed and the TCEQ appointed review panel has prepared and submitted a written report detailing findings and recommended actions.

(C) The TCEQ is responsible for taking certain enforcement action under §36.303 of the Texas Water Code if it is determined by the SAO under §36.302 of the Texas Water Code that a groundwater conservation district is not actively engaged in achieving the objectives of the district's management plan based on an audit of the district's performance under the plan.

(D) The TCEQ is responsible for investigation of the facts and circumstances of any violations of any rule or order of the commission, consistent with agency authority under §12.081 of the Texas Water Code. The Executive Director must prepare and file a written report with the commission and the subject district which documents the findings of the investigation and includes any recommended enforcement actions the Executive Director believes the commission should take under §36.303 of the Texas Water Code.

(E) An enforcement order approved by the commission may require the district to take certain action, refrain the district from taking certain actions, dissolve the district's board of directors, request the Attorney General to bring suit for the appointment of a receiver to collect assets and carry on the business of the district, or dissolve the district, as identified under §36.303(a) of the Texas Water Code.

(2) The TWDB. Under §36.1072(c) of the Texas Water Code, the Executive Administrator of the TWDB is responsible for approving groundwater conservation district management plans within 60 days of receipt if the plans are administratively complete. Under §36.1072(c) of the Texas Water Code, if the Executive Administrator does not approve a management plan, the Executive Administrator must provide to the district, in writing, the reasons for the action. Within 180 days after the date of receipt of notice, the district may submit a revised management plan for review and approval. As identified under §36.1072 of the Texas Water Code, the Executive Administrator's decision may be appealed to the TWDB; the decision of the TWDB may also be appealed to a district court in Travis County. TWDB rules in Chapter 356 of Title 31 of the Texas Administrative Code more fully set out these procedures.

(d) Agreed activities of each party to this MOA. For the mutual benefit of the parties to this MOA and to provide for a consistent regulatory framework, the parties agree to cooperate in function and service to the following:

(1) The Executive Director of the TCEQ will provide written notice to the Executive Administrator of the TWDB when a new groundwater conservation district is created or confirmed by voter election and the district's temporary board of directors has fulfilled

its statutory obligation and made such information available to the TCEQ. Also, notice of the following information will be provided to the TWDB within 15 days of receipt of required notifications from the district:

(A) the name, location, and enabling action for the newly created district;

(B) the date of statutory creation or the date of creation confirmation election, if an election is required; and

(C) the name of all directors, mailing address(es), and term expiration dates for directors of the new district.

(2) The Executive Administrator of the TWDB will provide written notice to the Executive Director of the TCEQ within 15 days, when the Executive Administrator:

(A) has not received a groundwater conservation district management plan by the required deadline for submission from a district;

(B) receives a groundwater conservation district management plan for administrative completeness review;

(C) approves a groundwater conservation district management plan as administratively complete;

(D) denies approval of a submitted groundwater conservation district management plan;

(E) receives a revised version of a groundwater conservation district management plan within the 180-day response period;

(F) fails to receive a revised version of a groundwater conservation district management plan at the expiration of the 180-day response period;

(G) receives documentation that a district has appealed the Executive Administrator's management plan approval decision to the TWDB, or a district has appealed TWDB's final decision to a district court in Travis County; or

(H) receives notice that final action by the TWDB or a district court in Travis County has been completed.

(3) The Executive Director of the TCEQ will provide written notice to the Executive Administrator of the TWDB when non-compliance review and oversight actions are taken against a groundwater conservation district. The Executive Director will provide notice when:

(A) initial notification-of-violation to a non-compliant district is issued;

(B) favorable actions are taken by a district and the district has voluntarily come into compliance;

(C) formal enforcement action has been initiated;

(D) the Executive Director's Preliminary Report is filed with the TCEQ's Chief Clerk;

(E) final enforcement action has been taken by the commission; and

(F) required follow-up investigative activities are taken by the TCEQ in accordance with §36.306 of the Texas Water Code.

(4) Either party to this MOA can substitute the individual notifications identified in paragraphs (1) - (3) of this subsection with monthly notices to the other parties of all actions taken in the previous thirty (30) days. These notices may be transmitted as up-to-date and accurate reports from a database maintained by the party.

(5) Both parties agree to:

(A) meet as needed to coordinate and maintain an efficient district performance review process;

(B) allow interagency access and review of applicable files relating to processing of a management plan by the TWDB, processing of an enforcement action by the TCEQ, or related file information pertaining to the responsibilities of the agencies;

(C) share any groundwater conservation district financial reports that may have been voluntarily submitted to an agency;

(D) provide full disclosure of related activities in the biennial legislative report required under §35.018 of the Texas Water Code; and

(E) identify the agency contact person and mailing address for the formal communications specified by this MOA, along with periodic update of the contact information, as necessary.

(e) General conditions.

(1) Term of MOA. The term of this MOA shall be from the effective date until termination or amendment of this MOA.

(2) Effective date. This MOA, and any subsequent amendment, shall become effective immediately after the date on which the TCEQ Executive Director and the TWDB Executive Administrator sign the document, which ever date is later.

(3) Amendment of MOA. This MOA may be amended by mutual agreement of the two parties in accordance with applicable law. Any amendment of this MOA will become effective immediately after the date on which the TCEQ Executive Director and the TWDB Executive Administrator sign the amended document, which ever date is later.

(4) Termination of MOA. This MOA may be terminated by either party upon thirty days written notice. The termination of this MOA will become effective thirty days after notice is received by the other party.

(5) Authority. By signing this MOA, the signatories acknowledge that they are acting upon proper authority from their governing bodies.

(6) Notices. Any notices required by this MOA to be in writing shall be addressed to the respective party as follows:

(A) Executive Director, Texas Commission on Environmental Quality, Attn: Todd Chenoweth, P.O. Box, 13087, Austin, TX 78711-3231;

(B) Executive Administrator, Texas Water Development Board, Attn: Bill Mullican, P.O. Box 13231, Austin, TX 78711-3231; and

(C) The identified contact person may be revised as necessary, in accordance with provision (d)(5)(E) of this MOA.

(f) Dated September 17, 2007.

§354.13. Memorandum of Agreement Between the Texas Board of Professional Geoscientists (TBPG) and the Texas Water Development Board (TWDB) Regarding Professional Geoscience.

(a) Purpose. The purpose of this Memorandum of Agreement (MOA) is to coordinate the respective responsibilities and duties of TBPG and TWDB in the regulation of professional geoscience in accordance with the Texas Occupations Code, Chapter 1002 (the Texas Geoscience Practice Act or TGPA). Senate Bill (SB) 138, which was passed by the 83rd Texas Legislature and signed by Governor Rick

Perry, amended the TGPA. The legislation, which became effective September 1, 2013, requires the TBPG to identify relevant state agencies and educate the identified agencies' staff on how to file a complaint with the TBPG and how the TBPG resolves a complaint. Under the provisions of SB 138, a state agency that becomes aware of a potential violation of the TGPA or rules of the TBPG is required to forward the information to the TBPG. The intent of this MOA is to implement SB 138 and otherwise to protect the public from adverse environmental impacts that could result from the improper public practice of geoscience associated with activities regulated by the TWDB.

(b) Definitions. The words and terms used in this MOA shall have the same meaning as defined in the Texas Geoscience Practice Act and associated rules passed by the TBPG at Title 22, Part 39, Chapter 850 and Chapter 851 of the Texas Administrative Code unless the context clearly indicates otherwise.

(c) General Jurisdiction.

(1) TWDB jurisdiction. The TWDB is the state agency with primary responsibility for water planning and administering water financing for the state as per Section 6.06, Texas Water Code.

(2) The TBPG is the state agency with regulatory jurisdiction over the public practice of professional geoscience authorized by the TGPA. The TBPG licenses Professional Geoscientists, registers Geoscience Firms, and certifies Geoscientists-in-Training. The TBPG's mission is to protect public health, safety, welfare and the state's natural resources by ensuring that only qualified persons carry out the public practice of geoscience and enforcing the Code of Professional Conduct the Board has established for its licensees. TBPG has the authority to adopt and enforce rules consistent with TGPA relating to Geoscientists, and necessary for the performance of its duties. These TBPG rules are identified in Title 22, Part 39, Chapter 850 and Chapter 851 of the Texas Administrative Code (TAC).

(3) The TWDB is an agency identified by the TBPG under the Texas Geoscience Practice Act, Section 1002.206

(d) Coordination of Activities. The TBPG and the TWDB agree to coordinate with each other in the following activities:

(1) The TBPG agrees to educate TWDB employees regarding the procedures by which complaints are filed with and resolved by the TBPG.

(2) The TWDB agrees to consult with the TBPG on issues that involve the public practice of professional geoscience in connection with activities under the jurisdiction or review of the TWDB.

(3) The TBPG agrees to consult with the TWDB on issues that involve the TWDB in connection with activities under the jurisdiction or review of the TBPG.

(4) The TBPG and the TWDB agree to designate a liaison or representative to facilitate communication and coordination between the TWDB and the TBPG.

(5) The TBPG and the TWDB agree to have agency representatives meet bi-annually, or as needed, to encourage increased communication between the agencies and discuss possible changes to this MOA as needed.

(e) Coordination of Complaints/Coordination of Information.

(1) Upon the identification by the TWDB of a potential violation of the TGPA or a rule adopted by the TBPG, the TWDB agrees to forward any information related to the potential violation and any subsequently obtained information to the TBPG.

(2) As provided in Texas Administrative Code §851.57, the TWDB will forward information relating to a potential violation to the TBPG by filing a formal complaint or providing information to TBPG on a prescribed form. The TWDB is responsible for informing the TBPG of any confidentiality provisions that apply to information and documents it forwards to the TBPG.

(3) The TBPG is responsible for taking appropriate actions, including consulting with TWDB as needed to ensure any applicable confidentiality provisions are maintained.

(4) Upon the identification by the TBPG of a potential issue of concern to TWDB, the TBPG agrees to forward any information related to the potential concern to the TWDB.

(5) When deemed appropriate by both agencies, the TWDB and the TBPG may cooperate on enforcement actions. Each agency shall retain the authority to undertake separate enforcement or legal actions.

(f) Miscellaneous.

(1) Nothing in this MOA shall be construed to reduce the statutory jurisdiction of either agency.

(2) Agency representatives shall meet bi-annually, or as needed, to discuss coordination of complaints under paragraph (c) of this MOA, to discuss possible changes in this MOA, to encourage increased communication between the agencies, and to increase public protection through effective use of the public protection mechanism of professional geoscience licensure and regulation.

(3) If any provision of this MOA is held to be invalid, the remaining provisions shall not be affected thereby.

(g) This MOA will take effect upon approval by both agency Executive Directors. This MOA will remain in effect until rescinded by either agency by board or commission action taken in accordance with the terminating agency's procedures. Dated: June 13, 2014

§354.14. Agreement for Right of Entry and Temporary Use of Highway Right of Way.

(a) THIS AGREEMENT IS MADE by and between the Texas Department of Transportation, hereinafter referred to as "TxDOT," and the Texas Water Development Board, hereinafter referred to as "TWDB."

(b) WHEREAS, pursuant to its authority under Texas Water Code §6.107, TWDB finds it necessary to enter certain public property under the control and jurisdiction of TxDOT to monitor water wells; and

(c) WHEREAS, Chapter 203 of the Texas Transportation Code empowers the Texas Transportation Commission and TxDOT to lay out, construct, maintain, and operate the state highway system; and

(d) WHEREAS, TxDOT has determined that such entry is in the public interest and will not damage the highway facility, impair safety, impede maintenance, or in any way restrict the operation of the highway facility.

(e) NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectively kept and performed as set forth, it is hereby agreed as follows:

(f) AGREEMENT.

(1) Article 1. Notice to TxDOT.

(A) Not later than five working days before entry to the site is needed, TWDB shall notify the District Engineer of TxDOT's

Waco District in writing or via email. Entry onto certain portions of the right of way of controlled access facilities requires prior approval from the Federal Highway Administration. In the event that TWDB requires entry onto that portion of the right of way to which access is controlled, the TWDB shall notify TxDOT at least fifteen working days in advance to allow time to obtain the necessary FHWA approval.

(B) The District Engineer will determine whether any construction or maintenance activities have been scheduled that might affect the site investigation, or if any special conditions exist that might otherwise impact the investigation.

(C) Right of entry shall be limited to site investigations associated with installation and maintenance of an automatic water-level recorder.

(2) Article 2. Site Investigation.

(A) At all times when on TxDOT right of way, TWDB staff, its contractors, and their respective employees, agents, and representatives shall wear protective clothing including but not limited to protective head gear such as hard hats, protective footwear such as steel-toed shoes, and reflective vests visible to the traveling public.

(B) All site investigations shall be conducted in accordance with all applicable federal and state laws, regulations, and policies.

(C) Pursuant to §203.031 of the Transportation Code, entry onto the right of way of any controlled access facility shall be allowed only from the outer edge of the right of way by way of frontage roads, nearby or adjacent public roads or streets, or trails along or near the highway right of way that connect to an intersecting road.

(D) TWDB shall notify the District Engineer at least 16 working hours in advance before performing any task that will result in disturbing the pavement.

(E) TWDB shall notify the District Engineer at least 16 working hours in advance before installing any equipment, structure, or other object intended to remain in place for more than 48 hours.

(F) TWDB shall notify the District Engineer at least 16 working hours in advance before closing one or more traffic lanes or otherwise interfering with the flow of traffic in any way. All such lane closures or traffic interference shall comply with the traffic control plan approved by TxDOT and attached to this Agreement as Exhibit "A." TWDB shall install the traffic control devices, and all traffic control shall comply with the Texas Manual on Uniform Traffic Control Devices.

(G) If during the site investigation TxDOT must perform or authorize a contractor to perform routine or special maintenance, TWDB will cooperate with TxDOT maintenance requirements.

(H) The District Engineer and the TWDB contractor are authorized to communicate directly with one another to coordinate, clarify, or otherwise discuss site investigation activities.

(I) If it becomes necessary for TWDB to curtail the investigation because of damages due to flooding, accident, or other catastrophic event, TWDB shall not resume investigation until notified by TxDOT to do so. TxDOT will proceed in a timely manner with any repair of damage caused by the above events.

(3) Article 3. Concluding the Investigation.

(A) TWDB shall notify the District Engineer when investigation activities have been completed. If one or more monitoring wells are installed, the requirements of this agreement shall survive the conclusion of initial activities.

(B) TWDB shall restore the right of way to its original condition at the conclusion of the investigation. TxDOT will inspect the right of way after any such restoration and determine that the original condition has been restored. If the right of way is found not to have been restored to its original condition, TxDOT will repair the damage at TWDB's expense.

(4) Article 4. General Terms and Conditions.

(A) TxDOT's authorization to allow TWDB a right of entry onto the site identified in this Agreement does not in any way impair or relinquish TxDOT's right to use such land for right of way purposes when it is required for construction or reconstruction of the traffic facility for which it was acquired, nor shall use of the land for other than highway purposes under this agreement ever be construed as abandonment of the land by TxDOT.

(B) TxDOT will notify TWDB of any utility installations owned by third parties known to be located on the right of way. TWDB shall provide adequate notice of the investigation to all utility owners identified by either TxDOT or TWDB who are potentially impacted by the investigation.

(C) Each party reserves the right to terminate this agreement at any time after notifying the other party in writing at least thirty (30) days in advance of the intended termination and establishing the conditions of termination.

(g) IN WITNESS WHEREOF, TxDOT and TWDB have executed duplicate counterparts to effectuate this agreement.

(h) Dated March 31, 2005.

(i) Attached graphic.

Figure: 31 TAC §354.14(i)

§354.15. Agreement in Furtherance of Transparency Initiative.

(a) Please allow this correspondence to memorialize our agreement regarding the sharing of information between the Texas Water Development Board ("TWDB") and the Texas Comptroller of Public Accounts, as follows:

(1) Upon request, the TWDB shall provide the Texas Comptroller of Public Accounts with access to information reflecting only the TWDB's debt and/or financial liabilities. Such information will be provided "as is," and shall be used solely for purposes authorized by law.

(2) The TWDB and the Texas Comptroller of Public Accounts understand and agree that, while the information provided by the TWDB shall be considered public information, our respective agencies shall nonetheless comply with all state and federal laws governing confidentiality, privacy and the security of such information, including but not limited to the Public Information Act, TEX. GOV'T CODE ANN. §552.001, et seq., and Open Meetings Act, TEX. GOV'T CODE ANN. §551.001, et seq.

(3) Any costs associated with the exchange of data between the TWDB and the Texas Comptroller of Public Accounts shall be paid by the agency incurring the cost or expense, and no funds appropriated to our respective agencies will be exchanged.

(4) Finally, any debt information conveyed by the TWDB and as described in this correspondence shall be provided in the manner and format proscribed by Securities and Exchange Commission (SEC) Rule 15c2-12.

(b) If the Texas Comptroller of Public Accounts is amenable to the terms of this agreement as set forth herein, please sign and date this letter where indicated below, and return a copy to me at your earliest convenience. We appreciate your attention to this matter, and look

forward to working with you to increase transparency in government on behalf of all citizens of the State of Texas.

(c) Dated April 4, 2014.

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 12, 2016.

TRD-201604114

Les Trobman

General Counsel

Texas Water Development Board

Earliest possible date of adoption: September 25, 2016

For further information, please call: (512) 463-7686



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER JJ. CIGARETTE AND TOBACCO PRODUCTS REGULATION

34 TAC §3.1202

The Comptroller of Public Accounts proposes amendments to §3.1202, concerning warning notice signs, to implement Senate Bill 97, 84th Legislature, 2015. The section is located in Title 34, Chapter 3, Subchapter JJ, which is currently titled Cigarette and Tobacco Products Regulation, but is being changed to reflect that the scope of regulation has changed to include e-cigarettes. The comptroller has proposed to retitle the subchapter as Cigarette, E-Cigarette, and Tobacco Products Regulation.

Throughout the section, titles are amended to correct formatting.

Subsection (a) is amended to conform with Health and Safety Code, §161.084(e). Subsections (a) and (b) are amended to correct grammatical errors and to make the sections easier to read. Subsections (a), (b), (d)(1)(A), and (2)(A) are amended to add e-cigarettes where appropriate, to implement Senate Bill 97, 84th Legislature, 2015. Subsection (d)(2)(A) is amended to remove the size requirements for the additional warning notice sign for a cash register or check-out stand to promote voluntary compliance. Subsection (d)(2)(A) and (B) are reworded to make them easier to read. Subsection (e) is amended to identify the parties responsible for posting warning notice signs for cigarettes and tobacco products, and to establish the effective date for posting warning notice signs for e-cigarettes.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule to current state statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic

cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller), which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Health and Safety Code, Chapter 161, Subchapter H (Distribution of Cigarettes or Tobacco Products), as amended by Senate Bill 97.

§3.1202. *Warning Notice Signs.*

(a) Warning notice signs [Notice Signs]. Each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine [machines] must post a warning notice sign in a location that is conspicuous to all employees and customers and that is close to the cash register, check-out stand, or vending machine where cigarettes, e-cigarettes, or tobacco products may be purchased. The failure [It is a violation to intentionally fail] to display a sign as prescribed by this section is [a] a Class C misdemeanor[)].

(b) Sign distribution [Distribution]. Upon request, the [The] comptroller [upon request] will provide the warning notice signs without charge to any person who sells cigarettes, e-cigarettes, or tobacco products, including distributors or wholesale dealers of cigarettes, e-cigarettes, or tobacco products in this state for distribution to persons who sell cigarettes, e-cigarettes, or tobacco products. A distributor or wholesale dealer may not charge for distributing a sign under this subsection. Requests for the warning notice signs may be made by calling the Comptroller of Public Accounts toll free at 1-800-862-2260, or by writing to the attention of the Account Maintenance Division, Comptroller of Public Accounts, 111 East 17th Street, Austin, Texas 78774-0100. In Austin, call (512) 463-3731. A request must include the number of signs needed, and the person and address to whom the signs are to be mailed.

(c) Alternate signs [Signs]. Retailers, distributors, and wholesale dealers may develop their own warning notice signs provided the signs meet minimum size and design specifications, including wording and font size, described in subsection (d) of this section. A retailer, distributor, or wholesale dealer may submit a sample of its proposed sign for review to the address as noted in subsection (b) of this section.

(d) Sign design [Design] and minimum size requirements [Minimum Size Requirements]. The design, minimum size, and placement location of each sign are as follows.

(1) Design. Each sign must be designed according to the following:

(A) it must contain the following statutory language: "PURCHASING OR ATTEMPTING TO PURCHASE E-CIGARETTES OR TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF E-CIGARETTES OR TOBACCO PRODUCTS TO A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO \$500 MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE

BY CALLING 1-800-345-8647. PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT."

(B) retailers must display the English version. The comptroller will make a Spanish version available. Both the Spanish and English versions may be posted.

(2) Size and placement [Placement]. The sign is to be posted on or near:

(A) a [the] cash register or check-out stand and must be no less than 8-1/2 inches wide by 14 inches in length. The font size for the statutory language that must appear on the sign must be no less than 14-point type. The mandatory [An 8-1/2 inches wide by 14 inches in length] warning notice sign must be conspicuous from each cash register or check-out stand where cigarettes, e-cigarettes, or tobacco products may be purchased. If a retailer chooses, an additional warning notice sign, regardless of size, [3 inches wide by 7 inches in length warning notice sign] may be conspicuously placed on each cash register or check-out stand where cigarettes, e-cigarettes, or tobacco products may be purchased;

(B) a [the] vending machine and [machines] must be no less than 3 inches wide by 7 inches in length. The font size for the statutory language that must appear on the sign must be no less than 10-point type.

(e) Effective date. Sellers of cigarettes and tobacco products must display the [Date. The] warning notice signs [must be displayed] in the appropriate locations beginning January 1, 1998. E-cigarette sellers must display the warning notice signs in the appropriate locations beginning October 1, 2015.

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 15, 2016
TRD-201604159
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: September 25, 2016
For further information, please call: (512) 475-0387



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§748.3, 748.43, 748.61, 748.65, 748.191, 748.301, 748.303, 748.309, 748.313, 748.315, 748.361, 748.363, 748.393, 748.395, 748.505, 748.533, 748.535, 748.539, 748.563, 748.571, 748.575, 748.605, 748.681, 748.721, 748.725, 748.729, 748.801, 748.861, 748.867, 748.869, 748.883, 748.885, 748.935, 748.937,

748.939, 748.941, 748.943, 748.945, 748.985, 748.987, 748.1009, 748.1013, 748.1021, 748.1103, 748.1109, 748.1117, 748.1119, 748.1205, 748.1207, 748.1209, 748.1211, 748.1213, 748.1215, 748.1217, 748.1219, 748.1223, 748.1225, 748.1263, 748.1269, 748.1303, 748.1331, 748.1335, 748.1337, 748.1341, 748.1345, 748.1349, 748.1351, 748.1381, 748.1385, 748.1389, 748.1433, 748.1435, 748.1437, 748.1501, 748.1531, 748.1539, 748.1541, 748.1543, 748.1549, 748.1551, 748.1581, 748.1661, 748.1695, 748.1697, 748.1741, 748.1743, 748.1751, 748.1757, 748.1759, 748.1761, 748.1763, 748.1791, 748.1793, 748.2003, 748.2009, 748.2053, 748.2101, 748.2151, 748.2231, 748.2233, 748.2307, 748.2309, 748.2401, 748.3015, 748.3017, 748.3351, 748.3353, 748.3357, 748.3365, 748.3601, 748.3603, 748.3701, 748.3705, 748.3751, 748.3753, 748.3757, 748.3765, 748.3801, 748.3891, 748.3931, 748.4043, 748.4045, 748.4213, 748.4261, 748.4265, 748.4301, 748.4403, 748.4471, and 748.4473; the repeal of §§748.101, 748.103, 748.105, 748.107, 748.109, 748.111, 748.131, 748.133, 748.161, 748.163, 748.231, 748.233, 748.235, 748.237, 748.239, 748.241, 748.307, 748.341, 748.435, 748.501, 748.727, 748.731, 748.1101, 748.1105, 748.1753, 748.1765, 748.3481, 748.3535, 748.3567, 748.4041, and 748.4047; and new §§748.101, 748.103, 748.105, 748.107, 748.109, 748.111, 748.113, 748.115, 748.117, 748.119, 748.121, 748.123, 748.125, 748.127, 748.129, 748.151, 748.153, 748.155, 748.157, 748.161, 748.341, 748.343, 748.345, 748.347, 748.724, 748.731, 748.1101, 748.1340, 748.1386, 748.1753, 748.1765, and 748.4041 in Chapter 748, concerning Minimum Standards for General Residential Operations. The purpose of the amendments, repeals, and new section is to implement Texas Human Resources Code (HRC) §42.042(b) requires CCL to conduct a comprehensive review of all rules and minimum standards every six years. The proposed changes are a result of the comprehensive review of all minimum standards located in Chapter 748.

During this review of standards, CCL's goal was to balance the concerns of child advocacy groups, general residential operations, children, and parents to formulate standards that promote the safety of every child in care.

In preparation for the review of minimum standards, CCL conducted a web-based survey open to permit holders, caregivers, advocates, parents, and anyone in the general public interested in commenting on the standards. The survey was available for public input from late August through December 2014. The next step in the review was to hold a series of 13 stakeholder forums throughout the state between September and November 2015 to solicit additional input from the public about proposed changes to the minimum standards.

Between the web-based survey and the stakeholder forums, CCL received almost three hundred comments (for both Chapters 748 and 749) from stakeholders for consideration in the review. These comments, along with a line-by-line review of all minimum standards conducted by both regional and State Office Licensing staff, formed the basis of the first round of recommendations that were then presented to a temporary workgroup. The temporary workgroup, comprised of 13 participants, including providers from child-placing agencies and general residential operations and representatives from Child Protective Services, Residential Contracts, and Licensing, met twice on December 16, 2015 and February 2, 2016. The workgroup reviewed and provided additional comments regarding the recommendations.

DFPS also received some comments in the surveys and forums related Emergency Behavior Intervention (EBI). In addition, CCL separately convened a temporary workgroup to undertake a review specific to EBI-related Minimum Standards. Included in this rule packet are non-substantive revisions related to EBI, such as moving EBI definitions to the general definitions section, and making non-substantive updates to provisions regarding required policies for an operation. In addition, this packet includes one clarifying provision related to inclusion of parents in service plan review meetings that resulted from the EBI-related temporary workgroup. At a later date, CCL will propose additional changes related to EBI that were identified during the survey and forums, as well as any substantive changes identified in the EBI-related review and temporary workgroup.

This comprehensive review includes changes to approximately two hundred minimum standards. Some of the changes are minimal (e.g. changing a cite to a rule, or deleting a masculine pronoun); other changes are small but have more of an impact (e.g. changing the treatment service terminology of "mental retardation" to "intellectual disability"); and still other changes are more complex and will have a wider impact. Below is a broad overview of some of the different areas and types of changes that DFPS is recommending: (1) updating definitions and treatment service types; (2) a rewrite and reorganization of the Divisions 1, 2, and 5 of Subchapter C, Organization and Responsibilities, relating to Permit Holder Responsibilities; Governing Body; and Policies and Procedures. The focus of the rewrite and the reorganization is to clarify: (A) the plans, policies, and procedures that are required during the application process; and (B) a GRO's operational responsibilities, including responsibilities for notifications to Licensing. The rewrite is also intended to clarify confusion over a "permit holder's" and "governing body's" responsibilities; (3) clarifying training requirements, for example: (A) only permitting 10 hours of non-required pre-service training to be carried over to use as annual training during the upcoming year (§748.937(b)(4)); and (2) increasing the number of annual training hours that may come from self-instructional training from 1/3 to 1/2 (§748.937(d)); (4) continuing to modify the rules to improve normalcy for children, for example: (A) changing the Children's Rights rule to make the rights easier to understand and find by modifying the language of some of the rights and listing the rights under seven different categories (e.g. Safety and Care, Living a Normal Life, Discipline, etc.) (§748.1101); (B) requiring a child 14 and older to review and sign the child's service plan (§748.1349); and (C) allowing more discretion in the use of trampolines, especially for older children (§748.3891); (5) while much of trauma informed care is being integrated into the GRO minimum standards through the "Normalcy" rule packet with changes to the training requirements, the changes in this packet also continue to integrate trauma informed care as follows: (A) defines trauma informed care at §748.43; (B) integrates it into the discipline policies at §748.115(2); and (C) integrates it into the service planning process at §748.1337; (6) clarify service planning requirements, for example: (A) increasing the time to complete a service plan from 40 days to 45 days (§748.1335); (B) permitting multiple meetings to complete the service planning meeting requirements (§748.1340); (C) permitting parent notifications for a service planning meeting to come from other parties (§748.1341); and (D) permitting a single service plan to continue throughout the time a child is in residential care as long as the GRO completes a preliminary service plan at admittance and continues to review and update the plan (§748.1386); (7) strengthening the minimum standards when it is necessary for the safety of children, for example: (A)

requiring older runaway children to be reported missing within two hours (this is already the requirement for younger children) (§748.303(a)(9)); (B) restricting the use of e-cigarettes or any kind of vapors (§748.1661); and (C) restricting infants from sleeping in restrictive devices (§748.1765); and (8) allowing more discretion by providers while still ensuring the safety of children, for example: (A) clarifying that electronic and digital signatures, including e-mail and electronic approvals, are appropriate §748.347; (B) shortening the experience requirements for professional level service providers §748.563; and (C) clarifying that an emergency admission includes when a GRO has 72 hours to place a child (§748.1263).

A summary of the changes are:

The amendment to §748.3: (1) clarifies that administrators, owners, or operators or any other controlling person who has the ability to influence or direct the operation's management, expenditures, or policies are responsible for following these minimum standards; and (2) updates terminology.

The amendment to §748.43 clarifies the definitions by: (1) updating definitions; (2) moving definitions from other subchapters that are used throughout the chapter (e.g. chemical restraint, corrective or adverse action, emergency medication, etc.); (3) adding and clarifying definitions regarding "normalcy" issues (e.g. childhood activities and unsupervised childhood activities); and (4) adding definitions to clarify "permit holder" and "governing body" (e.g. corporation or other type of business entity, owner, and partnership).

The amendment to §748.61 updates the names and description of the types of treatment services to be consistent with the DSM-5.

The amendment to §748.65 deletes the 16-year old supervision requirement and incorporates it into subsection (b) to §748.1021(a).

Subchapter C, Division 1, Permit Holder Responsibilities is repealed and is replaced by new Division 1, Plans and Policies Required During the Application Process. The new Subchapter C rewrites and reorganizes Divisions 1, 2, and 5. New Division 1 includes former Divisions 1 and 5 and clarifies the plans, policies, and procedures that are required during the application process.

Section 748.101 is repealed because: (1) portions of the rule are unnecessary; and (2) the other requirements are incorporated into §745.243(6)(J), new §748.103(a), and new §748.139.

Section 748.103 is repealed because: (1) portions of the rule are unnecessary or duplicative; and (2) the other requirements are incorporated into new §748.151 and new §748.153.

Section 748.109 is repealed and the content is incorporated into new §748.155.

Section 748.111 is repealed and the content is incorporated into new §748.157.

New §748.101 clarifies the plans that are required for the application process by: (1) incorporating portions of repealed §748.161(1) - (3) and repealed §748.3351(1); (2) adding a requirement that the operation plan must include the location and telephone numbers of all offices, the hours of operation of the offices, and a list of persons or officers and their titles that comprise the governing body, if applicable; and (3) adding the Division 6 requirements from Subchapter O of an emergency evacuation and relocation plan.

New §748.103 clarifies the policies that are required for the application process by accumulating a complete list and referencing the relevant minimum standard.

Section 748.105 is repealed and proposed new to include the content of the repealed version of this rule with non-substantive modifications; and the written staffing plan requirements from repealed §748.501 and §748.1009(b).

Section 748.107 is repealed and proposed new to include the content of the repealed version of this rule with non-substantive modifications; and conflict of interest policies from repealed §748.131(a)(5).

New §748.109 includes the admission policies content from repealed §748.233 with updated but non-substantive modifications to the rule.

New §748.111 includes the child-care policies content from repealed §748.235 with non-substantive modifications to the rule.

New §748.113 includes the emergency behavior intervention policies content from repealed §748.237 with non-substantive modifications to the rule.

New §748.115 includes the discipline policies content from repealed §748.235(7) with non-substantive modifications to the rule for clarity to clarify that the discipline policy must be consistent with Subchapter M.

New §748.117 includes a new requirement for a transitional living policy, which more than likely already exists if an operation is currently operating a transitional living program. It is also consistent with the CPA requirement in §749.125 that was previously required in repealed §749.351.

New §748.119 includes the volunteer policies content from repealed §748.239 with non-substantive modifications to the rule.

New §748.121 includes a new requirement for abuse and neglect policies. It is also consistent with the new CPA policy requirement at §749.135.

New §748.123 includes the employee vaccine-preventable disease policy content from repealed §748.241.

New §748.125 includes the operational policies content from repealed §748.231(a) and (d).

New §748.127 includes the content from repealed §748.231(b) with significant clarifications to explain how a GRO's plans, policies, and procedures must be adopted by a sole proprietor, partnership, or corporation.

New §748.129 clarifies that Licensing may cite standards in Division 1 for deficiencies after the application process is granted.

Subchapter C, Division 2, Governing Body, is repealed and replaced with new Division 2, Operational Responsibilities and Notifications. New Division 2 primarily includes former Division 2 and clarifies a GRO's operational responsibilities, including responsibilities for notifications to Licensing. The rewrite is also intended to clarify confusion over a "permit holder's" and "governing body's" responsibilities.

Section 748.131 is repealed because: (1) a grandfather clause is outdated and is no longer needed; (2) portions of the rule are unnecessary or duplicative; and (3) the other requirements will be incorporated into new §748.107, new §748.127, new §748.151, and §748.161.

Section 748.133 is repealed and the content will be incorporated into new §748.153.

New §748.151 includes portions of the content from repealed §748.103 with significant modifications, including the combining of some paragraphs and the deletion of some paragraphs because they were unnecessary and/or duplicative.

New §748.153 includes: (1) portions of the content from repealed §§748.103(a)(13), 748.133, 748.307(2) and (3), and 748.3351(1); (2) additions of items consistent with new §748.101 and new §748.103; and (3) modifications to the timeframes for notification to Licensing for consistency.

New §748.155 includes the content from repealed §748.103(b) and §748.109.

New §748.157 includes the content from repealed §748.111.

Section 748.161 is repealed and the contents is incorporated into new §748.101 and new §748.161.

New §748.161 creates a new rule by adding portions of the content from repealed §748.161 and §748.163.

Section 748.163 is repealed and the content is incorporated into new §748.161.

The amendment to §748.191 clarifies that cottage homes do not have to post the operations permit in the cottage home, as long as the operation posts the permit at the main office location.

Subchapter C, Division 5, Policies and Procedures, is repealed and is primarily incorporated into new Division 1, Plans and Policies Required During the Application Process.

Section 748.231 is repealed and the content is incorporated into five new rules: §§748.103(a), 748.125, 748.127, 748.153, and 748.529.

Section 748.233 is repealed and the content is incorporated into new §748.109.

Section 748.235 is repealed and the content is incorporated into new §748.111 and new §748.115.

Section 748.237 is repealed and the content is incorporated into new §748.113.

Section 748.239 is repealed and the content is incorporated into new §748.119.

Section 748.241 is repealed and the content is incorporated into new §748.123.

The amendment to §748.301 clarifies incidents are those incidents noted in §748.303.

The amendment to §748.303 clarifies several issues, including: (1) requiring a child death to be reported to law enforcement within one hour after the child's death, and reported to Licensing and the parents within two hours after the child's death; (2) making the language for "substantial physical injury" consistent with the new definition for that term; (3) requiring child-on-child physical abuse and sexual abuse to be reported when a GRO becomes aware of it; (4) clarifying that a serious incident includes when law enforcement responds to an alleged incident at the operation; (5) requiring an operation to report the absence of a 13 year old or older who cannot be located to Licensing, the parents, and law enforcement no later than two hours from the when the absence is discovered (Note: This is already the requirement for children younger than 13.); (6) adding a subsection from repealed §748.307(1) stating medical incidents that don't rise to

the level of a serious incident don't have to be reported to Licensing, but they must be documented; (7) adding language requiring a report to the Hotline if there is reason to believe an adult resident has been abused, neglected, or exploited; and (8) making the language in these sections consistent with the rest of the chapter.

Section 748.307 is repealed and incorporates the content into two new rules: §748.153 and §748.303(b).

The amendment to §748.309 deletes the requirement for reporting to licensing in writing, because those issues will now be included in new §748.153; and updates the name of the Hotline.

The amendment to §748.313 clarifies the language of the rule for consistency throughout the chapter.

The amendment to §748.315 clarifies that incident reports must be easily accessible to Licensing; and deletes a subsection because it is already required by §748.399(a).

Section 748.341 is repealed and incorporates the content into two new rules: §748.343 and §748.345.

New §748.341 includes the content from portions of repealed §748.231.

New §748.343 includes the content from portions of repealed §748.341 and §748.435 with non-substantive modifications.

New §748.345 includes part of the content of repealed §748.341 with non-substantive modifications, and adds further requirements for protecting electronic records.

New §748.347 clarifies that electronic and digital signatures, approvals by e-mail, and electronic approvals are allowed.

The amendment to §748.361 deletes a cite to a rule regarding electronic records because it is unnecessary. In addition, the master list of active and archived personnel records must be kept at the main office and must include a notation of the location of those records.

The amendment to §748.363 clarifies: (1) that employees must sign a statement documenting that the employee has read the operational policies required by §748.103; (2) what must go into personnel record regarding training; (3) deletes a signed statement requirement regarding the employee's training on abuse and neglect, because it has been clarified what must go into a personnel record regarding training; and (4) the name of the Hotline.

The amendment to §748.393 deletes the requirement that active child records must include the "date of each data entry and the name of the employee who makes the data entry", and deletes an unnecessary cite.

The amendment to §748.395 deletes the timeline for written summaries, because written summaries are not required.

Section 748.435 is repealed and the content moved to new §748.341.

Section 748.501 is repealed and the content incorporated into new §748.105(3).

The amendment to §748.505 clarifies that all employees must meet the minimum qualifications, so deletes the erroneous caveat that the minimum qualifications only apply to employees that are "regularly or frequently present while children are in care".

The amendment to §748.533 updates a reference for a cite to a rule.

The amendment to §748.535 clarifies the wording of the question to improve readability and understanding; and deletes and unnecessary phrase.

The amendment to §748.539 clarifies the wording of the rule to improve readability and understanding.

The amendment to §748.563 clarifies the qualification chart for professional level service providers by: (1) reducing the professional qualifications (years of experience) for: (A) prior option 2 from two years to one year; and (B) prior option 4 from three years to two years; (2) combining: (A) prior options 1 and 2 to create a new option 1, while removing the nine credit hours in graduate level course on family and individual function and interaction; and (B) prior options 3 and 4 to create new option 2, while removing any requirement that the degree be in a social work or other human service field; and (3) deleting an outdated grandfather clause.

The amendment to §748.571 deletes in rule the requirement for a nurse to comply with specific nurse delegation requirements, because nurses already have to comply with these requirements which are enforced by the Texas Board of Nursing.

The amendment to §748.575 deletes in rule the requirement for a nurse to comply with specific nurse delegation requirements, because nurses already have to comply with these requirements which are enforced by the Texas Board of Nursing.

The amendment to §748.605 updates treatment services terminology.

The amendment to §748.681 adds to caregiver minimum qualifications that: (1) a high school diploma or high school equivalency (GED) can come from a private school accreditation; or (2) there can be documentation to verify high school equivalency from home schooling.

The amendment to §748.721 deletes a subsection regarding requirements for volunteers that provide short-term services through an organization and incorporates it into new §748.724; deletes a masculine pronoun; and updates the name of the Hotline.

New §748.724: (1) incorporates a portion of the content from deleted §748.721(c); (2) adds "contractors" to the rule; and (3) clarifies that a GRO must determine that a contractor's/volunteer's entity that they work for has programs, policies, and procedures that are adequate to protect the health and safety of children.

The amendment to §748.725 combines repealed §748.727 with this rule and clarifies that a volunteer or sponsoring family that takes a child for an overnight visit is a volunteer activity. While the volunteer does not have to comply with the employee or caregiver requirements, the volunteer must meet the relevant background check requirements.

Section 748.727 is repealed and moves the content to §748.725, but clarifies that a sponsoring family must meet the relevant background checks.

The amendment to §748.729: (1) clarifies that the volunteer that takes a child for an overnight visit must be given the same information that a respite care provider would receive; (2) deletes the redundant requirement that taking a child for more than 48 hours requires approval from the parent, which is already required by

§748.725(b)(2); and (3) deletes the information about another child inviting a child for an overnight visit, because this is a background check issue and does not apply to this question.

Section 748.731 is repealed and proposed new, which takes a different approach by clarifying that a person may not perform community service hours at an operation.

The amendment to §748.801 incorporates the description of the acronym CEU into §748.937(a), which is the only place it is used; and clarifies the definition of "instructor-led training".

The amendment to §748.861 clarifies the language of the rule for better readability and understanding.

The amendment to §748.867 clarifies the language of the rule and deletes masculine pronouns.

The amendment to §748.869 reorders the subsections, and clarifies that a qualified instructor for pre-service training must hold a generally recognized credential or possess documented knowledge and/or experience relevant to the training the instructor will provide.

The amendment to §748.883 clarifies the rule question and answer for better readability and understanding.

The amendment to §748.885 clarifies the rule question and answer for better readability and understanding.

The amendment to §748.935 changes the "within 12-months from date of employment" to "within 12-months from when you hire the person" for when an employee's or caregiver's annual training must be completed.

The amendment to §748.937 clarifies certain aspects of the rule by: (1) spelling out the acronym CEU; (2) limiting to 10 hours the amount of non-required pre-service training hours that may be carried over and counted for annual training hours; (3) stating that the "required" pre-service training hours may not be counted for annual training hours; and (4) increasing from one-third to one-half the number of annual training hours that may come from self-instructional hours; and clarifying that no more than three hours of self-instructional training may come from reading written materials or watching a video on their own.

The amendment to §748.939 clarifies that while Licensing does not approve or endorse training resources, the requirements for a GRO to ensure reliable training relevant to the population of children served applies to both instructor-led training and self-instructional training.

The amendment to §748.941 clarifies that transportation safety training must be instructor-led.

The amendment to §748.943 adds water safety and administration of medication as training topics appropriate for annual training.

The amendment to §748.945 clarifies the psychotropic medication training must be met; deletes masculine pronouns; and updates a cite to a rule.

The amendment to §748.985 clarifies that first-aid training may be obtained through self-instructional training.

The amendment to §748.987 deletes "first-aid" from this rule, because first-aid training no longer needs to be instructor-led.

The amendment to §748.1009 moves subsection (b) regarding a professional staffing plan for treatment services to new §748.105(3)(D).

The amendment to §748.1013 deletes masculine pronouns.

The amendment to §748.1021 adds the requirement that a child must be 16 years old to be in a transitional living program and not require supervision, which came from the repealed §748.65(b).

Section 748.1101 is repealed and proposed new to modify the language of the repealed rule by: (1) dividing the children's rights into seven categories (e.g. Safety and Care, Living a Normal Life, Discipline, etc.) to make the rights easier to understand and find; and (2) improving the readability of the rule overall.

The amendment to §748.1103 clarifies that a timely signed copy of the "CPS Rights of Children and Youth in Foster Care" will meet the Licensing requirements in this rule.

Section 748.1105 is repealed and the child's personal care information is incorporated into the child's rights in new §748.1101.

The amendment to §748.1109 requires a re-evaluation by child placement management staff when restrictions are imposed on a child's contact with siblings for more than 60 days (it is currently 90 days). The wording of this rule was also modified to be consistent with other re-evaluations in this chapter.

The amendment to §748.1117 updates terminology.

The amendment to §748.1119 clarifies that the list of the techniques that may not be used on a child is not an exhaustive list.

The amendment to §748.1205: (1) deletes the requirements to document the child's birthplace and court orders establishing the managing conservator of the child; and (2) updates a cite to a rule.

The amendment to §748.1207 adds the Texas Family Code §32.203 requirement that in certain instances a child 16 years or older may sign a placement agreement for a transitional living program without the consent of the child's parent.

The amendment to §748.1209 clarifies that during orientation a child must be provided information on how to make complaints to outside agencies and how to contact outside parties to a child's case.

The amendment to §748.1211 amends this rule by: (1) deleting the requirement that parents must be able to determine whether a program is appropriate for a child and can meet the child needs, however, adding a new requirement to provide parents with required policies, including policies on fees, emergency behavior intervention, and discipline; and (2) adding the policies and explanations that must be provided to a child that signs a placement agreement as specified in §748.1207.

The amendment to §748.1213 clarifies that one of the special needs that must be shared with caregivers is supervision needs; and the sharing of all special needs must be documented.

The amendment to §748.1215 clarifies that the admission assessment must be completed prior to admission.

The amendment to §748.1217 amends the language of the rule to: (1) delete redundant phrases that are already clarified by a definition; and (2) clarify that an assessment must establish how the needs of the child can be met, which also allows for the deletion of the requirement for a rationale for the appropriateness of the admission.

The amendment to §748.1219 amends the language of the rule to: (1) allow any health care professional to evaluate whether a GRO can appropriately care for the child; (2) delete a supervision requirement, because that is already required to be reviewed for

all children; and (3) update the treatment services terminology, delete a masculine pronoun, and correct a cite to a rule.

The amendment to §748.1223 deletes a masculine pronoun and changes an acronym.

The amendment to §748.1225 changes "physician" to "health-care professional"; deletes a masculine pronoun; and changes an acronym.

The amendment to §748.1263 adds to the list of situations that constitute an emergency admission to include, "if you must place a child within 72 hours"; clarifies the wording of the rule; and deletes a masculine pronoun.

The amendment to §748.1269 makes the terminology for psychiatric evaluation, psychological evaluation, and psychosocial assessment consistent throughout the chapter.

The amendment to §748.1303 clarifies that parents (not GROs) are required to request and attend IEPs, so this requirement is being deleted for GROs. However, the changes clarify that a GRO should notify a parent if the caregivers believe an IEP should be requested, and GROs should attend an IEP if requested to do so.

The amendment to §748.1331 clarifies that the preliminary service plan addressing the immediate needs of the child must be completed within 72 hours; and an example of an immediate need is supervision requirements.

The amendment to §748.1335 clarifies that the initial service plan must be completed within 45 days (currently 40 days).

The amendment to §748.1337: (1) integrates "trauma informed care" into the service planning process; (2) adds some additional normalcy requirements to the service planning process; and (3) updates the items that are needed for an initial service plan, including: (A) updating the psychiatric evaluation, psychological evaluation, and psychosocial assessment language; (B) deleting redundant phrases that are already included in the definitions; (C) moving subsection (c) to (b)(2); and (D) clarifying references and other language for consistency.

New §748.1340 clarifies that the service planning team may meet in one meeting, two or more meetings, or in separate meetings to discuss and develop a child's service plan, provided that each service planning team member is informed of the discussion and comments regarding the child's service plan that were made in each meeting.

The amendment to §748.1341 clarifies that the child's parents must have at least two weeks' notice of the initial service planning meeting. The rule also requires documentation of the notice, but it does not specify who has to provide the notice.

The amendment to §748.1345 updates treatment services terminology.

The amendment to §748.1349 requires all children 14 years and older to review and sign the initial service plan, unless there is justification for not providing the plan. If the child disagrees with the plan or refuses to sign it, this information must be documented.

The amendment to §748.1351 clarifies that the service plan must be implemented within 15 days (currently 10 days) after the date of the scheduled service planning meeting involving the parents and the child.

The amendment to §748.1381 updates treatment services terminology.

The amendment to §748.1385 removes the requirement to determine for children receiving treatment services whether the placement should continue, change the child's treatment service designation, transfer the child to a least restrictive setting, or refer the child to an inpatient hospital. This is being deleted because permanency goals should be considered for all children and are broader than this list.

New §748.1386 clarifies that a single service plan that continues throughout the time a child is in residential care is allowed as long as the GRO completes a preliminary service plan at admittance and complies with the review and update rules in this division.

The amendment to §748.1389 updates treatment services terminology.

The amendment to §748.1433 deletes masculine pronouns.

The amendment to §748.1435 deletes masculine pronouns.

The amendment to §748.1437 deletes masculine pronouns.

The amendment to §748.1501 clarifies what has to be included in a child's record regarding a dental exam. The requirements for the "date of examination" and "procedures completed" are being deleted because these requirements will be in the results of the dental examination.

The amendment to §748.1531 clarifies what has to be included in a child's record regarding a medical exam. The requirements for the "date of examination" and "procedures completed" are being deleted because these requirements will be in the results of the medical examination. There is also clarification regarding documenting the date and time of an injury or illness resulting in a medical exam.

The amendment to §748.1539: (1) clarifies that the immunization requirements of DSHS must be met, instead of referencing the HRC; (2) clarifies that records for immunization exemptions and exceptions must be kept just like immunization records; and (3) deletes a duplicative statement regarding a child's health passport meeting Licensing documentation standards, which is already noted at §748.1543(b)(4).

The amendment to §748.1541 clarifies the exemptions and exceptions to the immunization requirements.

The amendment to §748.1543 clarifies the documentation requirements that are acceptable for an immunization record, including documentation of the name and address of the health-care professional (previously it only said RN) that administered the vaccine. Except the signature of a health-care professional is not required for official records from schools or state or local health authorities.

The amendment to §748.1549 deletes the term "physician" because the definition is already included in the term "health-care professional".

The amendment to §748.1551 corrects a cite to the rule.

The amendment to §748.1581 clarifies the language of this rule.

The amendment to §748.1661 clarifies that e-cigarettes and vaporizers, like tobacco products, are also prohibited.

The amendment to §748.1695 replaces "physician" with "health-care professional"; and deletes a masculine pronoun.

The amendment to §748.1697 updates treatment services terminology.

The amendment to §748.1741 adds a definition for "restrictive devices", and changes the term "baby bungee jumper" to "baby doorway jumper".

The amendment to §748.1743 clarifies that infant care items necessary for diaper changing must be kept out of the reach of children, but do not need to be in locked storage; and changes "child" to "infant".

The amendment to §748.1751: (1) clarifies that this rule applies to all full-size and non-full-size cribs; (2) requires that only mattresses designed for the crib may be used; and (3) clarifies the rule by replacing "child" with "infant".

Section §748.1753 is repealed and new §748.1753 updates the rule to: (1) move the information regarding "port-a-cribs" (which are non-full-size cribs as defined by CPSC) to §748.1751, because these non-full-size cribs must meet all of the crib requirements in §748.1751; (2) clarify the term "play yard", which are mesh or fabric sided cribs; (3) clarify the requirements that a play yard must meet, including a firm, flat mattress that is designed for the crib, fitted sheets, a waterproof or washable mattress, and secure mattress supports and proper hardware; and (4) clarify that following the manufacturer's instructions also applies to the cleaning of the crib.

The amendment to §748.1757 clarifies the prohibited equipment for use with an infant to be consistent with the Day Care requirements.

The amendment to §748.1759 clarifies that when infants are exploring, it should not be in restrictive devices.

The amendment to §748.1761 clarifies that since infants should not be sleeping in restrictive devices, language is deleted that allows a child to remain in confining equipment for 30 minutes after the infant awakes.

The amendment to §748.1763: (1) clarifies that a health-care professional's sleeping orders for an infant must be kept in the child's record; and (2) adds the content from deleted §748.1765.

Section 748.1765 is repealed and its contents is moved to §748.1763.

New §748.1765 clarifies that infants may not sleep in restrictive devices; and if a child falls asleep in a restrictive device, the child must be placed in a crib as soon as possible.

The amendment to §748.1791 clarifies the rule by replacing "child" with "toddler".

The amendment to §748.1793 clarifies the wording of the rule for better readability and understanding.

The amendment to §748.2003 clarifies that these requirements only apply to the administration of prescription medication.

The amendment to §748.2009 adds a requirement to inform a child's physician of any non-prescription medication or supplement to make sure there are no contraindications with other medications.

The amendment to §748.2053 clarifies that for a child that is on a self-medication program the GRO must ensure there is a system for reviewing the child's medication each day.

The amendment to §748.2101 removes the requirement to store medications "for external use only" separately from other medications.

The amendment to §748.2151: (1) replaces "vitamin" with "supplement", which has been defined in §748.43 as "vitamins, herbs, and any supplement labeled dietary supplement"; (2) clarifies that a medication record does not have to be updated immediately but "within 2 hours of administering medication", or "within 24 hours of administering medication if you operate a cottage home model"; (3) requires the documentation of a non-prescription medication or supplement that is given to a child and how often the child receives the medication or supplement (no cumulative record is required); and (4) requires documentation in the medical record of any prohibited supplements.

The amendment to §748.2231 clarifies the meaning of an "adverse reaction" to a medication; and adds a requirement to immediately report the reaction to the child's parent.

The amendment to §748.2233 clarifies the meaning of a medication "side effect"; adds a requirement to immediately report serious side effects to the child's parent; and replaces "physician" with "health-care professional".

The amendment to §748.2307 clarifies the language for prohibited discipline techniques to include not screaming at a child.

The amendment to §748.2309: (1) deletes "schools and chores" as activities that can't be restricted, because it is confusing. School can't be restricted because a child has to attend as a matter of law, and chores are not a restriction but something assigned to a child to do; and (2) changes the time from seven days to 14 days that a GRO may restrict a child's activities without a review by the treatment director, service planning team, or professional level service provider. This will be consistent with the requirement in foster homes if the proposal to change that time frame from 30 days to 14 days is adopted.

The amendment to §748.2401 removes most of the definitions from this section and incorporates them into §748.43, because the terms that are being incorporated are used in more than this one subchapter.

The amendment to §748.3015: (1) adds that gloves contaminated with blood must be placed in a tied, sealed, or otherwise closed plastic bag and discarded immediately; and (2) clarifies the wording of the rule for better readability and understanding.

The amendment to §748.3017 deletes the requirement that ferrets must be vaccinated, because this is not required by the Health and Safety Code.

The amendment to §748.3351 regarding the requirement for a sketch of the operation's floor plan showing the dimensions for all rooms and where children will sleep was moved to new §748.101(3). The requirement to notify Licensing of changes to the floor plan was moved to new §748.153(a)(2)(B).

The amendment to §748.3353 deletes masculine pronouns.

The amendment to §748.3357 does not change the intent of the current rule, but the changes to the grandfather clauses are made for better readability and understanding.

The amendment to §748.3365 clarifies that mattresses must not be on the floor.

Sections 748.3481, 748.3535, and 748.3567 are repealed because they relate to outdated grandfather clauses.

The amendment to §748.3601: (1) moves two requirements for pools to §748.3603, which includes additional requirements for a pool located at the operation; and (2) clarifies that the visibility of the pool applies to when the pool is in use.

The amendment to §748.3603: (1) adds two requirements for a pool located at the operation. The requirements were moved from §748.3601; and (2) deletes an outdated grandfather clause.

The amendment to §748.3701 updates treatment services terminology.

The amendment to §748.3705 clarifies the swimming activities terminology.

The amendment to §748.3751 clarifies that this rule applies to swimming activities that are sponsored by the operation.

The amendment to §748.3753 modifies the question and the answer of this rule because the certification of a lifeguard is common practice as long as the certification is from a recognized organization.

The amendment to §748.3757: (1) clarifies the chart by deleting the middle "children in the group" column, because the swimming ratio and supervising the number of children in the group were the same; and (2) clarifies that subsection (b) always requires at least two adults to supervise four or more children if all four children are actually in the water.

The amendment to §748.3765: (1) deletes a statement regarding prudent judgment around bodies of water, because the supervision requirement is already required by the supervision rule at §748.685 and prudent judgment requirement is already required by the new normalcy rules; and (2) clarifies that these requirements apply to swimming activities that are sponsored by the operation.

The amendment to §748.3801 clarifies the wording of the rule for better readability and understanding.

The amendment to §748.3891 makes the use of a trampoline at an operation more consistent with the use of a trampoline in a foster home. The rule does require the GRO to follow the manufacturer's instructions and other certain requirements, and new supervision requirements are based on the age of the child.

The amendment to §748.3931 clarifies that a qualified adult must hold a generally recognized credential or possess documented knowledge and/or experience in the type of weapon, firearm, explosive material, projectile, or toy that explodes or shoots that is to be used by the child.

Section 748.3041 is repealed because it was outdated.

New §748.4041 provides a more general approach, however, a Best Practices Box will include the national recommendations for transporting children published by the Department of Public Safety.

The amendment to §748.4043 clarifies terminology for a child passenger safety seat system to make it consistent throughout the chapter.

The amendment to §748.4045 clarifies terminology for a child passenger safety seat system to make it consistent throughout the chapter.

Section 748.4047 is repealed because it is unnecessary and the contents is clarified in new §748.3041.

The amendment to §748.4213 clarifies the wording of the rule by using "preliminary discharge plans" throughout the rule.

The amendment to §748.4261 updates a cite to a rule and the relevant language regarding the cite.

The amendment to §748.4265 adds to the information that a respite care provider must obtain regarding a child before providing respite care.

The amendment to §748.4301 deletes the wording of "residential treatment centers" where it is duplicative and not necessary.

The amendment to §748.4403 updates treatment services terminology.

The amendment to §748.4471 updates the terminology for a primitive camping excursion, and deletes a masculine pronoun.

The amendment to §748.4473 updates the terminology for a primitive camping excursion; and clarifies the wording of the rule for better readability and understanding.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Subia also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that: (1) there will be clarification of the Minimum Standards for General Residential Operations (GROs); (2) DFPS will be in compliance with HRC §42.042(b); and (3) there will be a reduced risk to children.

There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There is no anticipated impact on technology as a result of the proposed rule change.

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

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Licensing Division. Electronic comments may be submitted to CCLRrules@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-558, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER A. PURPOSE AND SCOPE

40 TAC §748.3

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.3. *Who is responsible for complying with these minimum standards [the rules of this chapter]?*

(a) For a licensed general residential operation, the [The] permit holder must ensure compliance with the minimum standards [rules] in this chapter at all times, with the exception of those minimum standards [rules] identified for specific types of services that your operation does not offer. For example, if we license your operation [grant you a permit] to offer emergency care services only, you do not have to comply with the minimum standards [rules] that apply to treatment services for a child with an emotional disorder, treatment services for a child with an intellectual disability [mental retardation], or a transitional living program; however, you must comply with all other applicable minimum standards [rules] of this chapter.

(b) For an unlicensed general residential operation that is subject to Licensing's regulation, the operation's administrator, owner, or operator or any other controlling person who has the ability to influence or direct the operation's management, expenditures, or policies must ensure compliance with all minimum standards in this chapter at all times, with the exception of those minimum standards identified for specific types of services that the unlicensed operation does not offer.

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 12, 2016.

TRD-201604050

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: September 25, 2016

For further information, please call: (512) 438-5559



SUBCHAPTER B. DEFINITIONS AND SERVICES

DIVISION 1. DEFINITIONS

40 TAC §748.43

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.43. *What do certain words and terms mean in this chapter?*

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another

meaning is assigned in this section or unless the context clearly indicates otherwise. The following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) Accredited college or university--An institution of higher education accredited by one of the following regional accrediting entities:

(A) The Southern Association of Colleges and Schools[;] Commission on Colleges, a subdivision of the Southern Association of Colleges and Schools;

(B) The Middle States [Assocation of Colleges and Schools;] Commission on Higher Education, a component of the Middle States Association of Colleges and Schools;

(C) The [New England Association of Schools and Colleges;] Commission on Institutions of Higher Education, a subdivision of the New England Association of Schools and Colleges;

(D) [North Central Association of Colleges and Schools;] The Higher Learning Commission (formerly part of the North Central Association of Colleges and Schools);

(E) The Northwest Commission on Colleges and Universities;

(F) The [Western Association of Schools and Colleges;] Accrediting Commission for Senior Colleges and Universities, a subdivision of the Western Association of Schools and Colleges; or

(G) The [Western Association of Schools and Colleges;] Accrediting Commission for Community and Junior Colleges, a subdivision of the Western Association of Schools and Colleges.

(2) Activity space--An area or room used for child activities.

(3) - (6) (No change.)

(7) Chemical restraint--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to immobilize or sedate a child as a mechanism of control. The use of a medication is not a chemical restraint under this chapter if the medication:

(A) Is prescribed by a treating health-care professional;

(B) Is administered solely for medical or dental reasons;

and

(C) Has a secondary effect of immobilizing or sedating a child.

(8) [(7)] Child/caregiver ratio--The maximum number of children for whom one caregiver can be responsible.

(9) Childhood activities--Activities that are generally accepted as suitable for children of the same chronological age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard as specified in §748.705 of this title (relating to What is the "reasonable and prudent parent standard"?). Examples of childhood activities include extracurricular activities, in-school and out-of-school activities, enrichment activities, cultural activities, and employment opportunities. Childhood activities include unsupervised childhood activities.

(10) [(8)] Child in care--A child who is currently admitted as a resident of a general residential operation, regardless of whether the child is temporarily away from the operation, as in the case of a

child at school or at work. Unless a child has been discharged from the operation, the child [he] is considered a child in care.

(11) [(9)] Child passenger safety seat system--An infant or child passenger restraint system that meets the federal standards for crash-tested restraint systems as set by the National Highway Traffic Safety Administration.

(12) Corporation or other type of business entity--May include an association, corporation, nonprofit association, nonprofit corporation, nonprofit association with religious affiliation, nonprofit corporation with religious affiliation, limited liability company, political subdivision, or state agency. For purposes of this chapter, this definition does not include any type of "partnership", which is defined separately.

(13) [(40)] Cottage or cottage home--A living arrangement for children who are not receiving treatment services in which:

(A) Each group of children has separate living quarters;

(B) 12 or fewer children are in each group;

(C) Primary caregivers live in the children's living quarters, 24 hours per day for at least four days a week or 15 days a month; and

(D) Other caregivers are used only to meet the child-to-caregiver ratio in an emergency or to supplement care provided by the primary caregivers.

(14) [(41)] Counseling--A procedure used by professionals from various disciplines in guiding individuals, families, groups, and communities by such activities as delineating alternatives, helping to articulate goals, processing feelings and options, and providing needed information. This definition does not include career counseling.

(15) [(42)] Days--Calendar days, unless otherwise stated.

(16) [(43)] De-escalation--Strategies used to defuse a volatile situation, to assist a child to regain behavioral control, and to avoid a physical restraint or other behavioral intervention.

(17) [(44)] Department--The Department of Family and Protective Services (DFPS).

(18) [(45)] Discipline--A form of guidance [Guidance] that is constructive or educational in nature and appropriate to the child's age, development, situation, and severity of the behavior.

[(16) Disinfecting solution--A disinfecting solution may be:]

[(A) A self-made solution, prepared as follows:]

[(i) One tablespoon of regular strength liquid household bleach to each gallon of water used for disinfecting such items as toys, eating utensils, and nonporous surfaces (such as tile, metal, and hard plastics); or]

[(ii) One-fourth cup of regular strength liquid household bleach to each gallon of water used for disinfecting surfaces such as bathrooms, crib rails, diaper-changing tables, and porous surfaces, such as wood, rubber or soft plastics; or]

[(B) A commercial product that is registered with the Environmental Protection Agency (EPA) as an antimicrobial product and includes directions for use in a hospital as a disinfectant. You must use the product according to label directions. Commercial products must not be toxic on surfaces likely to be mouthed by children like crib rails and toys.]

(19) [(47)] Emergency Behavior Intervention (EBI)--Interventions used in an emergency situation, including personal restraints, mechanical restraints, emergency medication, and seclusion.

(20) Emergency medication--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to modify a child's behavior. The use of a medication is not an emergency medication under this chapter if the medication:

(A) Is prescribed by a treating health-care professional;

(B) Is administered solely for a medical or dental reason (e.g. Benadryl for an allergic reaction or medication to control seizures); and

(C) Has a secondary effect of modifying a child's behavior.

(21) Emergency situation--A situation in which attempted preventative de-escalatory or redirection techniques have not effectively reduced the potential for injury, so that intervention is immediately necessary to prevent:

(A) Imminent probable death or substantial bodily harm to the child because the child attempts or continually threatens to commit suicide or substantial bodily harm; or

(B) Imminent physical harm to another because of the child's overt acts, including attempting to harm others. These situations may include aggressive acts by the child, including serious incidents of shoving or grabbing others over their objections. These situations do not include verbal threats or verbal attacks.

(22) [(48)] Family members--An individual related to another individual within the third degree of consanguinity or affinity. For the definitions of consanguinity and affinity, see Chapter 745 of this title (relating to Licensing). The degree of the relationship is computed as described in Government Code, §573.023 (relating to Computation of Degree of Consanguinity) and §573.025 (relating to Computation of Degree of Affinity).

(23) [(49)] Field trip--A group activity conducted away from the operation.

(24) [(20)] Food service--The preparation or serving of meals or snacks.

(25) [(21)] Full-time--At least 30 hours per week.

(26) [(22)] Garbage--Food or items that when deteriorating cause offensive odors and/or attract rodents, insects, and other pests.

(27) [(23)] General Residential Operation--A residential child-care operation that provides child care for 13 or more children or young adults. The care may include treatment services and/or programmatic services. These operations include formerly titled emergency shelters, operations providing basic child care, residential treatment centers, [operations serving children with mental retardation,] and halfway houses.

(28) Governing body--A group of persons or officers of the corporation or other type of business entity having ultimate authority and responsibility for the operation.

(29) [(24)] Group of children--Children assigned to a specific caregiver or caregivers. Generally, the group stays with the assigned caregiver(s) throughout the day and may move to different areas throughout the operation, indoors and out. For example, children who are assigned to specific caregivers occupying a unit or cottage are considered a group.

(30) [(25)] Health-care professional--A licensed physician, licensed ~~registered nurse with appropriate~~ advanced practice registered nurse, physician's assistant, ~~authorization from the Texas Board of Nursing,~~ a licensed vocational nurse (LVN), licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the person's ~~his~~ license. This does not include medical doctors or medical personnel not licensed to practice in the United States.

(31) [(26)] High-risk behavior--Behavior of a child that creates an immediate safety risk to self or others. Examples of high-risk behavior include suicide attempt, self-abuse, physical aggression causing bodily injury, chronic running away, substance abuse ~~drug addiction~~, fire-setting, and sexual aggression or perpetration.

(32) [(27)] Human services field--A field of study that contains coursework in the social sciences of psychology and social work including some counseling classes focusing on normal and abnormal human development and interpersonal relationship skills from an accredited college or university. Coursework in guidance counseling does not apply.

(33) [(28)] Immediate danger--A situation where a prudent person would conclude that bodily harm would occur if there were no immediate interventions. Immediate danger includes a serious risk of suicide, serious physical injury to self or others, or the probability of bodily harm resulting from a child running away if less than ~~under~~ 10 years old chronologically or developmentally. Immediate danger does not include:

(A) Harm that might occur over time or at a later time;

or

(B) Verbal threats or verbal attacks.

(34) [(29)] Infant--A child from birth through 17 months.

(35) [(30)] Livestock--An animal raised for human consumption or an equine animal.

(36) [(31)] Living quarters--A structure or part of a structure where a group of children reside, such as a building, house, cottage, or unit.

(37) Mechanical restraint--A type of emergency behavior intervention that uses the application of a device to restrict the free movement of all or part of a child's body in order to control physical activity.

(38) [(32)] Mental health professional--Refers to:

(A) A psychiatrist licensed by the Texas Medical Board;

(B) A psychologist licensed by the Texas State Board of Examiners of Psychologists;

(C) A master's level social worker or higher licensed by the Texas State Board of Social Work Examiners;

(D) A professional counselor licensed by the Texas State Board of Examiners of Professional Counselors;

(E) A marriage and family therapist licensed by the Texas State Board of Examiners of Marriage and Family Therapists; and

(F) A master's level or higher nurse licensed as an Advanced Practice Registered Nurse by the Texas Board of Nursing and board certified in Psychiatric/Mental Health.

(39) [(33)] Non-ambulatory--A child that is only able to move from place to place with assistance, such as a walker, crutches, a wheelchair, or prosthetic leg.

(40) [(34)] Non-mobile--A child that is not able to move from place to place, even with assistance.

(41) [(35)] Operation--General residential operations, including ~~and~~ residential treatment centers.

(42) Owner--The sole proprietor, partnership, or corporation or other type of business entity who owns the operation.

(43) [(36)] Parent--A person who ~~that~~ has legal responsibility for or legal custody of a child, including the managing conservator or legal guardian.

(44) Partnership--A partnership may be a general partnership, (general) limited liability partnership, limited partnership, or limited partnership as limited liability partnership.

(45) Permit holder--The owner of the operation that is granted the permit.

(46) Permit is no longer valid--For purposes of this chapter, a permit remains valid through the renewal process. A permit only becomes invalid when your operation voluntarily closes or is required to close through an enforcement action in Subchapter L of Chapter 745 (relating to Enforcement Actions).

(47) [(37)] Person legally authorized to give consent--The person legally authorized to give consent by the Texas Family Code or a person authorized by the court.

(48) Personal restraint--A type of emergency behavior intervention that uses the application of physical force without the use of any device to restrict the free movement of all or part of a child's body in order to control physical activity. Personal restraint includes escorting, which is when a caregiver uses physical force to move or direct a child who physically resists moving with the caregiver to another location.

(49) [(38)] Physical force--Pressure applied to a child's body that reduces or eliminates the child's ability to move freely.

(50) [(39)] PRN--A standing order or prescription that applies "pro re nata" or "as needed according to circumstances."

(51) Prone restraint--A restraint in which the child is placed in a chest-down hold.

(52) [(40)] Psychosocial assessment--An evaluation by a mental health professional of a child's mental health that includes a:

(A) Clinical interview of the child;

(B) Diagnosis from the Diagnostic and Statistical Manual of Mental Disorders 5 (DSM-5), or statement that rules out a DSM-5 diagnosis;

(C) Treatment plan for the child, including whether further evaluation of the child is needed (for example: is a psychiatric evaluation needed to determine if the child would benefit from psychotropic medication or hospitalization; or is a psychological evaluation with psychometric testing needed to determine if the child has a learning disability ~~disabilities~~ or an intellectual disability ~~disabilities~~); and

(D) Written summary of the assessment.

(53) Re-evaluate--Re-assessing all factors required for the initial evaluation for the purpose of determining if any substantive

changes have occurred. If substantive changes have occurred, these areas must be fully evaluated.

(54) [(41)] Regularly--On a recurring, scheduled basis. Note: For the definition for "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title (relating to What words must I know to understand this subchapter?).

(55) [(42)] Residential Treatment Center (RTC)--A general residential operation for 13 or more children or young adults that exclusively provides treatment services for children with emotional disorders.

(56) [(43)] Sanitize--The use of a product (usually a disinfecting solution) registered by the Environmental Protection Agency (EPA) that substantially reduces germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product's labeling instructions for sanitizing (paying particular attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children, such as toys and crib rails). For an EPA-registered sanitizing product or disinfecting solution that does not include labeling instructions for sanitizing (a bleach product, for example), you must conduct these steps in the following order: [A four-step process that must be followed in the subsequent order:]

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a disinfecting solution for at least two minutes. Rinsing with cool water only those items that a child is likely to place in his mouth; and

(D) Allowing the surface or item [article] to air-dry.

(57) [(44)] School-age child--A child five years old or older who will attend school in August or September of that year.

(58) [(45)] Seat belt--A lap belt and any shoulder strap included as original equipment on or added to a motor vehicle.

(59) Seclusion--A type of emergency behavior intervention that involves the involuntary separation of a child from other residents and the placement of the child alone in an area from which the resident is prevented from leaving by a physical barrier, force, or threat of force.

(60) [(46)] Service plan--A plan that identifies a child's basic and specific needs and how those needs will be met.

(61) Short personal restraint--A personal restraint that does not last longer than one minute before the child is released.

(62) [(47)] State or local fire inspector--A fire official who is authorized to conduct fire safety inspections on behalf of the city, county, or state government.

(63) [(48)] State or local sanitation official--A sanitation official who is authorized to conduct environmental sanitation inspections on behalf of the city, county, or state government.

(64) [(49)] Substantial physical injury [bodily harm]--Physical injury serious enough that a reasonable [prudent] person would conclude that the injury needs treatment by a medical professional, including dislocated, fractured, or broken bones; concussions; lacerations requiring stitches; second and third degree burns; and damages to internal organs. Evidence that physical injury is substantial includes the location and/or severity of the bodily harm and/or age of the child. Substantial physical injury [required professional medical attention. It] does not include minor bruising, the risk of

minor bruising, or similar forms of minor bodily harm that will resolve healthily without professional medical attention.

(65) Supplements--Includes vitamins, herbs, and any supplement labeled dietary supplement.

(66) Supine restraint--Placing a child in a chest up restraint hold.

(67) Swimming activities--Activities related to the use of swimming pools, wading/splashing pools, hot tubs, or other bodies of water.

(68) [(50)] Toddler--A child from 18 months through 35 months.

(69) Trafficking victim--A child who has been recruited, harbored, transported, provided or obtained for the purpose of forced labor or commercial sexual activity, including any child subjected to an act or practice as specified in Penal Code §20A.02 or §20A.03.

(70) Trauma informed care (TIC)--Care for children that is child-centered and considers the unique culture, experiences, and beliefs of the child. TIC takes into consideration:

(A) The impact that traumatic experiences have on the lives of children;

(B) The symptoms of childhood trauma;

(C) An understanding of a child's personal trauma history;

(D) The recognition of a child's trauma triggers; and

(E) Methods of responding that improve a child's ability to trust, to feel safe, and to adapt to changes in the child's environment.

(71) [(51)] Treatment director--The person responsible for the overall treatment program providing treatment services. A treatment director may have other responsibilities and may designate treatment director responsibilities to other qualified persons.

(72) [(52)] Universal precautions--An approach to infection control where all human blood and certain human bodily [body] fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(73) Unsupervised childhood activities--Childhood activities that a child in care participates in away from the operation and the caregivers. Childhood activities that an operation sponsors, conducts, or supervises are not unsupervised childhood activities. Unsupervised childhood activities may include playing sports, going on field trips, spending the night with a friend, going to the mall, or dating. Unsupervised childhood activities may last one or more days.

(74) [(53)] Vaccine-preventable disease--A disease that is included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(75) [(54)] Volunteer--A person who provides:

(A) Child-care services, treatment services, or programmatic services under the auspices of the operation without monetary compensation; [including a "sponsoring family;" or

(B) Any type of services under the auspices of the operation without monetary compensation when the person has unsupervised access to a child in care.

[(55)] Water activities--Activities related to the use of splashing pools, wading pools, swimming pools, or other bodies of water.]

(76) [(56)] Young adult--An adult whose chronological age is between 18 and 22 years, who is currently in a residential child-care operation, and who continues to need child-care services.

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

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DIVISION 2. SERVICES

40 TAC §748.61, §748.65

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.61. *What types of services does Licensing regulate?*

We regulate the following types of services:

(1) (No change.)

(2) Treatment Services--In addition to child-care services, a specialized type of child-care services designed to treat and/or support children:

(A) With Emotional Disorders who have a current DSM-5 diagnosis, such as mood disorders, psychotic disorders, or dissociative disorders, and [~~who~~] demonstrate two [~~three~~] or more of the following:

~~[(i)]~~ A Global Assessment Functioning of 50 or below;

~~[(ii)]~~ A current DSM diagnosis;

~~[(i)]~~ [~~(iii)]~~ Major self-injurious actions, including a [~~recent~~] suicide attempt within the last 12 months [~~attempts~~];

~~[(ii)]~~ [~~(iv)]~~ Difficulties that present a significant risk of harm to others, including frequent or unpredictable physical aggression; or

~~[(iii)]~~ [~~(v)]~~ An additional DSM-5 [~~A primary~~] diagnosis of substance-related and/or addictive disorder with [~~substance abuse or dependency and~~] severe impairment [~~because of the substance abuse~~];

(B) With a DSM-5 diagnosis of Intellectual Disability that is [~~Disabilities, who have an intellectual functioning of 70 or below and are~~] characterized by prominent, severe [~~significant~~] deficits and pervasive impairment in one or more of the following areas:

~~[(i)]~~ Conceptual, social, and practical adaptive skills to include daily living and self-care [~~self care~~];

~~[(ii)] - (v)~~ (No change.)

(C) With a DSM-5 diagnosis of Autism Spectrum Disorder that is [~~Pervasive Developmental Disorder, which is a category of disorders (e.g. Autistic Disorder or Rett's Disorder)]~~ characterized by prominent, severe deficits and pervasive impairment in one or more of the following areas of development:

~~[(i)]~~ Conceptual, social, and practical adaptive skills to include daily living and self-care [~~self care~~];

~~[(ii)] - (v)~~ (No change.)

(D) - (E) (No change.)

(3) (No change.)

§748.65. *What children are eligible to participate in a transitional living program?*

~~[(a)]~~ For a child to be eligible to participate in a transitional living program, the child must:

(1) Be 14 years old or older; and

(2) Not be receiving therapeutic camp services.

~~[(b)]~~ For a child to be eligible to receive the level of caregiver supervision described in §748.1019 of this title (relating to What are the supervision requirements for a transitional living program?) or §748.1021 of this title (relating to When does a child who is in a transitional living program not need supervision?), the child must be 16 years old or older.

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

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SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

40 TAC §§748.101, 748.103, 748.105, 748.107, 748.109, 748.111

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042.

§748.101. *What are my responsibilities as the permit holder before I begin operating?*

§748.103. *What are my operational responsibilities as the permit holder?*

§748.105. *What responsibilities do I have for personnel policies and procedures?*

§748.107. *What must my conflict of interest policies include?*

§748.109. *May I exceed my operation capacity?*

§748.111. *May I provide child day care services?*

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DIVISION 1. PLANS AND POLICIES REQUIRED FOR THE APPLICATION PROCESS

**40 TAC §§748.101, 748.103, 748.105, 748.107, 748.109,
748.111, 748.113, 748.115, 748.117, 748.119, 748.121,
748.123, 748.125, 748.127, 748.129**

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042.

§748.101. *What plans must I submit for Licensing's approval as part of the application process?*

As part of the application process, you must submit the following plans to us for approval:

(1) An operation plan that includes:

(A) The location and telephone numbers of all of your general residential operations; and

(B) A list of persons or officers and their titles who comprise the governing body, if applicable;

(2) A fiscal plan that includes:

(A) A detailed estimate of the operating costs of the operation for the first three months;

(B) Documentation of reserve funds or available credit at least equal to operating costs for the first three months;

(C) An estimated 12-month budget of income and expenses; and

(D) Predictable funds sufficient for the first year of operation;

(3) A sketch of the operation's floor plan showing the dimensions and the purpose of all rooms and specifying where children and caregivers, if applicable, will sleep; and

(4) An emergency evacuation and relocation plan that complies with Division 6 of Subchapter O (relating to Emergency Evacuation and Relocation).

§748.103. *What policies and procedures must I submit for Licensing's approval as part of the application process?*

(a) You must develop the policies and procedures identified in subsection (b) of this section. Your policies and procedures must comply with or exceed the minimum standards specified in this chapter, Chapter 42 of the Human Resources Code, and Chapter 745 of this title (relating to Licensing), and any other applicable law.

(b) As part of the application process, you must submit the following policies and procedures to us for our approval:

(1) Policies and procedures related to record keeping, including where the records will be located. The policies must be consistent with Subchapter D of this chapter (relating to Reports and Records Keeping);

(2) Personnel policies and procedures consistent with §748.105 of this title (relating to What are the requirements for my personnel policies and procedures?);

(3) Conflict of interest policies consistent with §748.107 of this title (relating to What must my conflict of interest policies include?);

(4) Admission policies consistent with §748.109 of this title (relating to What must my admission policies include?);

(5) Child-care policies consistent with §748.111 of this title (relating to What child-care policies must I develop?);

(6) Emergency behavior intervention policies consistent with §748.113 of this title (relating to What emergency behavior intervention policies must I develop if my operation is permitted to use emergency behavior intervention?);

(7) Discipline policies consistent with §748.115 of this title (relating to What are the requirements for my discipline policies for children in care?);

(8) Policies for a transitional living program, if applicable, consistent with §748.117 of this title (relating to What policies for a transitional living program must I develop?);

(9) Volunteer policies consistent with §748.119 of this title (relating to What policies must I develop if I use volunteers?);

(10) Abuse and neglect policies consistent with §748.121 of this title (relating to What abuse and neglect policies must I develop?);

(11) Employee policies and procedures that protect children from vaccine-preventable diseases. The policies must be consistent with §748.123 of this title (relating to What must an employee policy for protecting children from vaccine-preventable diseases include?);

(12) A weapons, firearms, explosive materials, and projectiles policy consistent with Division 6 of Subchapter Q (relating to Weapons, Firearms, Explosive Materials, and Projectiles); and

(13) A tobacco and e-cigarette policy consistent with §748.1661 of this title (relating to What policies must I enforce regarding tobacco products and e-cigarettes?).

§748.105. What are the requirements for my personnel policies and procedures?

Your personnel policies and procedure must:

(1) Include an organizational chart showing the administrative, professional, and staffing structures and lines of authority;

(2) Include written job descriptions, including minimum qualifications and job responsibilities for each position;

(3) Include a written professional staffing plan that:

(A) Demonstrates that the number, qualifications, and responsibilities of professional positions, including the child-care administrator, are appropriate for the size and scope of your services and that workloads are reasonable enough to meet the needs of the children in care;

(B) Describes in detail the qualifications, duties, responsibilities, and authority of professional positions. For each position, the plan must show whether employment is on a full-time, part-time, or continuing consultative basis. For part-time and consulting positions, the plan must specify the number of hours and/or frequency of services;

(C) Documents your staffing patterns, including your child/caregiver ratios, hours of coverage, and plans for providing backup caregivers in emergencies; and

(D) Identifies, if you provide treatment services, your:

(i) Ability to have enough caregivers, including caregivers who are awake throughout the night to supervise children 24 hours a day, including frequent one-to-one monitoring whenever necessary to meet the needs of a particular child; and

(ii) Staffing patterns, including your child/caregiver ratios, hours of coverage, and plans for providing backup caregivers in emergencies;

(4) Include written training requirements for employees and caregivers;

(5) Include policies on whether your operation allows individual caregivers to take children away from the operation for day or overnight visits. The policy must require obtaining the parent's written approval prior to allowing overnight visits with staff. The policy must also address the issue outlined in §748.685(e) of this title (relating to What responsibilities does a caregiver have when supervising a child or children?);

(6) Comply with background check requirements outlined in Subchapter F of Chapter 745 of this title (relating to Background Checks);

(7) Require your employees to report serious incidents and suspected abuse, neglect, or exploitation. An employee who suspects abuse, neglect, or exploitation must report their suspicion directly to us and may not delegate this responsibility, as directed by Texas Family Code §261.101(b);

(8) Require that all employees and consulting, contracting, and volunteer professionals who work with a child and others with access to information about a child be informed in writing of their responsibility to maintain child confidentiality; and

(9) Include either the model drug testing policy or a written drug testing policy that meets or exceeds the criteria in the model policy

provided in §745.4151 of this title (relating to What drug testing policy must my residential child-care operation have?).

§748.107. What must my conflict of interest policies include?

Your conflict of interest policies must include:

(1) A code of conduct on the relationship between your operation's owners (including members of the governing body, if applicable), employees, contract service providers, children in placement, and children's families, including required parameters for entering into independent financial relationships or transactions; and

(2) For corporations or other types of business entities, a statement that the majority of the voting members of the governing body must consist of persons who do not have a conflict of interest that would potentially interfere with objective decision making. Persons who have such a conflict of interest include the following:

(A) Family members of:

(i) An officer of the governing body;

(ii) The administrator or executive director of the operation; or

(iii) Any person with a controlling interest in the entity's stock; or

(B) If the governing body is a non-profit entity, persons who benefit financially from the operation, including persons employed by or working at the operation, paid consultants, subcontractors, and vendors.

§748.109. What must my admission policies include?

Your admission policies must include a description of each program you offer, including:

(1) The program's goals and services provided, including whether the program accepts emergency admissions; and

(2) The characteristics of the population the program serves, such as gender, age range, behaviors, and diagnoses. If the program includes treatment services, your policy must describe the type of treatment services the program is designed to treat, including emotional disorders, intellectual disability, autism spectrum disorder, primary medical needs, or trafficking victim services.

§748.111. What child-care policies must I develop?

You must develop policies that describe:

(1) Visitation rights between the child and family members and the child and friends;

(2) The child's right to correspond by mail with family members and friends, including any policies regarding mail restrictions and receipt of electronic messages and mail;

(3) The child's right to correspond by telephone with family members and friends;

(4) The child's right to receive and give gifts to family, friends, employees, or other children in care, including any restrictions on gifts;

(5) How a child obtains clothing;

(6) Personal possessions a child is or is not allowed to have, where the possessions may be stored, and search policies;

(7) Emergency behavior intervention techniques if the use of emergency behavior intervention is permitted in your operation. The policy must be consistent with §748.113(5) of this title (relating to What emergency behavior intervention policies must I develop if my operation is permitted to use emergency behavior intervention?);

(8) Any religious program or activity that you offer, including whether children must participate in the program or activity;

(9) The plans for meeting the educational needs of each child;

(10) When trips with caregivers away from the operation are allowed and what protocols will be used;

(11) Program expectations and rules that apply to all children, including an overview of your discipline policy;

(12) Child grievance procedures;

(13) The types and frequency of reports to parents;

(14) Procedures for routine and emergency diagnosis and treatment of medical and dental problems;

(15) Routine health care relating to pregnancy and child-birth, if you admit and/or care for a pregnant child;

(16) Your plan for providing health-care services to a child with primary medical needs;

(17) Transitional living policies, if applicable; and

(18) If applicable, how you will determine whether it is appropriate for a child to use weapons, firearms, explosive materials, and projectiles. This information must be consistent with §748.103(b)(12) of this title (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?).

§748.113. What emergency behavior intervention policies must I develop if my operation is permitted to use emergency behavior intervention?

At a minimum, you must develop emergency behavior intervention policies to implement the requirements in Subchapter N of this chapter (relating to Emergency Behavior Intervention). The policies must include the following:

(1) A complete description of emergency behavior interventions that you permit caregivers to use;

(2) The specific techniques that caregivers can use;

(3) The qualifications for caregivers who assume the responsibility for emergency behavior intervention implementation, including required experience and training, and an evaluation component for determining when a specific caregiver meets the requirements of a caregiver qualified in emergency behavior intervention. You must have an on-going program to evaluate caregivers qualified in emergency behavior intervention and the use of emergency behavior interventions;

(4) Your requirements for and restrictions on the use of permitted emergency behavior interventions;

(5) For the orientation required in §748.1209(b)(6) of this title (relating to What orientation must I provide a child?), how you will:

(A) Explain and document to a child in a manner that the child can understand:

(i) Who can use an emergency behavior intervention;

(ii) The actions a caregiver must first attempt to defuse the situation and avoid the use of emergency behavior intervention;

(iii) The situations in which emergency behavior intervention may be used;

(iv) The types of emergency behavior intervention you permit;

(v) When the use of an emergency behavior intervention must cease;

(vi) What action the child must exhibit to be released from the emergency behavior intervention;

(vii) The way to report an inappropriate emergency behavior intervention;

(viii) The way to provide voluntary comments during or after an emergency behavior intervention; and

(ix) The process for making written comments after an emergency behavior intervention, such as comments regarding the incident that led to the emergency behavior intervention, the manner in which a caregiver intervened, and the manner in which the child was the subject or to which they were a witness. You may create a standardized form that is easily accessible or give children the permission to submit comments on regular paper; and

(B) Obtain each child's input on preferred de-escalation techniques that caregivers can use to assist the child in the de-escalation process;

(6) That you will either:

(A) Post in a place where children and adult clients can view them, the emergency behavior interventions that you permit at your operation; or

(B) Provide the children and adult clients at admission a personal copy of the operation's emergency behavior intervention policies;

(7) Requirements that caregivers must attempt less restrictive and less intrusive emergency behavior interventions as preventive measures and de-escalating interventions to avoid the use of emergency behavior intervention;

(8) Training for emergency behavior intervention. The policy must include a description of the emergency behavior intervention training curriculum that meets the requirements in the rules of this chapter, the amount and type of training required for different levels of caregivers (if applicable), training content, and how the training will be delivered; and

(9) Prohibitions for discharging or otherwise retaliating against:

(A) An employee, child, adult client, resident, or other person for filing a complaint, presenting a grievance, or otherwise providing in good faith information relating to the misuse of emergency behavior intervention at the operation;

(B) A child, adult client, or resident because someone on behalf of the client or resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of emergency behavior intervention at the operation.

§748.115. What are the requirements for my discipline policies for children in care?

The discipline policies you develop for children in care must be consistent with Subchapter M of this chapter (relating to Discipline and Punishment). The discipline policies you develop must also:

(1) Guide caregivers and employees in the methods used for the discipline of children;

(2) Integrate trauma informed care into the care, treatment, and management of each child;

(3) Include measures for positive responses to appropriate behavior;

(4) Include the importance of nurturing behavior, stimulation, and promptly meeting the child's needs; and

(5) Include a statement that discipline of any type is not allowable for infants.

§748.117. What policies for a transitional living program must I develop?

For operations who offer a transitional living program, you must develop policies that address the following:

(1) Criteria used to select participants for the program;

(2) Supervision of participants consistent with §748.1019 of this title (relating to What are the supervision requirements for a transitional living program?) and §748.1021 of this title (relating to When does a child who is in a transitional living program not need supervision?);

(3) Expected behaviors of participants and consequences for failure to comply;

(4) Training, education, and experiences to be achieved in the program; and

(5) Roles of participants, employees, contract staff, and caregivers.

§748.119. What policies must I develop if I use volunteers?

If you use volunteers, you must develop policies that:

(1) Include job descriptions and/or responsibilities for the volunteers;

(2) Address qualifications, screening, and selection procedures for the volunteers;

(3) Address orientation and training programs for the volunteers;

(4) Address supervision of volunteers; and

(5) Address volunteer contact with children in care.

§748.121. What abuse and neglect policies must I develop?

You must develop policies on preventing, recognizing, and responding to abuse and neglect of children, including:

(1) Required annual training for employees;

(2) Methods for increasing employee awareness of issues regarding child abuse and neglect, including warning signs that a child may be a victim of abuse or neglect;

(3) Methods for increasing employee awareness of prevention techniques for child abuse and neglect;

(4) Strategies for coordination between the operation and appropriate community organizations; and

(5) Actions that the parent of a child who is a victim of abuse or neglect should take to obtain assistance and intervention.

§748.123. What must an employee policy for protecting children from vaccine-preventable diseases include?

A policy for protecting the children in your care from vaccine-preventable diseases must:

(1) Specify any vaccines that you have determined an employee must have for vaccine-preventable diseases based on the level

of risk the employee presents to children by the employee's routine and direct exposure to children;

(2) Require each employee to receive each specified vaccine that the employee is not exempt from having;

(3) Include procedures for verifying whether an employee has complied with your policy;

(4) Include procedures for an employee to be exempt from having a required vaccine because of:

(A) Medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention (CDC); or

(B) Reasons of conscience, including a religious belief;

(5) Include procedures that an exempt employee must follow to protect children in your care from exposure to disease, such as the use of protective medical equipment, including gloves and masks, based on the level of risk the employee presents to children by the employee's routine and direct exposure to children;

(6) Prohibit discrimination or retaliatory action against an exempt employee, except that required use of protective medical equipment, including gloves and masks, may not be considered retaliatory action for purposes of this section;

(7) Outline how you will maintain a written or electronic record of each employee's compliance with or exemption from your policy; and

(8) State the disciplinary actions you may take against an employee who fails to comply with your policy.

§748.125. What are the general requirements for my operation's policies and procedures?

(a) The requirements for policies only apply to the operation's policies that are required or governed by this chapter.

(b) All employees and caregivers must be aware of and follow your policies and procedures.

§748.127. What requirements must I follow when adopting my operation's plans, policies, and procedures?

(a) Your operation's plans, policies, and procedures must indicate the date on which you adopted them and their effective date.

(b) You must formalize the adoption of your operation's plans, policies, and procedures as appropriate for your type of ownership:

(1) If you are a sole proprietor, you must sign them;

(2) If you are a partnership, each partner must sign them;

or

(3) If you are a corporation or other type of business entity, the governing body must take a written action to adopt (sometimes this may be an order or the adoption may be included in the minutes of the governing body).

§748.129. Can Licensing cite my operation for a deficiency if I fail to operate according to my approved plans, policies, and procedures?

Yes, if you violate plans, policies, or procedures, then we may cite the relevant standard in Division 1 of this Subchapter (relating to Plans and Policies Required for the Application Process) as a deficiency.

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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DIVISION 2. GOVERNING BODY

40 TAC §748.131, §748.133

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042.

§748.131. What are the specific responsibilities of the governing body?

§748.133. After a permit has been issued, what subsequent information regarding my governing body must I provide to Licensing, and when must I provide it?

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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DIVISION 2. OPERATIONAL RESPONSIBILITIES AND NOTIFICATIONS

40 TAC §§748.151, 748.153, 748.155, 748.157

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042.

§748.151. What are my operational responsibilities?

While you are operating, you must:

(1) Have a designated full-time child-care administrator who meets the minimum qualifications of §748.531 of this title (relating to What qualifications must a child-care administrator meet?);

(2) Operate according to your approved plans, policies, and procedures;

(3) Maintain current, true, accurate, and complete records;

(4) Allow us to inspect your operation during its hours of operation;

(5) Not offer unrelated types of services that conflict or interfere with the best interests of a child in care, a caregiver's responsibilities, or operation space. If you offer more than one type of service, you must determine and document that no conflict exists;

(6) Maintain liability insurance as required by the Human Resources Code, §42.049; and

(7) Prepare the annual budget and control expenditures and ensure compliance with Division 3 of this subchapter (relating to General Fiscal Requirements).

§748.153. What changes must I notify Licensing about regarding my operation?

You must provide written notification to your Licensing Representative:

(1) As soon as possible, but at least 30 days before you:

(A) Change the legal structure of your operation or your governing body, if applicable;

(B) Move your operation to another location; or

(C) Change your operating hours;

(2) As soon as possible, but at least 15 days before:

(A) You make changes to the policies and procedures required in §748.103(b) of this title (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?);

(B) Changes are made to the operation's floor plan showing the dimensions and the purpose of all rooms and specifying where children and caregivers, if applicable, will sleep; and

(C) Construction begins on adding a swimming pool or other permanent body of water;

(3) As soon as possible, but no later than two days after:

(A) You change your child-care administrator;

(B) A new individual becomes a controlling person at your operation;

(C) An individual ceases to be a controlling person at your operation; or

(D) There is a significant change in the information we maintain about a controlling person, such as a name change or mailing address change; and

(4) Within 24 hours of the child's placement, if you provide emergency care services and exceed capacity according to §748.155(b) of this title (relating to May I exceed my operation's capacity?).

§748.155. May I exceed my operation's capacity?

(a) The number of children and young adults in your care must not exceed the capacity stated on your permit, except as described in subsection (b) of this section.

(b) If you are licensed to provide emergency care services, you may temporarily exceed your licensed capacity for not more than 48 hours to provide temporary care for a child needing emergency care services.

(c) For the purpose of determining whether you exceed your capacity, the number of children in your care includes a caregiver's own children who are at the operation, if they share general living space, bedroom, and/or bathroom space with children in care, and any children receiving respite child-care services at an operation providing emergency care services.

§748.157. May I provide child day care services?

You may provide child day care services under the following conditions:

(1) You don't provide treatment services to children with emotional disorders;

(2) You care for and supervise children who receive day care services separately from the children receiving residential services; and

(3) You have separate administrative employees and caregivers for each program.

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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DIVISION 3. GENERAL FISCAL REQUIREMENTS

40 TAC §748.161, §748.163

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042.

§748.161. What are my fiscal requirements?

§748.163. How often must I have a financial records review?

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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40 TAC §748.161

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042.

§748.161. What are my fiscal requirements?

(a) You must establish and maintain your operation on a sound fiscal basis, including:

(1) Paying your employees timely; and

(2) Making sure the needs of children in care are being met.

(b) You must maintain complete financial records that comply with Generally Accepted Accounting Principles, including accounting for a child's money separately from the funds of your operation. You may not use a child's personal earnings, allowances, or gifts to pay for the child's room and board, unless such use is a part of the child's service plan and the child's parent approves it in writing. You must give or send the child's money to the child, parent, or next placement within 30 days of the child's discharge.

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DIVISION 4. REQUIRED POSTINGS

40 TAC §748.191

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.191. *What items must I post at my operation?*

The items listed below must be posted in a prominent and publicly accessible place where employees, children, parents, and others may easily view them at all times:

(1) Your permit. An operation does not have to post its permit in its cottage homes, as long as it posts the permit at the main office location;

(2) The Licensing notice *Keeping Children Safe*; and

(3) Emergency and evacuation relocation plans posted in each building and living quarters used by children.

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DIVISION 5. POLICIES AND PROCEDURES

40 TAC §§748.231, 748.233, 748.235, 748.237, 748.239, 748.241

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042.

§748.231. *What are the general requirements for my operation's policies?*

§748.233. *What are the requirements for my admission policies?*

§748.235. *What child-care policies must I develop?*

§748.237. *What emergency behavior intervention policies must I develop if the use of emergency behavior intervention is permitted at my operation?*

§748.239. *What policies must I develop if I use volunteers?*

§748.241. *What must a policy for protecting children from vaccine-preventable diseases include?*

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SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 1. REPORTING SERIOUS INCIDENTS AND OTHER OCCURRENCES

40 TAC §§748.301, 748.303, 748.309, 748.313, 748.315

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.301. *What is a serious incident?*

A serious incident is a non-routine occurrence that has or may have dangerous or significant consequences on the care, supervision, and/or treatment of a child. The different types of serious incidents are noted in §748.303 of this title (relating to When must I report and document a serious incident?).

§748.303. *When must I report and document a serious incident?*

(a) You must report and document the following types of serious incidents involving a child in your care. The reports must be made to the following entities, and the reporting and documenting must be within the specified time frames:

Figure: 40 TAC §748.303(a)

(b) If there is a medically pertinent incident, such as a seizure, that does not rise to the level of a serious incident, you do not have to report the incident but you must document the incident in the same manner as a serious incident.

(c) [(b)] If there is a serious incident involving an adult resident, you do not have to report the incident to Licensing, but you must document the incident in the same manner as a serious incident. You do have to report the incident to:

(1) Law [law] enforcement, as outlined in the chart above; [- You also have to report the incident to the]

(2) The parents, if the adult resident is not capable of making decisions about the resident's [his] own care; and[-]

(3) Adult Protective Services through the Texas Abuse and Neglect Hotline if there is reason to believe the adult resident has been abused, neglected or exploited.

(d) [(e)] You must report and document the following types of serious incidents involving your operation, an employee, a professional level service provider, contract staff, or a volunteer to the following entities within the specified time frame:

Figure: 40 TAC §748.303(d)
[Figure: 40 TAC §748.303(e)]

§748.309. *How do I make a report of a serious incident or occurrence to Licensing?*

[(a)] All serious incident reports must be made directly to the Texas [Child] Abuse and Neglect Hotline.[: and]

[(b)] Occurrences that are required to be reported to Licensing in writing must be forwarded to your Licensing representative (See §748.307(2) and (3) of this title (relating to When must I report other occurrences?)).]

§748.313. *What additional documentation must I include with a written serious incident report?*

You must include the following additional documentation with a written serious incident report, as applicable:

Figure: 40 TAC §748.313

§748.315. *How long [Where] must I keep incident reports?*

[(a)] You must keep the incident reports on file at the operation for two years. The reports must be easily accessible to Licensing upon request.

[(b)] You must permit Licensing to make a copy of incident reports, as requested.:

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40 TAC §748.307

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§748.307. *When must I report other occurrences?*

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DIVISION 2. OPERATION RECORDS

40 TAC §748.341

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§748.341. *If I keep electronic records, what procedures must I have for those records?*

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40 TAC §§748.341, 748.343, 748.345, 748.347

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042.

§748.341. *What are the retention requirements for my operation's policies?*

(a) You must maintain a copy of your policies and procedures at the operation. They must be available for review by employees, contract staff, caregivers, Licensing, or your clients, upon request.

(b) You must maintain copies of all current and previous policies for at least two years.

§748.343. *What policies and procedures must I have for protecting records?*

You must have policies and procedures for:

(1) Protecting paper and electronic records from destruction and loss; and

(2) Clarifying the persons:

(A) Within your operation who are authorized to access records; and

(B) Outside of your operation who are authorized by law to have access to records.

§748.345. What additional policies and procedures must I have for electronic records?

If you keep electronic records, you must develop policies and procedures in addition to the requirements in §748.343 of this title (relating to What policies and procedures must I have for protecting records?). These policies and procedures must address:

(1) What records must be in the external paper file and what records can be stored in the electronic file;

(2) Computer security systems, including confidentiality, passwords, and employee procedures to ensure the security of the system;

(3) Requirements for routine back-up of data;

(4) Anti-virus protection systems; and

(5) Limit access to your electronic files to persons within your operation authorized to see specific information in an electronic file.

§748.347. Are electronic signatures allowed?

Yes, you may use electronic and digital signatures, including approvals by e-mail and electronic approvals.

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DIVISION 3. PERSONNEL RECORDS

40 TAC §748.361, §748.363

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.361. Where must I maintain personnel records?

(a) You must maintain all active personnel records at the operation. [This may include electronic records per §748.341 of this title (relating to If I keep electronic records, what procedures must I have for those records?).]

(b) - (d) (No change.)

(e) You must maintain in the main office of the operation a master list of active and archived personnel records with a notation of the [and their] location of those records [in the main office of the operation].

§748.363. What information must the personnel record of an employee include?

For each employee, the personnel record must include:

(1) - (6) (No change.)

(7) A statement signed and dated by the employee documenting that the employee has read a copy of the operational policies required by §748.103 of this title (relating to What policies and procedures must I submit for Licensing's approval as part of the application process?).~~;~~

~~{(A) Operational policies; and}~~

~~{(B) Personnel policies;}~~

(8) A statement signed and dated by the employee indicating ~~[documenting;]~~

~~{(A) [That] the employee must immediately report any suspected incident of child abuse, neglect, or exploitation to the Texas [Child] Abuse and Neglect Hotline and to the operation's administrator or administrator's designee; [and}~~

~~{(B) The date the employee attended pre-service training in measures to prevent, identify, treat, and report suspected occurrences of child abuse (including sexual abuse), neglect, and exploitation, as required by §748.881(2) of this title (relating to What curriculum components must be included in the general pre-service training?);}~~

(9) - (10) (No change.)

(11) A record of training, including the date of the training, the number of [and] training hours, and the curriculum covered;

(12) Any documentation of the person's performance ~~[tenure]~~ with the operation; and

(13) The date and reason for the person's separation, if applicable.

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DIVISION 4. CHILD RECORDS

40 TAC §748.393, §748.395

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.393. *How must I maintain an active child record?*

(a) You must keep active child records at the operation where the child is receiving services. This may include electronic records [per §748.341 of this title (relating to If I keep electronic records, what procedures must I have for those records?)].

(b) On an on-going basis, you must ensure that each child's record:

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

{(3) Includes the date of each data entry and the name of the employee who makes the data entry;}

(3) [(4)] Is kept accurate and current;

(4) [(5)] Is locked and kept in a safe location; and

(5) [(6)] Is kept confidential as required by law.

§748.395. *How current must a child's record be?*

All documentation must be in the record:

(1) No later than 30 days after the occurrence or event; or

{(2) Within 15 days from the end of the month for monthly summaries; or}

(2) [(3)] As otherwise specified in this chapter.

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DIVISION 5. RECORD RETENTION

40 TAC §748.435

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§748.435. *What procedures must I have for protecting records?*

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SUBCHAPTER E. PERSONNEL

DIVISION 1. GENERAL REQUIREMENTS

40 TAC §748.501

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§748.501. *What must my written professional staffing plan include?*

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40 TAC §748.505

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.505. *What minimum qualifications must all employees meet?*

(a) (No change.)

(b) Each employee [who is regularly or frequently present while children are in care] must:

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

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DIVISION 2. CHILD-CARE ADMINISTRATOR

40 TAC §§748.533, 748.535, 748.539

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.533. *Can a child-care administrator be an administrator for two residential child-care programs?*

(a) (No change.)

(b) An operation that provides emergency care services must designate an employee in the staffing plan that is solely responsible for administering those services. This employee must have the experience and background to be able to perform the child-care administrator responsibilities. See §748.535 of this title (relating to What responsibilities must the child-care administrator [designated to be responsible for the on-site administration of the operation] have?). A designated employee, other than the child-care administrator for the operation, is not required if the emergency care services program has a capacity of not more than 30 children.

§748.535. *What responsibilities must the child-care administrator [designated to be responsible for the on-site administration of the operation] have?*

The child-care administrator must:

(1) (No change.)

(2) Be responsible for or assign responsibility for:

(A) - (D) (No change.)

(E) Administering and managing the operation according to your [the] policies [adopted by the governing body];

(F) - (H) (No change.)

§748.539. *Who must have overall administrative responsibility when the child-care administrator is absent on a frequent and/or extended basis?*

[(a)] When the child-care administrator is absent on a frequent and/or extended basis, the [The child-care] administrator must designate an employee that has a Child-Care Administrator's License to be responsible for the overall administration of the operation while the administrator is absent [on a frequent and/or extended basis].

[(b)] The designee must be a Licensed Child-Care Administrator as required in Chapter 43 of the Human Resources Code.

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DIVISION 3. PROFESSIONAL LEVEL SERVICE PROVIDERS

40 TAC §§748.563, 748.571, 748.575

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.563. *What professional qualifications must a professional level service provider have in order to perform professional level service activities?*

(a) - (b) (No change.)

(c) To provide services for any other children, a professional level service provider must have the following qualifications:
Figure: 40 TAC §748.563(c)

[(d)] A person who is a professional level service provider at your operation on or before the effective date of these rules may have the following qualifications in lieu of those set forth in subsection (c) of this section;

[[Figure: 40 TAC §748.563(d)]]

§748.571. *What are the responsibilities of a registered nurse at an operation that provides services to a child with primary medical needs?*

The responsibilities of a registered nurse include:

(1) (No change.)

(2) Leading or participating in the service planning process for the child's care [including registered nurse delegation of tasks or exemption from the registered nurse delegation in compliance with 22 TAC, Chapters 224 and 225 of the Texas Board of Nurse Examiners rules];

(3) - (9) (No change.)

§748.575. *In what circumstances may a physician or registered nurse (including an advanced practice registered nurse) delegate nursing tasks to unlicensed caregivers?*

The physician or registered nurse may delegate nursing tasks to unlicensed caregivers only if all delegation criteria are met for the task to be delegated, including, but not limited to:

~~[(1) Compliance with 22 TAC, Chapters 224 and 225 of the Texas Board of Nurse Examiners rules;]~~

(1) ~~[(2)]~~ The nursing task is one that a reasonable and prudent physician or registered nurse would find is within the scope of sound nursing judgment to delegate;

(2) ~~[(3)]~~ The physician or registered nurse determines that the nursing task can be properly and safely performed by the unlicensed caregiver without jeopardizing the child's welfare;

(3) ~~[(4)]~~ The operation employing or contracting with the unlicensed caregivers develops and follows a protocol, with input from a physician or registered nurse, for the instruction and training of unlicensed caregivers performing nursing tasks. The protocol must address:

(A) An established mechanism for identifying those individuals to whom nursing tasks may be designated;

(B) The manner in which the instruction addresses the complexity of the delegated task;

(C) The manner in which the unlicensed caregivers demonstrate the competency of the delegated task; and

(D) The mechanism for re-evaluation of the competency;

(4) ~~[(5)]~~ The training protocol recognizes that the final decision as to what nursing tasks can be safely delegated in any specific situation is within the specific scope of the physician's or registered nurse's judgment; and

(5) ~~[(6)]~~ A physician or registered nurse must instruct unlicensed caregivers in performing nursing tasks.

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DIVISION 4. TREATMENT DIRECTOR

40 TAC §748.605

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Ser-

vices Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.605. *What qualifications must a treatment director have?*

(a) A treatment director that provides or oversees treatment services for children with intellectual disabilities [~~mental retardation~~] or children with autism spectrum disorder [~~pervasive developmental disorders~~] must be:

(1) (No change.)

(2) Certified by the Texas Education Agency as an education diagnostician, have a master's degree in special education or a human services field, and have three years of experience working with children with intellectual disabilities [~~mental retardation~~] or autism spectrum [~~a pervasive developmental~~] disorder.

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

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DIVISION 5. CAREGIVERS

40 TAC §748.681

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.681. *What minimum qualifications must a caregiver meet?*

Each employee must meet the following qualifications before you can count the employee [~~him~~] in the child/caregiver ratio:

(1) (No change.)

(2) Have either:

(A) A high school diploma or high school equivalency, such as a General Educational Development (GED) [~~one of the following~~] from a program recognized by the Texas Education Agency (TEA), the Texas Private School Accreditation Commission (TPSAC), or other similar [~~a public~~] educational entity from another state; or [~~outside of Texas~~]

(B) Documentation to verify high school equivalency from home schooling. The documentation must adequately address basic competencies that would be otherwise met by a high-school diploma or a GED, including basic reading, writing, and math skills; and

~~[(A) High school diploma; or]~~

~~[(B) High school equivalency, such as a General Educational Development (GED); and]~~

(3) (No change.)

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DIVISION 6. CONTRACT STAFF AND VOLUNTEERS

40 TAC §§748.721, 748.724, 748.725, 748.729, 748.731

The amendments and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new sections implement HRC §42.042.

§748.721. *What are the requirements for a volunteer?*

(a) (No change.)

(b) The personnel record must include a statement signed and dated by the volunteer indicating the volunteer [he] must immediately report any suspected incident of abuse, neglect, or exploitation to the Texas [Child] Abuse and Neglect Hotline and the operation's administrator or administrator's designee. An internal reporting policy may not require or allow a person to delegate [the delegation of] the person's responsibility to report suspected abuse, neglect, or exploitation.

~~[(e) If the volunteer provides short-term services through an agency or an organization, you must determine that the organization or agency's policies meet the intent of these rules before the volunteer can have contact with children.]~~

§748.724. *When is a volunteer or contractor who is a part of another organization subject to my policies and procedures?*

(a) A volunteer or contractor who is part of another organization is subject to your policies and procedures unless that organization provides screening, training, and supervision to the volunteer/contractor that are adequate to protect the health and safety of children. Before the volunteer/contractor can have contact with children:

(1) The volunteer/contractor must meet the relevant requirements of your policies and procedures; or

(2) You must confirm the organization provides adequate screening, training, and supervision.

(b) An organization may be another licensed operation.

§748.725. *Can a volunteer, a volunteer's family, or a sponsoring family take [As a family or organization that invites] a child in care for an overnight or weekend visit [a "volunteer"]?*

(a) Yes, but when [When] a volunteer, a volunteer's family, or a sponsoring family [or organization] takes a child who is in care for an overnight or weekend visit, this is [not] a volunteer activity.

(b) Neither the volunteer nor the family would have to comply with employee or caregiver requirements, but:

(1) The volunteer and/or the family would have to meet the relevant background checks; and

(2) In order for a volunteer or a family [or organization] to take a child out of care for more than 48 hours, you must get written approval from the parent.

§748.729. *What must I do when a child in care visits a volunteer or sponsoring family for a day or overnight?*

~~[(a)]~~ If a child has a day or overnight visit with a volunteer, a volunteer's family, or sponsoring family, you must ensure that:

(1) The child is properly supervised, properly fed and hydrated, and provided with safe housing accommodations, if applicable;[-]

(2) The child's health, safety, and well-being are protected; and[-]

(3) Prior to the visit, the person responsible for the child during the visit has to receive the same information that you as a respite child-care services provider would receive, as specified in §748.4265 of this title (relating to What information regarding a child must I receive prior to providing respite child-care services to that child?) [for emergency medical care, such as permission for emergency medical care, telephone numbers for the child's licensed physician(s), and medication and treatment information].

~~[(4) Unless the volunteer is court-appointed, the volunteer must not remove the child from the operation for more than 48 hours without prior written approval of the child's parent.]~~

~~[(b) When a child who is not in your care invites a child who is in your care for an overnight or weekend visit, this is not a volunteer activity. You must get prior written approval from the parent to continue a visit for more than 48 hours.]~~

§748.731. *May a person perform community service hours at my operation?*

A person may not perform community service hours at your operation. For the purposes of this rule, community service includes service a person must perform because the person is on probation, parole, or otherwise required to perform the service through the courts because of criminal activity.

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40 TAC §748.727, §748.731

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042.

§748.727. *Is a "sponsoring family" program a volunteer program?*

§748.731. *Can I use a volunteer that is on probation, parole, or referred for community service through the courts?*

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SUBCHAPTER F. TRAINING AND PROFESSIONAL DEVELOPMENT

DIVISION 1. DEFINITIONS

40 TAC §748.801

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.801. *What do certain words and terms mean in this subchapter?*

The [These] words and terms used in this subchapter have the following meaning [meanings in this subchapter]:

{(1) CEU--Continuing education unit.}

(1) [(2)] CPR--Cardiopulmonary resuscitation.

(2) [(3)] Hours--Clock hours.

(3) [(4)] Instructor-led [Instructor led] training--Training that is characterized by the communication and interaction that takes place between the student and the instructor. It [and] must include an opportunity for the student to [timely] interact with the instructor to obtain clarifications and information beyond the scope of the training material. For such an opportunity to exist, the instructor must be able to answer [materials, including answering] questions, provide [providing] feedback on skills practice, provide [providing] guidance or information on additional resources, and proactively interact [interacting] with students. Examples of this type of training include classroom training, on-line distance learning, video-conferencing, or other group learning experiences.

(4) [(5)] Self-instructional [Self instructional] training--Training that is designed to be used by one individual working alone and at the individual's [his] own pace to complete lessons or modules. Examples of this type of training include computer based training, written materials, or video training.

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DIVISION 3. PRE-SERVICE EXPERIENCE AND TRAINING

40 TAC §§748.861, 748.867, 748.869

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.861. *What are the pre-service experience requirements for a caregiver?*

(a) (No change.)

(b) If 25 or more children or 30% or more of your total population of children in care are receiving treatment services, then a caregiver must have 40 hours of supervised child-care experience in your operation and/or another [an] operation that provides the same treatment services. Until the caregiver has met this [If the] 40-hour experience requirement, the caregiver: [is not met, before you may assign the person as the only caregiver responsible for a group of children, the

caregiver must have at least 40 total hours of supervised child-care experience from your operation and/or another operation that provides the same treatment services. Until the caregiver completes the supervised experience, an experienced caregiver must be physically available to supervise the caregiver at all times.]

(1) May not be assigned as the only caregiver responsible for a group of children;

(2) Must be supervised at all times by another caregiver who has already satisfied the 40-hour experience requirement; and

(3) The supervised child-care experience must be documented in the appropriate personnel record.

§748.867. *Must I provide pre-service training to a caregiver or an employee who has previously worked in an operation?*

(a) A caregiver is exempt from completing the eight hours of general pre-service training if the caregiver [he] has been employed as a caregiver in a general residential operation [~~or residential treatment center~~] during the past 12 months.

(b) A caregiver or an employee [~~working with children~~] does not have to complete the pre-service training regarding emergency behavior intervention if the caregiver or employee [he]:

(1) Has been employed by a general residential operation [~~or residential treatment center~~] during the last 12 months;

(2) - (3) (No change.)

(c) (No change.)

§748.869. *What are the instructor requirements for providing pre-service training?*

(a) The training must instructor-led.

(b) [~~(a)~~] A qualified instructor must deliver the pre-service training. A qualified instructor must hold a generally recognized credential or possess documented knowledge and/or experience relevant to the training the instructor will provide.

~~[(b) The training must be instructor led.]~~

(c) - (d) (No change.)

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DIVISION 4. GENERAL PRE-SERVICE TRAINING

40 TAC §748.883, §748.885

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.883. *What additional [If your operation cares for children younger than two years old; what additional curriculum components must be included in the] general pre-service training requirements are there for a caregiver who will care for children younger than two years old?*

You must ensure that each caregiver who provides care [If your operation cares] for children younger than two years old receives; the general pre-service training on [curriculum must also include the following components]:

(1) (No change.)

(2) Understanding safe sleep environments and preventing [~~Preventing~~] sudden infant death syndrome; and

(3) (No change.)

§748.885. *What additional [For caregivers that administer psychotropic medication; what additional curriculum components must be included in the] general pre-service training requirements are there for a caregiver that administers psychotropic medication?*

Before a caregiver is permitted to administer psychotropic medication, you must ensure that each caregiver that administers psychotropic medication receives general pre-service training on: [the caregiver must be trained on administering the medication. The training curriculum must include the following components]:

(1) - (5) (No change.)

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DIVISION 6. ANNUAL TRAINING

40 TAC §§748.935, 748.937, 748.939, 748.941, 748.943, 748.945

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.935. *When must a person complete the annual training?*

(a) Each person must complete the annual training:

(1) Within 12 months from when you hire the person [~~the date of his employment~~]; and

(2) During each subsequent 12-month period after the anniversary date of hire.

(b) Alternately, you have the option of prorating the person's annual training requirements from the date of hire [~~employment~~] to the end of the calendar year or the end of the operation's fiscal year and then beginning a new 12-month period that coincides with the calendar or fiscal year.

(c) (No change.)

§748.937. *What types of hours or instruction can be used to complete the annual training requirements?*

(a) If the training complies with the other rules in this division (relating to Annual Training), annual training may include hours or Continuing Education Units [CEUs] earned through:

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

(3) Self-instructional training, excluding training on emergency behavior intervention[, first-aid,] and CPR;

(4) - (6) (No change.)

(b) For annual training hours, you may count:

(1) The hours of annual training that a person received at another [~~general~~] residential child-care operation [~~or residential treatment center~~], if the person:

(A) - (B) (No change.)

(2) - (3) (No change.)

(4) Any [~~The~~] hours of pre-service training that the person earned [~~earns~~] in addition to the required pre-service hours, although you may not carry over more than 10 hours of a person's pre-service training hours for use as annual training hours during the upcoming year[- For example, if a person completes 24 hours of pre-service emergency behavior intervention training, and is required to obtain 16 hours, that person may count eight of the hours toward annual training requirements;]

(5) - (6) (No change.)

(c) For annual training hours, you may not count:

(1) Orientation training;

(2) Required pre-service [~~Pre-service~~] training;

(3) - (4) (No change.)

(d) No more than one-half [~~one-third~~] of the required annual training hours may come from self-instructional training. No more than three hours of the self-instructional training may come from a person reading written materials or watching a video on their own.

(e) (No change.)

§748.939. *Does Licensing approve training resources or trainers for annual training hours?*

No. We do not approve or endorse training resources or trainers for training hours. You must, however, ensure the employees receive reliable training relevant to the population of children served, which includes for both instructor-led training and self-instructional training:

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

§748.941. *What are the instructor requirements for providing annual training?*

(a) (No change.)

(b) Transportation safety training must be instructor-led and provided by:

(1) - (6) (No change.)

§748.943. *What areas or topics are appropriate for annual training?*

Other than the mandated topics, annual [~~Annual~~] training must be in areas appropriate to the needs of children for whom the operation or employee will be providing care, which may include:

(1) - (5) (No change.)

(6) Supervision and safety practices for [~~in the care of~~] children in care; [~~or~~]

(7) Preventing the spread of communicable diseases;[-]

(8) Water safety; or

(9) Administration of medication.

§748.945. *For a caregiver who administers* [~~caregivers that administer~~] *psychotropic medication, what annual training is required?*

If you permit a caregiver to administer psychotropic medication:

(1) The caregiver's [~~His~~] annual training must meet the psychotropic medication training requirements in §748.885 of this title (relating to What additional general pre-service training requirements are there for a caregiver that administers psychotropic medication? [~~For caregivers that administer psychotropic medication, what additional curriculum components must be included in the general pre-service training?~~]); and

(2) The caregiver [~~He~~] must obtain the annual psychotropic medication training no later than 12 months after the caregiver's [~~his~~] last psychotropic medication training.

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DIVISION 7. FIRST-AID AND CPR CERTIFICATION

40 TAC §748.985, §748.987

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.985. *Who can provide first-aid and CPR certification?*

(a) The following may provide first-aid and CPR certification:

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

(b) A caregiver may not obtain [~~first-aid or~~] CPR certification through self-instructional training.

§748.987. *What must the [~~first-aid and~~] CPR training include?*

(a) [~~First-aid and~~] CPR ~~training/certification~~ [training] and re-certification must consist of a curriculum that includes both written and hands-on skill-based instruction, practice [~~for CPR, the practice~~] is through the use of a CPR mannequin[~~;~~] and testing.

(b) CPR ~~training/certification~~ [training] and recertification must include CPR for children and adults. For operations that care for infants and/or admit children with infants, the training must also include CPR for infants.

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SUBCHAPTER G. CHILD/CAREGIVER RATIOS

40 TAC §§748.1009, 748.1013, 748.1021

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.1009. *How many caregivers must I employ?*

[(a)] You must employ an adequate number of qualified caregivers to meet the needs of children, taking into account each child's age, medical, physical, and mental condition and other factors that affect the amount of supervision the child requires, including enough caregivers to meet:

(1) Child/caregiver ratios; and

(2) All of their responsibilities required in §748.685 of this title (relating to What responsibilities does a caregiver have when supervising a child or children?).

[(b) If you provide treatment services, your professional staffing plan must identify your:]

[(1) Ability to have enough caregivers, including caregivers who are awake throughout the night to supervise children 24 hours a day, including frequent one-to-one monitoring whenever necessary to meet the needs of a particular child; and]

[(2) Staffing patterns, including your child/caregiver ratios, hours of coverage, and plans for providing backup caregivers in emergencies.]

§748.1013. *How does a caregiver care for a child needing constant supervision during sleeping hours?*

(a) A caregiver must always be awake when caring for a child needing constant supervision, such as a medically fragile child or a child that is an immediate danger to self [himself] or others.

(b) To facilitate continuous care for a child, the caregiver may move a child to a location where the caregiver can directly and continuously supervise a child until there is no longer an immediate danger to self [himself] or others. The caregiver must provide comfortable sleeping arrangements for the child.

§748.1021. *When does a child who is in a transitional living program not need supervision?*

(a) The child must be 16 years old or older.

(b) [(a)] You must evaluate each child in a transitional living program to determine whether the child needs supervision. The evaluation must:

(1) Include a written plan defining the periods of time the child may be left unsupervised;

(2) Include a written plan for addressing behavioral problems that a child may have while in the transitional living program; and

(3) Identify how the child may contact the caregivers when caregivers are not physically present with the child, such as being available to the child by telephone or other means of contact.

(c) [(b)] The child's service planning team must approve the evaluation.

(d) [(e)] You must document the evaluation of the child and the approval in the child's record. You must review and update the evaluation during the child's service planning meetings.

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SUBCHAPTER H. CHILD RIGHTS

40 TAC §748.1101, §748.1105

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the

health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042.

§748.1101. *What rights does a child in care have?*

§748.1105. *What provisions must I make for a child's personal care?*

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40 TAC §§748.1101, 748.1103, 748.1109, 748.1117, 748.1119

The new section and amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section and amendments implement HRC §42.042.

§748.1101. *What rights does a child in care have?*

(a) A child's rights are cumulative of any other rights granted by law or other Licensing rules.

(b) The following categories include the child's rights that you must adhere to:

(1) Safety and care, including:

(A) The right to good care and treatment that meets the child's needs in the most family-like setting possible;

(B) The right to be free from abuse, neglect, and exploitation; and

(C) The right to fair treatment;

(2) Family contacts, including the right to maintain regular contact with the child's parents and siblings, unless restrictions are necessary because of the child's best interest, the decision of an appropriate professional, or a court order;

(3) Living a normal life, including:

(A) The right to be able to communicate in a language or any other means that is understandable to the child at admission or within a reasonable time after an emergency admission, if applicable, such as having a plan for an interpreter, having at least one person at the operation at all times who can communicate with the child in the

child's own language, or other means to communicate with the child in the child's own language;

(B) The right to receive educational services appropriate to the child's age and developmental level;

(C) The right to have the child's religious needs met;

(D) The right to participate in childhood activities, including unsupervised childhood activities away from the operation and the caregivers, that are appropriate for the child's age, maturity, and developmental level;

(E) The right to privacy, including sending and receiving unopened mail, making and receiving phone calls, keeping a personal journal, and having visitors, unless the child's best interest, appropriate professionals, or court order necessitates restrictions;

(F) The right to personal care, hygiene, and grooming equipment and supplies and training in how to use them;

(G) The right to have comfortable clothing, which is suitable to the child's age and size and similar to the clothing of other children in the community. Teenagers should have reasonable opportunities to select the clothing;

(H) The right to clothing that protects the child against the weather;

(I) The right to have personal items in the child's room and to get additional items within reasonable limits;

(J) The right to personal space in the child's bedroom to store the child's clothes and belongings;

(K) The right to be informed of search policies and be free of unreasonable searches and unreasonable removal of personal items;

(L) Depending on the child's age and maturity, the right to seek employment, keep the child's own money, have a bank account in the child's name, and get paid for any work done for the operation as part of the child's service plan or vocational training, with the exception of assigned routine duties that relate to the child's living environment, such as cleaning the child's room, or other chores, or work assigned as a disciplinary measure;

(M) The right to consent in writing before taking part in any publicity or fund raising activity for the operation, including the use of the child's photograph;

(N) The right to refuse to make public statements showing gratitude to the operation; and

(O) The right to not be pressured to get an abortion, give up her child for adoption, or parent her child, if applicable;

(4) Discipline, including:

(A) The right to be free from any harsh, cruel, unusual, unnecessary, demeaning, or humiliating treatment or punishment. This means the child must not be:

(i) Shaken;

(ii) Subjected to or threatened with corporal punishment, including spanking or hitting the child;

(iii) Forced to do unproductive work that serves no purpose except to demean the child, such as moving rocks from one pile to another or digging a hole and then filling it in;

(iv) Denied food, sleep, a bathroom, mail, or family visits as punishment;

(v) Subjected to remarks that belittle or ridicule the child or the child's family;

(vi) Threatened with the loss of placement or shelter as punishment; and

(vii) Subjected to demeaning behavior to embarrass, control, harm, intimidate, or isolate the child. "Demeaning behavior" may include using physical force, rumors, threats, or inappropriate comments;

(B) The right to discipline that is appropriate to the child's age, maturity, and developmental level; and

(C) The right to have restrictions or disciplinary policies explained to the child at admittance and when the measures are imposed;

(5) Plans for the child while in care, including:

(A) The right to have a comprehensive service plan that addresses the child's needs, including transitional and discharge planning; and

(B) The right to actively participate in the development of the child's service plan within the limits of the child's comprehension and ability to manage the information. The child has the right to a copy or summary of the plan. A child 14 years of age or older has the right to review and sign the service plan, unless there is a reason not to provide the plan;

(6) Medical care and records, including:

(A) The right to medical, dental, vision, and mental health care and developmental services that adequately meet the child's needs. The right to request that the care or services be separate from adults (other than young adults) who are receiving services;

(B) The right to be free of unnecessary or excessive medication; and

(C) The right to confidential care and treatment, including keeping medical records and operation records private and only discussing them when it is about the child's care; and

(7) Complaints, including the right to make calls, reports, or complaints without interference, coercion, punishment, retaliation, or threats of punishment or retaliation. The child may make these calls, reports, or complaints anonymously. Depending upon the nature of the complaint, the child has the right to call, report, or complain to:

(A) The DFPS Texas Abuse/Neglect Hotline at 1-800-252-5400;

(B) The HHSC Ombusman for Children and Youth Currently in Foster Care at 1-844-286-0769;

(C) The DFPS Office of Consumer Affairs at 1-800-720-7777; or

(D) Disability Rights of Texas at 1-800-252-9108.

§748.1103. How must I inform a child and the child's parents of their rights?

(a) - (c) (No change.)

(d) The person you are informing of the child's rights must sign a statement indicating that the person has read and understands these rights. A copy of a timely signed "CPS Rights of Children and Youth in Foster Care" will meet this standard. You must put the signed copy in the child's record.

§748.1109. What right does a child have regarding contact with siblings?

(a) - (b) (No change.)

(c) When you restrict sibling contact, you must include justification in the child's record. Restrictions imposed by you that continue for more than 60 days must be re-evaluated every 60 days by a professional level service provider, who also must: [service plan and service plan reviews and updates. If a restriction imposed by you lasts more than 90 days, you must document the justification for continuing the restriction in the child's record at least every 90 days.]

(1) Explain the reasons for the continued restrictions to the child; and

(2) Document the reasons in the child's record.

(d) (No change.)

§748.1117. What must I document regarding a search?

You must document the following in the child's record when you conduct a search under §748.1113(b) of this title (relating to Under what circumstances may I conduct a search for prohibited items or items that endanger a child's safety?):

(1) - (8) (No change.)

(9) The resolution of the issue with the child, including increased supervision, additional counseling [therapy], or disciplinary consequences.

§748.1119. What techniques am I prohibited from using on a child?

Certain [You may not use any of the following] techniques must not be used on a child, including:

(1) - (6) (No change.)

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SUBCHAPTER I. ADMISSION, SERVICE PLANNING, AND DISCHARGE DIVISION 1. ADMISSION

**40 TAC §§748.1205, 748.1207, 748.1209, 748.1211,
748.1213, 748.1215, 748.1217, 748.1219, 748.1223, 748.1225**

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.1205. *What information must I document in the child's record at admission?*

(a) You must include the following in the child's record at admission:

(1) The child's name, gender, race, religion, and date of birth[, and birthplace];

~~(2) Court orders establishing who is the managing conservator for the child, if applicable.;~~

(2) ~~(3)~~ The name, address, and telephone number of the managing conservator, the primary caregivers for the child, any person with whom the child is allowed to leave the operation, and any other individual who has the legal authority to consent to the child's medical care;

(3) ~~(4)~~ The names, addresses, and telephone numbers of biological or adoptive parents, unless parental rights have been terminated;

(4) ~~(5)~~ The names, addresses, and telephone numbers of siblings;

(5) ~~(6)~~ The date of admission;

(6) ~~(7)~~ Medication the child is taking;

(7) ~~(8)~~ The child's immunization record;

(8) ~~(9)~~ Allergies, such as food, medication, sting, and skin allergies;

(9) ~~(10)~~ Chronic health conditions, such as asthma or diabetes;

(10) ~~(11)~~ Known contraindications to the use of restraint;

(11) ~~(12)~~ Identification of the child's treatment needs, if applicable, and any additional treatment services or programmatic services the child is receiving;

(12) ~~(13)~~ Identification of the child's high-risk behavior(s), if applicable, and the safety plan staff and caregivers will implement related to the behavior(s);

(13) ~~(14)~~ A copy of the placement agreement, if applicable; and

(14) ~~(15)~~ Documentation of the attempt to notify the parent of the child's location as required by §748.1211(c)(3) [~~§748.1211(e)~~] of this title (relating to What information must I share with the parent at the time of placement?), if applicable.

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

§748.1207. *What is a placement agreement?*

(a) A placement agreement is your agreement with a child's parent or the child that defines your roles and responsibilities and authorizes you to obtain or provide services for the child. The placement agreement must include:

(1) Authorization permitting you to care for the child;

(2) A medical consent form signed by a person legally authorized by the Texas Family Code to provide consent; and

(3) The reason for placement and anticipated length of time in care.

(b) A placement agreement must be signed by the child's parent, except as provided in subsection (c).

(c) For a transitional living program, a child 16 years of age or older may sign the placement agreement on the child's own behalf,

as provided in the Texas Family Code §32.203, without the consent of the child's parent if the child:

(1) Resides separate and apart from the child's parent and manages the child's own financial affairs;

(2) Is unmarried and pregnant; or

(3) Is unmarried and a parent.

§748.1209. *What orientation must I provide a child?*

(a) (No change.)

(b) Orientation must include information about your policies on the following:

(1) - (11) (No change.)

(12) A general daily schedule for routine activities for children in care; and

(13) Internal grievance [Grievance] procedures.

(c) Orientation must include information on how to:

(1) Make complaints to outside agencies; and

(2) Contact parties to a child's case (i.e. caseworker, attorney ad litem, guardian ad litem, CASA worker, etc.).

(d) ~~(e)~~ You must document in the child's record when the orientation occurred, any item [items] that the orientation did not include, and the reason that the orientation did not include that item.

§748.1211. *What information must I share with the parent at the time of placement?*

(a) At admission, you must provide the following policies to the parent placing the child:

(1) Fee policies;

(2) Emergency behavior intervention policies;

(3) Discipline policies; and

(4) Any other policies required by us, upon request of the parent.

~~(a) The parent must be able to determine whether your program and/or practices are appropriate for the child and can meet the child's needs.~~

(b) At admission, you must [review and] provide and explain the following written information and policies [materials] to the parent placing the child [that explain]:

(1) (No change.)

(2) Your policies regarding the:

(A) Use of volunteers or sponsoring families, if applicable;

(B) - (C) (No change.)

(3) Information about the [The] parent's right to refuse to or withdraw consent for a child to participate in:

(A) - (B) (No change.)

(c) If you sign a placement agreement for a transitional living program with a child as specified in §748.1207 of this title (relating to What is a placement agreement?), then you:

(1) Must share the policies noted in subsection (a) with the child, instead of the parent;

(2) Do not have to comply with subsection (b), but you must provide and explain to the child your policies regarding the:

(A) Use of volunteers or sponsoring families, if applicable;

(B) Involvement of the child in any publicity and/or fund raising activity for the operation; and

(C) Child's right to refuse to or withdraw consent to participate in:

(i) Research programs; and/or

(ii) Publicity and/or fund raising activities for the operation; and

(3) [(e)] Must [You must] attempt to notify the child's parent [of a child you admit to a transitional living program] of the child's location, if the child was admitted without the consent of the parent[; as provided in Texas Family Code §32.203].

§748.1213. *What information must I provide caregivers when I admit a child?*

(a) (No change.)

(b) You must inform appropriate caregivers of any special needs, such as medical or dietary needs or conditions or supervision needs, and document that you shared the information with the caregiver.

§748.1215. *When must I complete the admission assessment?*

(a) You must complete a non-emergency admission assessment prior to admission. [according to the time frames required in §748.1217 of this title (relating to What information must an admission assessment include?). For an emergency admission assessment, see §748.1269 of this title (relating to For an emergency admission, when must I complete all of the requirements of an admission assessment?).]

(b) (No change.)

§748.1217. *What information must an admission assessment include?*

(a) (No change.)

(b) Prior to a child's non-emergency admission, an admission assessment must be completed which includes:

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

(3) A description of the child's behavior, including appropriate and maladaptive behavior, and any high-risk behavior [posing a risk to self or others];

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

(6) Current mental health and substance abuse status, including available results of any psychiatric evaluation, psychological evaluation, or psychosocial assessment [or psychiatric examination];

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

(9) Any applicable requirements of §748.1219 of this title (relating to What are the additional admission assessment requirements when I admit a child for treatment services?);

(10) Documentation indicating efforts made to obtain any of the information in paragraphs (1) - (9) of this subsection, if any information is not obtainable;

(11) - (13) (No change.)

(14) The child's understanding of the placement; and

(15) A determination of whether and how you can meet the [immediate] needs of the child.[; and]

[(16) A rationale for the appropriateness of the admission.]

(c) Prior to completing a child's initial service plan, the following information must be added to the admission assessment:

(1) - (12) (No change.)

(13) A recommended behavior management plan; and

(14) A determination of whether and how you can meet the needs of the child, based on an evaluation of the child's special strengths and needs.[; and]

[(15) A rationale for the appropriateness of the admission.]

(d) - (e) (No change.)

§748.1219. *What are the additional admission assessment requirements when I admit a child for treatment services?*

When you admit a child for treatment services, you must do the following, as applicable:

Figure: 40 TAC §748.1219

§748.1223. *What are the medical requirements when I admit a child into care?*

(a) You must ensure that the child has a medical examination by a health-care professional within 30 days after the date of admission. This exam is not required if you have documentation that the child has had a medical examination within the past year, including documentation in the child's health passport if the child [he] is in the department's [DFPS] conservatorship.

(b) - (d) (No change.)

§748.1225. *What are the dental requirements when I admit a child into care?*

(a) If the child is younger than three years old and a health-care professional [physician] recommends a dental examination, then you must ensure that a dentist examines the child.

(b) A child three years old or older must have a dental appointment scheduled with a dentist within 30 days after the date of admission, and the examination must occur within 90 days after the date of admission. A dental examination is not required if you have documentation that the child has had a dental examination within the past year, including documentation in the child's health passport if the child [he] is in the department's [DFPS] conservatorship.

(c) (No change.)

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DIVISION 2. EMERGENCY ADMISSION

40 TAC §748.1263, §748.1269

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.1263. *What constitutes an emergency admission to my operation?*

It is an emergency admission if [You may admit a child on an emergency basis if the child]:

- (1) You must place the child within 72 hours;
- (2) [(+) The child was [Is being] removed from a situation involving alleged abuse or neglect;
- (3) [(2) The child is [Is] an alleged perpetrator of abuse and cannot be served in the child's current placement due to the child's [his] perpetrating behaviors;
- (4) [(3) The child displays [Displays] behavior that is an immediate danger to self [himself] or others and cannot function or be served in his current setting;
- (5) [(4) The child was [Is] abandoned and after exercising reasonable efforts, the child's identity cannot be immediately determined. You must document the [The] efforts made to obtain information on the child's identity [must be documented] in the child's record;
- (6) [(5) The child was [Is] removed from the child's [his] home or placement, and there is an immediate need to find a residence for the child;
- (7) [(6) A law enforcement officer or juvenile probation officer [Is] released the child to your authorized emergency care program [by a law enforcement or juvenile probation officer]; or
- (8) [(7) The child is otherwise [Is] without adult care.

§748.1269. *For an emergency admission, when must I complete all of the requirements for an admission assessment?*

- (a) (No change.)
- (b) In an emergency admission of a child receiving treatment services, the child must not continue in care for more than 30 days after the date of admission or 10 days after the date of admission for a residential treatment center, unless the child has received the [psychological,] psychiatric evaluation, psychological evaluation, psychosocial assessment, [psychometric] or medical [physician's] evaluation that is required by §748.1219 of this title (relating to What are the additional admission assessment requirements when I admit a child for treatment services?), and the evaluation or assessment indicates manifestations of the disorder requiring treatment services. All evaluations and assessments must be signed, dated, and documented in the child's record.

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DIVISION 3. EDUCATIONAL SERVICES

40 TAC §748.1303

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.1303. *What responsibilities do I have for a child's individual educational needs?*

You must:

- (1) - (5) (No change.)
- (6) Let the parent know that an [Request] IEP (Individual Education Plan) meeting should be requested [meetings] if you are concerned with the child's educational program or if the child does not appear to be making progress; and
- (7) Attend IEP meetings and other school staffings and conferences, if requested by the parent, to represent the child's educational best interests, including the child being evaluated for and provided with related services needed to benefit from educational services, and positive behavior supports designed to decrease the need for negative disciplinary techniques or interventions.

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DIVISION 4. SERVICE PLANS

40 TAC §§748.1331, 748.1335, 748.1337, 748.1340, 748.1341, 748.1345, 748.1349, 748.1351

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §431.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective

Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §42.042.

§748.1331. *What are the requirements for a preliminary service plan?*

(a) You must complete a preliminary service plan that addresses the immediate needs of a child within 72 hours, such as supervision requirements, enrolling the child in school, or obtaining needed medical care or clothing[, within 72 hours of the child's admission].

(b) - (f) (No change.)

§748.1335. *When must I complete an initial service plan?*

You must complete the initial service plan within 45 [40] days after you admit the child.

§748.1337. *What must a child's initial service plan include?*

(a) You must base the child's initial service plan on the child's needs identified in the child's admission assessment and integrate trauma informed care in the care, treatment, and management of each child. The service planning team may prioritize the child's service planning goals and objectives based on the child's admission assessment. However, any required service plan components not initially addressed must have a justification for the delay in addressing the needs.

(b) The child's initial service plan must be documented in the child's record and include those items that a preliminary plan must include (see §748.1331 of this title (relating to What are the requirements for a preliminary service plan?)), and the items noted below for each specific type of service that you provide the child:

Figure: 40 TAC §748.1337(b)

[(e) For children receiving treatment services, the plan must address all of the child's waking hours.]

§748.1340. *Can the service planning team discuss to develop a child's service plan in separate meetings?*

Yes, the service planning team may meet in one meeting, two or more meetings, or in separate meetings, provided that each service planning team member is informed of the discussions and comments regarding the child's service plan that were made in each meeting.

§748.1341. *When must I inform the child's parent(s) of an initial service plan meeting?*

(a) The [You must give the] child's parent(s) must have at least two weeks advance notice of the initial service plan meeting.

(b) (No change.)

§748.1345. *What roles do professional level service providers have in service planning?*

The roles of professional level service providers in service planning include:

Figure: 40 TAC §748.1345

§748.1349. *To [With] whom do I provide a copy of the child's [share the] initial service plan?*

(a) You must give a copy or summary of the initial service plan to the:

(1) Child, when appropriate. At a minimum, you must give a copy or a summary of the plan to a child 14 years of age or older, unless there is justification for not providing the plan;

(2) - (3) (No change.)

(b) If you provide a copy or summary of the initial service plan to a child, the child must review and sign the plan. You must document if the child disagrees with the plan or refuses to sign it.

(c) [(b)] If you do not provide a copy or summary of [share] the service plan to a [or summary with the] child, you must document your justification for not sharing the plan in the child's record.

(d) [(e)] You must document in the child's record that you provided a copy or summary of the service plan to the child's parents.

§748.1351. *When must I implement a service plan?*

You must implement and follow an initial service plan as soon as all of the service planning team members have reviewed and signed the plan, but no later than 15 [10] days after the date of the scheduled service-planning meeting involving the parents and the child.

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DIVISION 5. SERVICE PLAN REVIEWS AND UPDATES

40 TAC §§748.1381, 748.1385, 748.1386, 748.1389

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §431.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §42.042.

§748.1381. *How often must I review and update a service plan?*

Except for when the child's placement within your operation changes because of a change in the child's needs, you must review and update the service plan as follows:

Figure: 40 TAC §748.1381

§748.1385. *How do I review and update a service plan?*

To review and update a service plan, you must:

(1) - (7) (No change.)

[(8) Determine for children receiving treatment services for emotional disorders, pervasive developmental disorders, or primary medical needs whether to:]

[(A) Continue the placement;]

[(B) Continue the placement as child-care services;]

~~[(C) Transfer the child to a less restrictive setting; or]~~

~~[(D) Refer the child to an inpatient hospital;]~~

(8) [(9)] Evaluate the use and effectiveness of emergency behavior intervention techniques, if used, since the last service plan. If applicable, this evaluation must focus on:

(A) The frequency, patterns, and effectiveness of types of emergency behavior interventions;

(B) Strategies to reduce the need for emergency behavior interventions overall; and

(C) Specific strategies to reduce the need for use of personal and mechanical restraints, emergency medication, and/or seclusion, where applicable;

(9) [(40)] Document in the child's record the review and update of the plan; and

(10) [(44)] Document the names of the persons participating in the review and update.

§748.1386. Can an operation continue to review and update a child's previous service plan without creating a new service plan?

Yes, a single service plan that continues throughout the time a child is in residential child care is acceptable, as long as you:

(1) Complete a preliminary service plan as required by §748.1331 of this title (relating to What are the requirements for a preliminary service plan?) each time a child is admitted into your care; and

(2) Continue to comply with the service plan review and update requirements in this division of this subchapter (relating to Service Plan Reviews and Updates).

§748.1389. How often must I re-evaluate the intellectual functioning of a child receiving treatment services for intellectual disabilities [mental retardation]?

(a) - (b) (No change.)

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DIVISION 6. DISCHARGE AND TRANSFER PLANNING

40 TAC §§748.1433, 748.1435, 748.1437

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §431.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.1433. Who must plan a child's non-emergency discharge or transfer?

(a) - (c) (No change.)

(d) If a child in your care is not receiving treatment services, you must inform the child [him] of the [his] non-emergency discharge or transfer at least four days prior to the date of the discharge or transfer, unless your licensed child-care administrator or a professional level service provider has clear justification for not giving the child [him] such notice. The licensed child-care administrator or professional level service provider who determines the justification for the child not having the advance notice of the discharge or transfer, must put the justification in writing and sign and date it. The justification must be in the child's record.

(e) If a child in your care is receiving treatment services, you must inform the child [him] of the [his] non-emergency discharge or transfer at least four days prior to the date of the discharge or transfer, unless your treatment director, three members of the child's service planning team, or the child's psychiatrist or psychologist has justification for not giving the child [him] such notice. Whoever determines the justification for the child not having the advance notice of the discharge or transfer must put the justification in writing and sign and date it. The justification must be in the child's record.

§748.1435. How do I discharge or transfer a child who is an immediate danger to self [himself] or others?

An employee of your operation must accompany the child to the receiving operation, agency, or person unless the child's parent or law enforcement transports the child.

§748.1437. What must I document in the child's record at the time of a discharge or transfer?

At the time of a discharge or transfer, you must document the following:

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

(3) For discharge, the name, address, telephone number, and relationship of the person to whom you discharge the child, unless the child legally consents to a [his] discharge. If the child legally consents to a [his] discharge and does not want to involve the child's parent(s), you must document this in the child's record;

(4) - (7) (No change.)

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SUBCHAPTER J. CHILD CARE DIVISION 1. DENTAL CARE

40 TAC §748.1501

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §431.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.1501. *What general dental requirements must my operation meet?*

- (a) (No change.)
- (b) The child's record must include a written record of each dental examination that consists of [specifying the]:
 - (1) A copy of the results of the dental examination; [Date of the examination;]
 - ~~[(2) Procedures completed;]~~
 - (2) ~~[(3)]~~ Follow-up treatment recommended and any appointments scheduled; and
 - (3) ~~[(4)]~~ A notation of the [The] child's refusal to accept dental treatment, if applicable. ~~;~~ and]
 - ~~[(5) A copy of the results of the dental examination.]~~
- (c) For a child in the [DFPS] conservatorship of the department, you must supplement any information already documented in the child's health passport in order to comply with subsection (b) of this section. In your written record for the child, you are not required to repeat information that is already in the child's health passport.
- (d) You must obtain follow-up dental work recommended by the dentist, such as treatment of cavities and cleaning.

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DIVISION 2. MEDICAL CARE

40 TAC §§748.1531, 748.1539, 748.1541, 748.1543, 748.1549, 748.1551

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §431.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC

§40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.1531. *What general medical requirements must my operation meet?*

- (a) (No change.)
- (b) The child's record must include a written record of each medical examination that consists of [specifying]:
 - (1) A copy of the results of the medical examination; [The date of the examination;]
 - ~~[(2) The procedures completed;]~~
 - (2) ~~[(3)]~~ The follow-up treatment recommended and any appointments scheduled;
 - (3) ~~[(4)]~~ A notation of the [The] child's refusal to accept medical treatment, if applicable;
 - ~~[(5) The results of the medical examination;]~~
 - (4) ~~[(6)]~~ If the medical examination is a result of an injury or illness [medical incident], the documentation of the date, time, and circumstances surrounding the injury or illness [incident, including the date and time of the incident]; and
 - (5) ~~[(7)]~~ Any other documentation provided by the health-care professional who performed the examination.

(c) For a child in the [DFPS] conservatorship of the department, you must supplement any information already documented in the child's health passport in order to comply with subsection (b) of this section. In your written record for the child, you are not required to repeat information that is already in the child's health passport.

- (d) (No change.)

§748.1539. *What immunizations must a child in my care have?*

(a) Each child that you admit must meet and continue to meet the applicable immunization requirements as specified by [~~§42.043 of the Human Resources Code and~~] the Department of State Health Services.

(b) You must maintain current immunizations records for each child in your care, including any immunization exemptions or exceptions. [~~For a child in DFPS conservatorship, documentation in the child's health passport is sufficient.~~]

(c) Unless the child is exempt from immunization requirements, all immunizations required for the child's age must:

- (1) Be completed by the date of admission; or

(2) A child that is homeless or a child in foster care shall be admitted temporarily for 30 days if acceptable evidence of immunization is not available. You should immediately refer the child to an appropriate health care professional to obtain the required immunizations. [~~Begin within 30 days after the date of admission.~~]

§748.1541. *What [are the] exemptions or exceptions are there concerning [from] immunization requirements?*

(a) A child may be exempt from [Exemptions for] immunization requirements for a medical reason or reason of conscience, including a religious belief. To claim an exemption, the person applying for the child's admission must meet criteria specified by:

(1) §42.043(d) and (d-1) [§42.043] of the Human Resources Code; or

(2) The Department of State Health Services rule [rules] in 25 TAC §97.62 (relating to Exclusions from Compliance).

(b) For some diseases, a child who previously had a disease and is accordingly naturally immune from it may qualify for an exception to immunization requirements for the disease. To claim this exception, the person applying for the child's admission must meet the criteria specified by the Department of State Health Services rule in 25 TAC §97.65 (relating to Exceptions to Immunization Requirements).

§748.1543. *What documentation is acceptable for an immunization record?*

(a) The documentation for an [An original or faesimile of the] immunization record must include the:

(1) Child's [The child's] name and birth date;

(2) Type of vaccine and [The] number of doses administered [and vaccine type];

(3) Month [The month], day, and year the child received each vaccination; and

(4) Name, address, and signature of the health-care professional that administered the vaccine. The [One of the] following are acceptable as a signature:

(A) A [signature of] rubber stamp signature or electronic signature from the health-care professional who administered the vaccine; or

(B) Another health-care professional's [A registered nurse's] documentation of the immunization [that is provided by a health-care professional], as long as the name and address of the health-care professional that administered the vaccine is [professional's name and qualifications are] documented.

(b) Appropriate documentation for [Documentation of] an immunization record on file at your operation may include an original or photocopy of [be]:

(1) The immunization [original] record;

~~(2) A photocopy;~~

~~(2) [(3)]~~ An official immunization record generated from a state or local health authority, such as a registry;

~~(3) [(4)]~~ A record received from school officials, including a record from another state; or

~~(4) [(5)]~~ The child's health passport, for a child in the [DFPS] conservatorship of the department.

(c) The signature of the health-care professional that administered the vaccine is not required for paragraphs (b)(2), (3) and (4).

§748.1549. *What special equipment must I provide for a child with a physical disability?*

When recommended by a [physieian or other] health-care professional, you must ensure that a child with a physical disability has any special equipment that can be reasonably obtained.

§748.1551. *How often must the physician review a child with primary medical needs?*

(a) (No change.)

(b) The review must address:

(1) (No change.)

(2) Any new or changed orders regarding the items outlined in §748.1219(3)(B) of this title (relating to What are the additional admission assessment requirements when I admit a child for treatment services?).

(c) (No change.)

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DIVISION 3. COMMUNICABLE DISEASES

40 TAC §748.1581

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §431.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.1581. *What health precautions must I take if someone in my operation has a communicable disease?*

(a) - (b) (No change.)

(c) If a health-care professional diagnoses a person in your care or a person who resides at your operation with a communicable disease that is reportable to DSHS [may be spread through casual contact], a health-care professional must authorize the person's participation in any routine activities [activity] at your operation. The authorization must:

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

(3) Include any specific instructions and precautions to be taken for the protection of others, if necessary.

(d) If an employee, contract service provider, or volunteer has a communicable disease that is reportable to DSHS [may be spread through casual contact], you must obtain written authorization from a health-care professional for the person to be present at the operation. The written authorization must include a statement that the person will not pose a serious threat to the health of the others.

(e) (No change.)

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DIVISION 6. TOBACCO AND E-CIGARETTE USE

40 TAC §748.1661

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §431.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.1661. What policies must I enforce regarding tobacco products and e-cigarettes?

(a) A child may not use or possess tobacco products, e-cigarettes, or any type of vaporizers.

(b) An adult may not smoke tobacco products, e-cigarettes, or vaporizers in the children's living quarters or inside any building on your premises where children are present.

(c) An adult may only smoke tobacco products, e-cigarettes, or vaporizers on your premises at a safe distance from the children's living quarters.

(d) No one may smoke tobacco products, e-cigarettes, or vaporizers in motor vehicles when transporting children in care.

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DIVISION 7. NUTRITION AND HYDRATION

40 TAC §748.1695, §748.1697

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §431.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including

the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.1695. What are the specific requirements for feeding an infant?

(a) You must feed the infant:

(1) (No change.)

(2) Based on the recommendation of the infant's health-care professional [licensed physician], who must approve you giving the infant any milk other than fortified formula.

(b) You must hold the infant while feeding an [him if the] infant that is:

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

(c) - (d) (No change.)

§748.1697. What are the specific requirements for feeding toddlers and older children?

(a) (No change.)

(b) Food service practices for children receiving treatment services for primary medical needs or an intellectual disability [mental retardation], including non-mobile children, must encourage self-help and development.

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DIVISION 8. ADDITIONAL REQUIREMENTS FOR INFANT CARE

40 TAC §§748.1741, 748.1743, 748.1751, 748.1753, 748.1757, 748.1759, 748.1761, 748.1763, 748.1765

The amendments and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §431.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new sections implement HRC §42.042.

§748.1741. What do certain terms [words] mean in this division?

These terms [words] have the following meaning in this division:

(1) Baby doorway [bungee] jumper--A bucket seat that is suspended from a doorway by an elastic bungee cord that allows an infant to bounce while sitting in the seat.

(2) Baby walker--A baby walker allows an infant to sit inside the walker equipped with rollers or wheels and move across the floor.

(3) Bouncer seat--A stationary seat designed to provide gentle rocking or bouncing motion by an infant's movement, or by battery-operated movement. This type of equipment is designed for an infant's use from birth until the child can sit up unassisted.

(4) Restrictive device--Equipment that places the body of an infant in a position that may restrict airflow or cause strangulation; usually, the infant is placed in a semi-seated position. Examples of restrictive devices are car seats, swings, bouncy seats, and high chairs.

§748.1743. *What are the basic care requirements for an infant?*

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

(e) Items necessary for diaper changing must be kept out of the reach of children, but do not need to be in locked storage.

(f) [(e)] An infant's caregiver must never leave the infant unsupervised. A sleeping infant is considered supervised if the caregiver is within eyesight or hearing range of the infant [child] and can intervene as needed, or if the caregiver uses a video camera or audio monitoring device to monitor the infant [child] and is close enough to the infant [child] to intervene as needed.

§748.1751. *What specific safety requirements must my cribs meet?*

(a) All full-size and non-full-size cribs must have:

(1) A firm, flat mattress that snugly fits the sides of the crib and that is designed for the crib. The mattress must not be supplemented with additional foam material or pads;

(2) - (6) (No change.)

(7) No cutout areas in the headboard or footboard that would entrap an infant's [a child's] head or body;

(8) - (9) (No change.)

(b) You must sanitize each crib when soiled and before reassigning the crib to a different infant [child].

(c) You must never leave an infant [a child] in the crib with the drop gate down.

(d) (No change.)

§748.1753. *Are play yards allowed?*

(a) Play yards, which are mesh or fabric sided cribs, are allowed if they meet the following safety requirements:

(1) The play yards must be used according to the manufacturer's instructions, including the cleaning of the cribs;

(2) Play yards must have:

(A) A firm, flat mattress that snugly fits the sides of the crib and that is designed for the crib. The mattress must not be supplemented with additional foam material or pads;

(B) Sheets that fit snugly and do not present an entanglement hazard;

(C) A mattress that is waterproof or washable;

(D) Secure mattress support hangers, and no loose hardware or improperly installed or damaged parts;

(E) A minimum height of 22 inches from the top of the railing to the mattress support at its lowest level;

(F) Folded sides that securely latch in place when raised;

(G) For mesh cribs, mesh openings that are 1/4 inch or less; and

(H) Mesh or fabric that is securely attached to the top rail, side rail, and floor plate; and

(3) You must never leave an infant in a play yard with a side folded down.

(b) If you become aware of a recall for a non-full-size crib or a mesh crib that you are using, you must discontinue its use immediately.

§748.1757. *What types of equipment are not allowed for use with infants?*

(a) You may not use any of the following types of equipment with infants:

(1) (No change.)

(2) Baby doorway [bungee] jumpers;

(3) Accordion safety gates; [and]

(4) Toys that are not large [small] enough to prevent swallowing or choking; [swallow or choke a child.]

(5) [(b)] Bean bags, [Children may not sleep on beanbags,] waterbeds, and [or] foam pads for use as sleeping equipment; and[-]

(6) [(e)] Soft [You may not use soft] or loose bedding, such as blankets, sleep positioning devices, stuffed toys, quilts, pillows, bumper pads (including mesh bumpers), and comforters in a crib for an infant younger than 12 months of age.

(b) An infant receiving treatment services for primary medical needs may have special items that assist with safe sleep at the written recommendation of a health-care professional. You must keep the recommendation in the child's record.

§748.1759. *What activities must I provide for infants?*

You must provide the following activities for an infant:

(1) Multiple opportunities each day to explore in a safe and clean area that is outside of the crib or restrictive device [other confining equipment];

(2) - (4) (No change.)

§748.1761. *How long may an infant remain in a crib after awakening?*

An infant may remain in the crib [or other confining equipment] for up to 30 minutes after awakening, as long as the infant is content and responsive.

§748.1763. *What are the specific sleeping requirements for infants [Are infants required to sleep on their backs]?*

(a) You [Yes- You] must place an infant not yet able to turn over on his own in a face-up sleeping position unless a health-care professional orders otherwise. You must keep any orders from a health-care professional in the child's record.

(b) An infant's head, face, or crib must not be covered at any time by an item such as a blanket, linen, or clothing.

(c) An infant may not sleep in a prone position with a sleeping adult at any time, including in the adult's bed, on a couch, etc.

§746.1765. May I allow infants to sleep in a restrictive device?

No. You may not allow an infant to sleep in a restrictive device. If an infant falls asleep in a restrictive device, the infant should be removed from the device and placed in a crib as soon as possible.

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40 TAC §748.1753, §748.1765

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §431.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042.

§748.1753. Are mesh cribs or port-a-cribs allowed?

§748.1765. If an infant has difficulty falling asleep, may the infant's head or crib be covered?

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DIVISION 9. ADDITIONAL REQUIREMENTS FOR TODDLER CARE

40 TAC §748.1791, §748.1793

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §431.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules

governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.1791. What are the basic care requirements for a toddler?

(a) (No change.)

(b) A toddler's caregiver must ensure that the environment is safe. For example, the caregiver must free the area of objects that may choke or harm the toddler [infant], take measures to prevent electric shock, free the area of furniture that is in disrepair or unstable, and allow no unsupervised access to water to prevent the risk of drowning.

(c) A toddler's caregiver must never leave the toddler unsupervised. A sleeping toddler is considered supervised if the caregiver is within eyesight or hearing range of the toddler [child] and can intervene as needed, or if the caregiver uses a video camera or audio monitoring device to monitor the toddler [child] and is close enough to the toddler [child] to intervene as needed.

§748.1793. What furnishings and equipment must I provide for toddlers?

Furnishings and equipment for toddlers must at a minimum include the following:

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

(3) Containers or low shelving that are accessible to toddlers, so toddlers [items that] can [be] safely obtain the items [used] without adult intervention [direct supervision are accessible to children].

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**SUBCHAPTER L. MEDICATION
DIVISION 1. ADMINISTRATION OF
MEDICATION**

40 TAC §748.2003, §748.2009

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §431.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.2003. What are the requirements for administering prescription medication [medication requirements must my operation meet]?

- (a) (No change.)
- (b) For prescription medications, you [You] must:
 - (1) - (5) (No change.)
 - (6) Ensure a person trained in and authorized to administer ~~[prescription]~~ medication administers the medication to a child in care unless the child is on a self-medication program;
 - (7) Maintain any documentation provided by the health-care professional on the administration of current ~~[prescription]~~ medication;
 - (8) Not physically force a child to take ~~[prescription]~~ medication except as allowed by §748.2455(a)(2)(B) of this title (relating to What actions must a caregiver take before using a permitted type of emergency behavior intervention?);
 - (9) Ensure that your employees do not provide any ~~[prescription]~~ medication or treatment to a child except on written orders of a health-care professional;
 - (10) Not borrow or administer ~~[prescription]~~ medication to a child that is prescribed to another person; and
 - (11) Not administer ~~[prescription]~~ medication to more than one child from the same container. Only the child for whom the ~~[prescription]~~ medication was prescribed may use the medication.

§748.2009. *What are the requirements for administering nonprescription medication and supplements [vitamins]?*

- (a) For non-prescription medications and supplements, you [You] must:
 - (1) Follow [follow] the label instructions for dosage;
 - (2) Inform the child's physician of the administration and dosage of any non-prescription medication or supplements to [and] ensure the nonprescription medication and/or supplements are [is] not contraindicated with any other medication prescribed to the child or the child's medical conditions.

- (b) You may give nonprescription medication or supplements [vitamins] to more than one child from one container.

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DIVISION 2. SELF-ADMINISTRATION OF MEDICATION

40 TAC §748.2053

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §431.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC

§40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.2053. *Who must record the medication dosage if a child is on a self-medication program?*

When a child who is on a self-medication program takes a dosage of the medication, you must ensure there is a system for reviewing the child's medication each day and that the child either [may]:

- (1) Records [Reeord] the daily dosage [if you have a system for reviewing the child's medication each day]; or

- (2) Reports [Report] the medication to an appropriate employee or service provider, who must then do the actual daily recording.

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DIVISION 3. MEDICATION STORAGE AND DESTRUCTION

40 TAC §748.2101

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §431.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.2101. *What medication storage requirements must my operation meet?*

You must:

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

- ~~[(3) Ensure the medication storage area has a separate container where medications "for external use only" are stored separately from other medications;]~~

- (3) ~~[(4)]~~ Store medication covered by Schedule II of the Texas Controlled Substances Act under double lock in a separate container. For example, a double lock can include a lock on the cabinet or filing cabinet and the door to the closet where medications are stored;

- (4) ~~[(5)]~~ Make provisions for storing medication that requires refrigeration;

(5) [(6)] Keep medication storage area(s) clean and orderly;

(6) [(7)] Remove discontinued medication immediately and destroy it in a way that ensures that children do not have access to it;

(7) [(8)] Remove medication on or before the expiration date and destroy it in a way that ensures that children do not have access to it;

(8) [(9)] Remove medication of a discharged or deceased child immediately and destroy it in a way that ensures that children do not have access to it; and

(9) [(10)] Provide prescription medication to the person to whom a child is discharged or transferred if the child is taking the medication at that time.

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DIVISION 4. MEDICATION RECORDS

40 TAC §748.2151

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §431.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.2151. *What records must you maintain for each child receiving medication?*

(a) You must maintain a cumulative medication record of all:

(1) (No change.)

(2) Nonprescription medications and supplements that are [medication, excluding vitamins,] dispensed to a child under five years old.

(b) The cumulative medication record must be updated:

(1) Within 2 hours of administering medication, unless you operate a cottage home model; or

(2) Within 24 hours of administering medication if you operate a cottage home model.

(c) [(b)] You must maintain the medication record, which [during the time that you provide services to the child. This record] must include [the]:

(1) Child's full name;

(2) Prescribing health-care professional's name, if applicable;

(3) Reason medication was prescribed, for prescription medication;

(4) Medication name, strength, and dosage;

(5) Date (day, month, and year) and time the medication was administered;

(6) Name and signature of the person who administered the medication;

(7) Child's refusal to accept medication, if applicable; and

(8) Reasons for administering the medication, including the specific symptoms, condition, and/or injuries of the child that you are treating, only for:

(A) PRN psychotropic medications; and

(B) Nonprescription medications and supplements [(excluding vitamins)] for children under five years old.

(d) [(e)] Unless you operate on a cottage home model, you must count each medication prescribed to a child at least daily and document the count. The medication count must match the medication documentation.

(e) You must document in the medication record any non-prescription medication or supplement that is given to the child and how often the child receives the medication or supplement.

(f) [(d)] You must document [Identification of] any prohibited prescription medications (for example, medication allergies or contraindications) or prohibited [medication,] non-prescription medications and supplements [medication, or vitamins for each child must be maintained] in the medication record [that must be incorporated into the child's record].

(g) [(e)] You must incorporate the [The] medication record [records of prescription and applicable nonprescription medication dispensed to the child must be incorporated] into the child's record.

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DIVISION 6. SIDE EFFECTS AND ADVERSE REACTIONS TO MEDICATION

40 TAC §748.2231, §748.2233

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §431.0055, which

provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.2231. *What must I do if a child has an adverse reaction to a medication?*

If a child has an adverse reaction (unexpected or dangerous reaction) to a medication, you must:

(1) Immediately report the reaction to a health-care professional and the child's parent;

(2) - (4) (No change.)

§748.2233. *What must I do if a child experiences side effects from any medications?*

(a) A side effect from any medication is an effect of medication in addition to the medication's intended effect, often an undesirable effect.

(b) If a child experiences side effects from any medication, you [the caregiver] must:

(1) (No change.)

(2) Immediately report any serious side effects to the child's health-care professional and the child's parent [physician]; and

(3) Report any other side effect to the prescribing health-care professional [physician] within 72 hours.

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SUBCHAPTER M. DISCIPLINE AND PUNISHMENT

40 TAC §748.2307, §748.2309

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §431.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.2307. *What other methods of punishment are prohibited?*

In addition to corporal punishment, prohibited discipline techniques include:

(1) - (7) (No change.)

(8) Humiliating, shaming, ridiculing, rejecting, screaming, or yelling at a child;

(9) - (15) (No change.)

§748.2309. *To what extent may I restrict a child's activities as a behavior management tool?*

(a) Within limits, a caregiver may restrict a child's activities as a behavior management tool.

(b) Restrictions of activities that[; other than school or chores, which] will be imposed on a child for more than fourteen [seven] days, must have prior approval by the treatment director, service planning team, or professional level service provider.

(c) - (e) (No change.)

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SUBCHAPTER N. EMERGENCY BEHAVIOR INTERVENTION

DIVISION 1. DEFINITIONS

40 TAC §748.2401

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §431.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.2401. *What do certain terms [words] mean in this subchapter?*

These terms [words] have the following meaning in this subchapter:

{(1) Chemical restraint—A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to immobilize or sedate a child as a mechanism of control. The use of medications that have a secondary effect of immobilizing or sedating a child, but are prescribed by a treating health-care professional and administered

solely for medical or dental reasons, is not chemical restraint and is not regulated as such under this chapter.]

[(2) De-escalation--See §748.43(13) of this title (relating to What do certain words and terms mean in this chapter?).]

[(3) Emergency behavior intervention--See §748.43(17) of this title.]

[(4) Emergency medication--A type of emergency behavior intervention that uses chemicals or pharmaceuticals through topical application, oral administration, injection, or other means to modify a child's behavior. The use of medications that have a secondary effect of modifying a child's behavior, but are prescribed by a treating health-care professional and administered solely for medical or dental reasons (e.g. benadryl for an allergic reaction or medication to control seizures); is not emergency medication and is not regulated as such under this chapter.]

[(5) Emergency situation--A situation in which attempted preventative de-escalatory or redirection techniques have not effectively reduced the potential for injury and it is immediately necessary to intervene to prevent:]

[(A) Imminent probable death or substantial bodily harm to the child because the child attempts or continually threatens to commit suicide or substantial bodily harm; or]

[(B) Imminent physical harm to another because of the child's overt acts, including attempting to harm others. These situations may include aggressive acts by the child, including serious incidents of shoving or grabbing others over their objections. These situations do not include verbal threats or verbal attacks.]

[(6) Mechanical restraint--A type of emergency behavior intervention that uses the application of a device to restrict the free movement of all or part of a child's body in order to control physical activity.]

[(7) Personal restraint--A type of emergency behavior intervention that uses the application of physical force without the use of any device to restrict the free movement of all or part of a child's body in order to control physical activity. Personal restraint includes escorting, which is when a caregiver uses physical force to move or direct a child who physically resists moving with the caregiver to another location.]

[(8) PRN--See §748.43(38) of this title.]

[(9) Prone restraint--Placing a child in a chest down restraint hold.]

[(10) Seclusion--A type of emergency behavior intervention that involves the involuntary separation of a child from other residents and the placement of the child alone in an area from which the resident is prevented from leaving by a physical barrier, force, or threat of force.]

[(11) Short personal restraint--A personal restraint that does not last longer than one minute before the child is released.]

[(12) Supine restraint--Placing a child in a chest up restraint hold.]

(1) [(13)] Transitional hold--The use of a temporary restraint technique that lasts no longer than one minute as part of the continuation of a longer personal or mechanical restraint.

(2) [(14)] Triggered review--A review of a specific child's placement, treatment plan, and orders or recommendations for intervention, because a certain number of interventions have been made

within a specified period of time (e.g. three seclusions within a seven-day period).

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SUBCHAPTER O. SAFETY AND EMERGENCY PRACTICES

DIVISION 1. SANITATION AND HEALTH PRACTICES

40 TAC §748.3015, §748.3017

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §431.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.3015. *How must caregivers handle bodily fluids that require universal precautions?*

[(a)] Caregivers must follow [Bodily fluids that require] universal precautions outlined by the Centers for Disease Control (CDC) when handling [include] blood, vomit, or other bodily fluids that may contain blood, including:[:]

[(b)] When handling these bodily fluids, caregivers must:

(1) Using [Use] disposable, nonporous gloves;

(2) Placing gloves contaminated with blood in a tied, sealed, or otherwise closed plastic bag and discarding them immediately;

(3) [(2)] Discarding all other [Discard the] gloves in a sanitary manner immediately after one use;

(4) [(3)] Washing [Wash] hands with soap and running water after using and disposing of the gloves;

(5) [(4)] Disposing the [Dispose these] bodily fluids in accordance with local regulations. Where local disposal regulations do not exist, the Department of State Health Services must be consulted regarding the appropriate disposal procedures and their recommendations must be followed; and

(6) [(5)] Disposing [Dispose] disposable syringes, needles, and other sharp items used by persons for injections or for medical or

other procedures in a hard plastic, leak and puncture-resistant container immediately after use, and keep them inaccessible to children.

§748.3017. *Are animals allowed at my operation?*

(a) Yes; if:

(1) You have documentation at your operation showing dogs~~;~~ and cats~~;~~ and ferrets~~;~~ have been vaccinated for rabies as required by Texas Health and Safety Code, Chapter 826; and

(2) (No change.)

(b) (No change.)

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SUBCHAPTER P. PHYSICAL SITE

DIVISION 2. INTERIOR SPACE

40 TAC §§748.3351, 748.3353, 748.3357, 748.3365

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.3351. *What are the requirements for general living space?*

You must provide:

~~[(1) Us with a sketch of the operation's floor plan showing the dimensions and the purpose of all rooms and specifying where children and caregivers, if applicable, will sleep. This must be provided to us with the initial application for a permit and when changes are made;]~~

(1) ~~[(2)]~~ Living space, appropriate furnishings, and bathroom facilities that are safe, clean, and maintained in good repair;

(2) ~~[(3)]~~ Provisions for personal storage space in the child's bedroom for each child's clothing and belongings;

(3) ~~[(4)]~~ At least 40 square feet per child, including adult residents and children of caregivers residing at the operation, of indoor activity space, excluding bedrooms, halls, kitchens, bathrooms, and any other space not regularly available to a child;

(4) ~~[(5)]~~ Each bedroom with at least one window with outside exposure as a source of natural light, unless you were granted a permit by us prior to January 1, 2007, and your permit is still valid; and

~~(5) [(6)]~~ Every bedroom window with curtains, blinds, shades, or other provisions for rest and privacy.

§748.3353. *May I use a video camera to supervise a child in the child's bedroom?*

(a) (No change.)

(b) Video cameras may not be used to supervise children, other than infants and toddlers unless the:

(1) (No change.)

(2) Child:

(A) - (B) (No change.)

(C) Requires heightened supervision, such as a child who sleepwalks, experiences night terrors, engages in physically aggressive or sexual behavior problems, or resides in a bedroom with such a child. You must document the justification for the video camera in each child's service plan, and each child must have other accessible and reasonable locations where the child [he] may change [his] clothing in private.

(c) (No change.)

§748.3357. *What are the requirements for floor space in a bedroom used by a child?*

(a) - (b) (No change.)

~~[(e) If we granted you a permit to provide emergency care services to a child prior to January 1, 2007, then you are exempt from the 60 square feet of bedroom space for each occupant and the maximum bedroom occupancy requirement until:]~~

~~[(1) You move your operation to a new building;]~~

~~[(2) You structurally alter the current building by adding a new room; or]~~

~~[(3) Your permit is no longer valid.]~~

(c) ~~[(d)]~~ If ~~[prior to January 1, 2007]~~, we granted you a permit prior to January 1, 2007, then you are exempt from the maximum bedroom occupancy requirement until:

(1) You move your operation to a new building;

(2) You structurally alter the current building by adding a new room; or

(3) Your permit is no longer valid.

~~[(d) If we granted you a permit to provide emergency care services to a child prior to January 1, 2007, then you are also exempt from the 60 square feet of bedroom space for each occupant until:]~~

(1) You move your operation to a new building;

(2) You structurally alter the current building by adding a new room; or

(3) Your permit is no longer valid.

§748.3365. *What are the requirements for beds and bedding?*

(a) You must provide each child with an individual bed or bunk bed. For infants and toddlers, a crib is allowable. For crib requirements, see §748.1751 of this title (relating to What specific safety requirements must my cribs meet?). Each bed being used by a child must have:

(1) (No change.)

(2) A mattress that is off the floor with a cover or protector if the child is not provided with a mattress that is waterproof;

(3) - (5) (No change.)

(b) (No change.)

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DIVISION 6. PLAY EQUIPMENT AND SAFETY REQUIREMENTS

40 TAC §748.3481

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§748.3481. *If my operation was previously granted a permit by Licensing, will I be given additional time to comply with the requirements of this division?*

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DIVISION 7. PLAYGROUND USE ZONES

40 TAC §748.3535

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§748.3535. *If my operation was previously granted a permit by Licensing, will I be given additional time to comply with the requirements of this division?*

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DIVISION 8. PROTECTIVE SURFACING

40 TAC §748.3567

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042.

§748.3567. *If my operation was previously granted a permit by Licensing, will I be given additional time to comply with the requirements of this division?*

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DIVISION 9. SWIMMING POOLS, WADING/SPLASHING POOLS, AND HOT TUBS

40 TAC §748.3601, §748.3603

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC

§40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.3601. *What are the requirements for swimming pools that a child uses?*

If a swimming pool with more than two feet of water is used in an activity sponsored by you, then the swimming pool, either at or away from your operation, must meet the following criteria:

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

(3) Drain grates, vacuum outlets, and skimmer covers must be in place~~;~~ ~~in good repair, and unable to be removed without using tools~~];

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

(6) All parts of the swimming pool must be clearly visible during the use of the pool;

(7) The bottom of the pool must be visible during the use of the pool [at all times];

(8) Pool covers must be completely removed prior to pool use and must not present an entrapment hazard; ~~and~~

~~[(9) All indoor/outdoor areas within 50 feet of the pool must be free of furniture and equipment that a child could use to scale a fence or barrier or release a lock; and]~~

~~(9) [(40)] Swimming area rules and emergency procedures must be posted at the swimming area and explained to the children.~~

§748.3603. *What are the additional requirements for a swimming pool located at my operation?*

(a) - (k) (No change.)

~~(l) The drain grates, vacuum outlets, and skimmer covers that must be in place, must also be in good repair, and not be able to be removed without using tools. [If you have a pool on the premises of your operation and we granted you a permit before January 1, 2007, then you have five years from January 1, 2007, to comply with the specific requirements of this rule. However, during this five-year period, you must ensure:]~~

~~[(1) Children do not have unsupervised access to the pool; and]~~

~~[(2) There is an adult present who is able to immediately turn off the pump and filtering system when children are swimming.]~~

~~(m) All indoor/outdoor areas within 50 feet of the pool must be free of furniture and equipment that a child could use to scale a fence or barrier or release a lock.~~

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SUBCHAPTER Q. RECREATION ACTIVITIES
DIVISION 1. GENERAL REQUIREMENTS

40 TAC §748.3701, §748.3705

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.3701. *What are my responsibilities for providing opportunities for recreational activities and physical fitness?*

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

(e) You must provide the follow types of recreational activities based on each individual child's needs:

Figure: 40 TAC §748.3701

§748.3705. *What are higher risk recreational activities?*

Higher risk recreational activities are activities that present a greater potential of injury to the child and involve special technical skill, equipment, or safety regulations for participation, including using all-terrain vehicles, swimming [and water] activities, watercraft activities, riding horses, wilderness hiking and camping excursions, trampoline use, and using weapons, firearms, explosive materials, and projectiles.

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DIVISION 2. SWIMMING ACTIVITIES

40 TAC §§748.3751, 748.3753, 748.3757, 748.3765

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.3751. *Must a certified lifeguard be on duty during a swimming activity?*

(a) (No change.)

(b) At all times during a swimming activity sponsored by the operation involving a body of water two feet deep or more which occurs away from your operation:

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

(c) (No change.)

§748.3753. *Who [What] must provide a certified lifeguard's training [consist of]?*

A certified lifeguard's training must be provided through a recognized organization.[:]

~~[(1) Be provided through a recognized organization;]~~

~~[(2) Be taught by a certified instructor; and]~~

~~[(3) Award a valid lifeguard certificate or its equivalent documenting successful completion of the training. The certificate does not have to use the term "lifeguard," but you must be able to document that the certificate represents the type of training required in supervision, rescue techniques, lifesaving, and water safety.]~~

§748.3757. *What are the child/adult ratios for swimming activities?*

(a) The maximum number of children one adult can supervise during swimming activities is based on the age of the youngest child in the group and is specified in the following chart:

Figure: 40 TAC §748.3757(a)

(b) For four year olds and older, ~~in [in] addition to meeting the required swimming child/adult ratio listed in subsection (a) of this section, if four or more children are actually in the water [engaged in swimming activities], then there must be at least two adults supervising [to supervise] the children.~~

(c) (No change.)

§748.3765. *What are the requirements for a child's access to a body of water?*

~~[(a) You must use prudent judgment and ensure children in your care are protected from unsupervised access to a body of water such as a swimming pool, hot tub, pond, river, lake, or creek.]~~

~~[(b) Prior to any activity regarding a body of water, you must explain the dangers of the body of water and the rules governing the activity to the children in a manner that each child can understand.~~

~~[(c) If your operation sponsors a swimming activity and you allow a child to swim in a body of water:~~

~~(1) The supervising adult must clearly designate the swimming areas;~~

~~(2) You must meet the swimming child/adult ratios; and~~

~~(3) If more than six children are participating in the activity, you must have life-saving equipment present at all times that is sufficient to reach and rescue the child, such as a safety throw bag with a brightly colored 50-foot buoyant rope or a rescue boat equipped with a reach pole and a buoy.~~

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DIVISION 3. WATERCRAFT ACTIVITIES

40 TAC §748.3801

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.3801. *What watercraft activities do the rules of this division apply to?*

The rules of this division apply to activities involving bodies of water [activities]:

(1) In which more than six children participate; and

(2) (No change.)

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DIVISION 5. TRAMPOLINE USE

40 TAC §748.3891

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.3891. *May I use a trampoline?*

(a) You may use a trampoline [for individual use] if: [it is less than four feet in diameter and no higher than 42 inches above a properly installed and maintained protective surface as defined in §748.3563 of this title (relating to What are the requirements of protective surfacing for use zones?)]

(1) The use of the trampoline and the number of children allowed on the trampoline at one time meets the manufacturer's instructions;

(2) Shock-absorbing pads cover the springs, hooks, and frame;

(3) Ladders are removed from the trampoline when the trampoline is not in use; and

(4) A caregiver provides supervision as follows:

(A) For children under 12 years old, the caregiver must be immediately present, watching the child/ren at all times, enforcing safety rules and manufacturer's instructions, and able to respond to an emergency; and

(B) For children 12 years old and older, the caregiver must be on the premises, visually check on the child/ren at frequent intervals, and able to respond in an emergency.

(b) (No change.)

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DIVISION 6. WEAPONS, FIREARMS, EXPLOSIVE MATERIALS, AND PROJECTILES

40 TAC §748.3931

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.3931. *Are weapons, firearms, explosive materials, and projectiles permitted at my operation?*

Generally, weapons, firearms, explosive materials, and projectiles (such as darts or arrows)[:] are permitted, however, there are some specific restrictions:

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

(5) No child may use a weapon, firearm, explosive material, projectile, or toy that explodes or shoots, unless the child is directly supervised by a qualified adult. A qualified adult must hold a generally recognized credential or possess documented knowledge and/or experience in the type of the weapon, firearm, explosive material, projectile, or toy that explodes or shoots that is to be used by the child.

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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Trevor Woodruff

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-5559



SUBCHAPTER R. TRANSPORTATION DIVISION 2. SAFETY RESTRAINTS

40 TAC §748.4041, §748.4047

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042.

§748.4041. *What safety restraint system must I use when I transport children?*

§748.4047. *Must caregivers, adults, and/or the driver wear a seat belt?*

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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40 TAC §§748.4041, 748.4043, 748.4045

The new section and amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and

Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section and amendments implement HRC §42.042.

§748.4041. *What are the requirements for transporting children?*

The driver and all passengers must follow all federal, state, and local laws when driving, including laws on the use of a child passenger safety seat system, seat belts, and liability insurance.

§748.4043. *Do the seat belt requirements prohibit transporting children in the bed of a pick-up truck?*

(a) - (b) (No change.)

(c) At all other times transportation is provided by the operation, employees, or volunteers, each child must be in a child passenger safety seat system [~~restraint~~] when the vehicle is in motion.

§748.4045. *May I place more than one person in each child passenger [~~seat belt or~~] safety seat system or seat belt?*

No. Only one person may use each child passenger [~~safety belt or~~] safety seat system or seat belt.

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 S. ADDITIONAL REQUIREMENTS FOR OPERATIONS THAT PROVIDE EMERGENCY CARE SERVICES

DIVISION 1. SERVICE MANAGEMENT

40 TAC §748.4213

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.4213. *What are the requirements for a preliminary [~~written~~] discharge plan?*

(a) If the child receives emergency care services for more than 15 days, you must have a written preliminary discharge plan for the child from the person responsible for the child.

(b) You must place the preliminary discharge [~~written~~] plan in the child's record on or before the child's 16th day in care at your operation.

(c) You must obtain written documentation from the person responsible for the child that the preliminary discharge plan is reviewed and updated at least weekly.

(d) The preliminary discharge plan and weekly reviews must be available for our review.

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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DIVISION 3. RESPITE CHILD-CARE SERVICES

40 TAC §748.4261, §748.4265

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.4261. *May I provide respite child-care services?*

(a) Respite child-care services are not subject to regulation under this subchapter, if the:

(1) (No change.)

(2) Care meets the short-term program's criteria for exemption as specified §745.117(2) [does not exceed 40 days per year as outlined in §745.117(6)] of this title (relating to Which programs of limited duration are exempt from Licensing regulation?).

(b) (No change.)

§748.4265. *What information regarding a child must I receive prior to providing respite child-care services to that child?*

To ensure continuity of care, you must obtain the following information:

(1) Specific needs of a child, including:

(A) All psychological, psychiatric, or medical treatment currently being provided;

(B) (No change.)

(C) Authorization for medical treatment; [~~and~~]

(D) Safety plans, including any special supervision precautions;

(E) Sleeping information;

(F) Discipline instructions;

(G) Any expectations that the current caregiver may have of the operation; and

(H) [(D)] Any other needs of a child that should be addressed by the operation [respite child-care services provider];

(2) Non-routine events taking place in the life of the child, including any scheduled appointments such as family and sibling visits;

(3) - (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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SUBCHAPTER T. ADDITIONAL REQUIREMENTS FOR OPERATIONS THAT PROVIDE AN ASSESSMENT SERVICES PROGRAM

DIVISION 1. REGULATION

40 TAC §748.4301

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.4301. Does Licensing regulate all assessment services?

(a) No. This subchapter only regulates general residential operations [~~and residential treatment centers~~] that also provide an assessment services program.

(b) Services provided by other individuals, agencies, and organizations are not subject to regulation under this subchapter.

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 U. ADDITIONAL REQUIREMENTS FOR OPERATIONS THAT PROVIDE THERAPEUTIC CAMP SERVICES

DIVISION 1. DEFINITIONS

40 TAC §748.4403

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§748.4403. What children are eligible to participate in a therapeutic camp program?

(a) (No change.)

(b) Individuals that are not eligible to participate in a therapeutic camp program include:

(1) - (6) (No change.)

(7) A child diagnosed with Autism Spectrum Disorder [~~a Pervasive Developmental Disorders such as Autistic Disorder, Asperger's Disorder and Rett's Disorder~~];

(8) A child diagnosed with an intellectual disability [~~Mental Retardation~~];

(9) - (10) (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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DIVISION 3. PRIMITIVE CAMPING EXCURSIONS

40 TAC §748.4471, §748.4473

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042.

§748.4471. *What personal hygiene provisions must I provide to a child who participates in a primitive [wilderness] camping excursion?*

You must provide the following to a child who participates in a primitive camping excursion with:

(1) (No change.)

(2) A means [~~Means~~] for a child to bathe or clean the child's [~~his~~] body at least twice weekly; and

(3) (No change.)

§748.4473. *What are the requirements for laundry provisions on a primitive [wilderness] camping excursion?*

You must provide the following to a child who participates in a primitive camping excursion [~~children~~]:

(1) A [~~Who are on a camping excursion a~~] way to launder clothes at least weekly; or

(2) Clean [~~With clean~~] clothes at least weekly.

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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General Counsel

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 807. CAREER SCHOOLS AND COLLEGES

CHAPTER 807. CAREER SCHOOLS AND COLLEGES

The Commission proposes amendments to the following sections of Chapter 807, relating to Career Schools and Colleges:

Subchapter A. General Provisions, §807.2 and §807.7

Subchapter B. Certificates of Approval, §807.11 and §807.15

Subchapter E. School Director and Administrative Staff, §807.62

Subchapter H. Courses of Instruction, §807.122

Subchapter J. Advertising, §807.175

Subchapter N. Cancellation and Refund Policy, §807.262 and §807.264

Subchapter O. Records, §807.281 and §807.282

Subchapter R. Closed Schools, §807.342

Subchapter S. Sanctions, §807.353

Subchapter T. Cease and Desist Orders, §807.362 and §807.365

The Commission proposes the repeal of the following section of Chapter 807, relating to Career Schools and Colleges:

Subchapter A. General Provisions, §807.5 Exemptions

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas law charges the Agency with exercising jurisdiction and control of the oversight of career schools and colleges operating in Texas. The Agency's Career Schools and Colleges department (CSC) licenses and regulates most private postsecondary career schools and colleges that offer vocational training or continuing education to Texas residents. The Agency currently regulates more than 560 career schools and colleges, which provide training to more than 160,000 students annually.

Senate Bill (SB) 563, passed by the 82nd Texas Legislature, Regular Session (2011), required the Agency to establish a pilot program to improve the efficiency and quality of Agency operations while reducing costs, and to adopt a structured approach for identifying the wasteful use of state resources and improving Agency processes. These proposed rules reflect improvements to regulations and efficiency resulting from implementation of the bill.

Texas law requires the Agency to administer the provisions of Texas Education Code, Chapter 132, enforce minimum standards for approval and regulation of career schools and colleges, and adopt policies and rules necessary for carrying out the responsibilities of Chapter 132. To fulfill this role, the Agency investigates complaints about schools, monitors schools to ensure regulatory compliance, arranges for the disposition of students affected by a school closure, and administers the tuition trust account to pay tuition refunds to students when a school closes. In carrying out its regulatory duties, CSC seeks to:

--hold all businesses meeting the definition of a career school or college to consistent standards of quality, performance, and regulatory oversight;

--provide consumer protection for Texas students; and

--ensure students receive quality training that meets the needs of Texas employers.

To support the Agency's ability to effectively and efficiently protect students, regulate career schools and colleges, and meet employer needs, and to improve consumer disclosures that allow informed choices, the Commission proposes amendments in several key areas. The amendments enumerate the Commission's expectations and use of its regulatory authority in areas in which recent violations and possible abuses have been identified. Additionally, the amendments are intended to increase

transparency of regulatory requirements and the overall performance of career schools and colleges.

Further, to support effective and efficient Agency response to the needs of schools, students, and consumers, and to provide direction to career schools and colleges regulated by the Agency, the Chapter 807 amendments:

--add definitions for "response deadline" and "address of record" and amend the definition of "date of notice";

--removing a requirement for a school to receive an exemption;

--modify the exemption requirements for accredited, degree-granting career schools and colleges;

--consolidate the exemption requirements into one section;

--shorten the time for a career school or college to receive an original license;

--require career schools and colleges to notify the Agency of changes in accreditation and Title IV status;

--remove a duplicative requirement for school directors;

--require schools whose program approval was revoked for failing to meet the minimum employment rate for three consecutive years to wait a minimum of one year and submit a reimplementation plan before reapplying for approval of the program;

--require schools that charge tuition and fees based on more than one period to fully disclose information to students that will allow them to understand the charges;

--emphasize that schools must disclose all catalog changes and that there are sanctions for failure to comply;

--clarify the order of refunds paid by schools;

--add Local Workforce Development Boards (Boards) as possible recipients of refunds and any associated penalties paid by schools for late refunds;

--change the requirement for an audit based on incorrect calculation of refunds or for late payment to an agreed-upon procedures engagement;

--require schools to protect student records, whether physical or electronic, from damage, loss, or misuse;

--require schools to properly maintain and dispose of student information and records;

--clarify the method and order of refunds paid from the tuition trust account;

--amend the penalty matrix to define what constitutes an instance;

--remove the provision for oral argument while preserving the right of written appeal; and

--remove the requirement to send a copy of CSC rules with the statement of charges in a cease and desist notice.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

Texas Government Code §2001.039 requires that every four years each state agency review and consider for reoption, revision, or repeal each rule adopted by that agency. The Com-

mission has conducted a rule review of Chapter 807, Career Schools and Colleges, and proposes the following amendments:

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§807.2. Definitions

New §807.2(7) is added to create a definition for "address of record" that requires each career school or college to establish a distribution list e-mail address of record that consistently maintains a minimum of two current subscribers, with the format of the address to be "School#Director@xdomain," e.g., S1111Director@gmail.com.

Creating a definition for "address of record" to require an Internet presence reflects the current best practice among career schools and colleges. Moreover, modernizing the address of record for career schools and colleges ensures a consistent point of contact for notice, both for students and for the Agency, regardless of a school's choice to physically relocate.

Section 807.2(16) is amended to change the definition of "Date of Notice" from the date the Agency receives the notice to the date it is mailed, which accords with the definition in statute and simplifies establishing the date. Existing §807.2(16) is also renumbered to §807.2(17) to accommodate the addition of new definitions within this section.

New §807.2(33) is added to create a definition for "response deadline," clarifying that deadlines that fall on a weekend, an official state holiday, a state holiday for which minimal staffing is required, or a federal holiday are extended one working day.

This addition reflects typical Agency practice and will ensure consistent interpretation regarding timely filing, both for career schools and colleges and for Agency staff.

§807.5. Exemptions

The Commission proposes the repeal of §807.5 in its entirety. The contents of this section will be included in a proposed amendment to §807.7(e).

§807.7. Exemptions

Section 807.7(a)(c) and (d) are amended to delete "or educational institution" from the phrase "school or educational institution," to conform with existing definitions.

New §807.7(e) is moved from previous §807.5(2) - (5) and relettered.

SUBCHAPTER B. CERTIFICATES OF APPROVAL

The Commission proposes the following amendments to Subchapter B:

§807.11. Original Approvals

Section 807.11(b) is amended to reduce processing time frames from 180 days to 90 days.

Section 807.11(c) is amended to reduce response time frames from 30 days to 21 days.

In undergoing a Rapid Process Improvement (RPI) review, CSC streamlined critical application review processes, thereby reducing the time required for Agency staff to fully process an original application. The RPI review also identified process efficiencies that allowed for a reduction in response time frames from career schools and colleges.

§807.15. Notification of Legal Actions

Section 807.15 is amended to read "Notification of Actions" from "Notification of Legal Action."

Updating the title of §807.15 reflects the need to broaden the terminology to include other critical notification requirements. Restricting notification solely to legal actions overlooked critical changes to schools' eligibility-related requirements and operational status. Such changes are discussed in more detail in proposed new §807.15(d).

Section 807.15 is amended to add subsection (d), to require schools to report, in writing and within five days, any change in accreditation status or Title IV status, e.g., Heightened Cash Monitoring 1 or 2, loss of eligibility, composite score, 90/10 ratio or default rate problems, or other similar changes.

Any change to a school's accreditation status or Title IV status is critical knowledge for consumers, as such changes can affect transferability of credits and the ability to secure federal student loans.

SUBCHAPTER E. SCHOOL DIRECTOR AND ADMINISTRATIVE STAFF

The Commission proposes the following amendments to Subchapter E:

§807.62. School Director Qualifications and Duties

Section 807.62(e) is removed; subsequent subsections are relettered to reflect the removal of this subsection.

The requirement for the school director to sign and agree to the terms of the Director's Statement found in §807.62(e) is no longer needed. RPI review identified the form as a redundant requirement.

SUBCHAPTER H. COURSES OF INSTRUCTION

The Commission proposes the following amendments to Subchapter H:

§807.122. General Information for Courses of Instruction.

Section 807.122 is amended to add the following language:

(a) A school shall not apply for approval of a program that is substantially similar to a discontinued or revoked program, unless the application for approval is submitted at least one year after the date of discontinuation or revocation, and:

(1) the school's approved programs are all meeting the employment rate as referenced in §807.131(b), at the time of application; and

(2) the school submits a reimplementation plan to the Agency.

A school whose remaining programs all meet the minimum rate at the time of application and which provides an implementation plan for a revoked program, may reapply for approval after the one-year period. Programs found to be substantially similar to a revoked program would also be subject to the same requirements.

Subsequent subsections are relettered to reflect additions.

SUBCHAPTER J. ADVERTISING

The Commission proposes the following amendments to Subchapter J:

§807.175. Catalog

New §807.175(c) is added to require a school catalog to include specific information about tuition and fees calculations based on one or more period of time, e.g., semester, quarter.

Requiring schools that charge tuition and fees based on one or more period to completely disclose information to students allowing them to understand the charges and ensuring full disclosure to students, parents, and other funding sources. Further, the basis of a school's charges is established clearly, both for students and the Agency, should issues arise, including, but not limited to, calculation of refunds.

New §807.175(d) is added to require schools to disclose all changes and to advise schools that there are sanctions for failing to comply.

This language is designed to ensure that schools keep their policies current, both for students and for the Agency, and to emphasize the importance of prompt notification of changes to such policies.

SUBCHAPTER N. CANCELLATION AND REFUND POLICY

The Commission proposes the following amendments to Subchapter N:

§807.262. Completion of Refund

New §807.262(d) is added to delineate the proper recipients of refunds and to establish that refunds will be paid in the following order: 1) any federal loans; 2) any private loans; 3) credit card or cash payments made by the student; and 4) other funding sources, including Boards. Clarifying who can receive refunds and the order in which refunds are made are critical to ensuring proper and timely distribution of any refunds.

Current Agency rules do not delineate the recipients or the order of refunds to students by schools. In addition to direct payment from a student, payment may be made on behalf of a student by a bank or other lending institution, or by federal entities. A student's tuition may also be paid directly to a school by an employer or by another funding source, including Boards. The proposed language is added to clarify the order in which refunds will be made to various funding sources and that, when payment is not made by a student but is made on the student's behalf, that funding source is entitled to recover any refund, as appropriate.

§807.264. Penalties Relating to Refunds

Current §807.264(b) is amended to remove the provision that any late refunds for grants \$15 or less are to be paid to the tuition trust account (TTA).

This language is intended to clarify Agency practice.

New §807.264(b)(3) adds new language, including adding Boards as potential recipients in the payment of penalties for late refunds.

This new language is added to align with new §807.262(d) to ensure that Boards are treated equivalently to students paying for themselves.

As a Board pays for the education or training services on behalf of an individual, the Board is entitled to receive any penalties relating to a recovered refund, as appropriate.

Section 807.264(c) is amended to require schools to submit an agreed-upon procedures engagement when the Agency determines the method used to calculate refunds is in error or the school does not pay refunds within the specified time limit. This

language is added to increase the reliability of schools' refund calculations.

Section 807.264 is further amended by adding subsection (d) listing the requirements of the opinion letter, deleting the requirement for an audited report, and instead requiring an agreed-upon procedures engagement that requires an independent CPA to examine all files for students who did not complete a course of study to determine compliance with the most restrictive of: 1) the Act; 2) this chapter; or 3) the school catalog current at the time of the student's enrollment.

SUBCHAPTER O. RECORDS

The Commission proposes the following amendments to Subchapter O:

§807.281. General Information for Records

Section 807.281(b) is amended to clarify that records may be electronic; to add that records must be protected against damage, loss, or misuse; and to direct that records be available to the Commission for inspection.

Updating this rule will ensure that the Agency can protect student records, whether retained in hard copy or electronic copy.

§807.282. Student Records

Section 807.282's title is amended to read "Student Information and Records."

Updating the title of §807.282 reflects a broader terminology that includes other information in addition to what is statutorily defined as student records.

New §807.282(d) and (e) are added to provide detail regarding appropriate methods of record maintenance and destruction to improve accountability and protection of students' sensitive personal information and provide clarity regarding minimum record destruction standards to enhance objective evaluation of compliance.

SUBCHAPTER R. CLOSED SCHOOLS

The Commission proposes the following amendments to Subchapter R:

§807.342. Tuition Trust Account

Section 807.342(c) is amended to clarify that discharges will be determined before making refunds and that other funding sources are only refunded if an amount remains after the Commission has attempted to provide full refunds to students.

This wording change is designed to ensure that all outstanding liabilities are accounted for, thereby maximizing the effectiveness of the tuition trust account.

SUBCHAPTER S. SANCTIONS

The Commission proposes the following amendments to Subchapter S:

§807.353. Administrative Penalties

Section 807.353(e) is amended to define violation and repeat offense penalties. The violation for failure to respond to an Agency request is repealed, as no scenario exists in which a school would not have already received a penalty for the violation that occurred when the school failed to respond.

Amended §807.353(e) includes a definition of "Instance" when referring to each violation and adds new violations for protection and disposal of sensitive student personal information.

SUBCHAPTER T. CEASE AND DESIST ORDERS

The Commission proposes the following amendments to Subchapter T:

§807.362. Contents of Statement of Charges and Notice of Hearing

Section 807.362 is amended to remove the requirement to send a copy of the CSC rules with the statement of charges for a cease and desist notice.

Sending a hard copy of rules is not a statutory requirement, adds costs, and is unnecessary, given that all rules are accessible and up to date on the Agency website.

§807.365. Hearing Decision and Final Review by the Commission.

Section 807.365 is amended to eliminate the provision for oral argument, while preserving the right of written appeal to the Commission.

Oral argument before the Commission is not a statutory requirement and creates conflict with the requirement that the Commission's decision be made on the basis of the record of the hearing officer.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small businesses or microbusinesses as a result of enforcing or administering the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses.

Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to gain further efficiencies in the investiga-

tion of complaints, reviews of policies and procedural systems of state agencies and reporting of data to elected state leadership and the public.

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

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on June 9, 2016. The Commission also conducted a conference call with Board executive directors and Board staff on June 10, 2016, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §807.2, §807.7

The amendments are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Government Code, Chapter 552.

§807.2. *Definitions.*

In addition to the definitions contained in §800.2 of this title, the following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Academic quarter--A period of instruction that includes at least ten weeks of instruction, unless otherwise approved by the Agency.

(2) Academic semester--A period of instruction that includes at least 15 weeks of instruction, unless otherwise approved by the Agency.

(3) Academic term--An academic quarter, academic semester, or other progress evaluation period.

(4) Academically related activity--An exam, tutorial, computer-assisted instruction, academic counseling, academic advisement, turning in a class assignment, or attending a study group that is assigned by the institution, or other activity as determined by the Agency.

(5) Accountant--An independent certified public accountant properly registered with the appropriate state board of accountancy.

(6) Act--Texas Education Code, Chapter 132, Career Schools and Colleges.

(7) Address of record--In addition to the mailing address contained in the application for a certificate of approval, each career school or college shall establish an e-mail address of record for a dis-

tribution list that consistently maintains a minimum of two current subscribers, with the format of the address to be "School#Director@xdo-main," e.g., S1111Director@gmail.com.

(8) [(7)] Advertising--Any affirmative act designed to call attention to a school or program for the purpose of encouraging enrollment.

(9) [(8)] Agency--The unit of state government established under Texas Labor Code, Chapter 301, that is presided over by the Commission and administered by the executive director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of Agency shall apply to all uses of the term in rules contained in this chapter.

(10) [(9)] Appellant--The party or the party's authorized hearing representative who files an appeal from an appealable determination or decision.

(11) [(10)] Asynchronous distance education--Distance education training that the Agency determines is not synchronous.

(12) [(11)] Class or course--An identifiable unit of instruction that is part of a program of instruction.

(13) [(12)] Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers, and one representative of the public. The definition of Commission shall apply to all uses of the term in rules contained in this subchapter.

(14) [(13)] Coordinating Board--The Texas Higher Education Coordinating Board.

(15) [(14)] Course of instruction--A program or seminar.

(16) [(15)] Course time--A course or class period that is:

(A) a 50-minute to 60-minute lecture, recitation, or class, including a laboratory class or shop training, in a 60-minute period;

(B) a 50-minute to 60-minute internship in a 60-minute period; or

(C) 60 minutes of preparation in asynchronous distance education.

(17) [(16)] Date of notice--The date the notice is mailed [received], unless good cause exists for the hearing officer to determine otherwise.

(18) [(17)] Date of request of hearing--The date on which the appellant or the hearing representative filed a written notice of appeal with the Agency by hand delivery, facsimile, or mail. If an appeal is mailed to the Agency, then the appeal is perfected as of the postmark date on the envelope containing the appeal request unless good cause exists for the hearing officer to determine otherwise. If an appeal is delivered by hand or facsimile after 5:00 p.m., the date of request shall be the next day.

(19) [(18)] Distance education course--Either a seminar or a program that is offered to non-residence school students via correspondence or other media from a remote site on a self-paced schedule, excluding programs using interactive instruction.

(20) [(19)] Distance education school--A school that offers only distance education courses.

(21) [(20)] Employment--A graduating or graduate student's employment in the same or substantially similar occupation for which the student was trained.

(22) [(21)] Good reputation--The possession of honesty and truthfulness, trustworthiness and reliability, and a professional commitment to the educational process and the training or preparing of a person for a field of endeavor in a business, trade, technical, or industrial occupation, as well as the condition of being regarded as possessing such qualities. In determining whether a person is of good reputation, the Agency is not limited to the following acts or omissions. The Agency may consider similar acts or omissions and rehabilitation efforts in response to prior convictions in making its determination. A person is considered to be of good reputation if the person:

(A) has never been convicted of a felony or any other crime that would constitute risk of harm to the school or students as determined by the Agency;

(B) has not been successfully sued for fraud or deceptive trade practices, or breach of contract, within the last 10 years;

(C) does not own or administer a school currently in violation of legal requirements, has never owned or administered a school with repeated violations, and has never owned or administered a school that closed with violations including, but not limited to, unpaid refunds; or

(D) has not knowingly falsified or withheld information from the Agency.

(23) [(22)] Hearing--An informal, orderly, and readily available proceeding held before an impartial hearing officer. A party or hearing representative may present evidence to show that the Agency's determination should be reversed, affirmed, or modified.

(24) [(23)] Hearing officer--An Agency employee designated to conduct impartial hearings and issue final administrative decisions.

(25) [(24)] Hearing representative--Any individual authorized by a party to assist the party in presenting the party's appeal. A hearing representative may be legal counsel or another individual. Each party may have a hearing representative to assist in presenting the party's appeal.

(26) [(25)] Job placement--An affirmative effort by the school to assist the student in obtaining employment in the same or substantially similar stated occupation for which the student was trained.

(27) [(26)] Master student registration list--A comprehensive list with an entry made for any person who signs an enrollment agreement, makes a payment to attend the school, or attends a class. The entry shall be made on the date the first of these events occurs.

(28) [(27)] Party--The person or entity with the right to participate in a hearing authorized in applicable statute or rule.

(29) [(28)] Program or program of instruction--A postsecondary program of organized instruction or study that may lead to an academic, professional, or vocational degree, certificate, or other recognized educational credential.

(30) [(29)] Refund--The completed payment of a refund such that the refund instrument has been negotiated or credited into the proper account(s).

(31) [(30)] Reimbursement contract basis--A school operating, or proposing to operate, under a contract with a state or federal

entity in which the school receives payment upon completion of the training.

(32) [(31)] Residence school--A school that offers at least one program that includes classroom instruction or synchronous distance education.

(33) Response deadline--Deadlines that fall on a weekend, an official state holiday, a state holiday for which minimal staffing is required, or a federal holiday are extended one working day.

(34) [(32)] Sanctions--Administrative or civil actions, including, but not limited to, penalties, revocation of approvals, or cease and desist orders taken by the Agency against an entity in response to violations of the Act or this chapter.

(35) [(33)] School--A "career school or career college," as defined in the Act, that includes each location where courses of instruction shall be offered.

(36) [(34)] Secondary education--Successful completion of public, private, or home schooling at the high school level or obtainment of a recognized high school equivalency credential.

(37) [(35)] Seminar--A course of instruction that enhances a student's career, as opposed to a program that teaches skills and fundamental knowledge required for a stated occupation. A seminar may include a workshop, an introduction to an occupation or cluster of occupations, a short course that teaches part of the skills and knowledge for a particular occupation, language training, continuing professional education, and review for postsecondary examination.

(38) [(36)] Seminar school--A school that offers only seminars.

(39) [(37)] Small school--A "small career school or college" as defined in the Act.

(40) [(38)] Stated occupation--An occupation for which a program is offered that:

(A) is recognized by a state or federal law or by a state or federal agency as existing or emerging;

(B) is in demand; and

(C) requires training to achieve entry-level proficiencies.

(41) [(39)] Student--Any individual solicited, enrolled, or trained in Texas by a school.

(42) [(40)] Suspension of enrollments--A sanction that requires the school to suspend enrollments, re-enrollments, advertising, and solicitation, and to cease, in any way, advising prospective students, either directly or indirectly, of the available courses of instruction.

(43) [(41)] Synchronous distance education--The Agency may determine distance education to be synchronous under the following conditions:

(A) the training is conducted simultaneously in real time, or the training is conducted so that the manner of delivery ensures that even if the instructor and student are separated by time, the course time of instruction that the student experiences can be determined; and

(B) there is consistent interaction between the student(s) and the instructor on a schedule that includes a definite time for completion of the program and periodic verifiable student completion/performance measures that allow the application of the progress standards of Subchapter L and attendance standards of Subchapter M of this chapter.

(44) [(42)] Title IV school--A career school or college that participates in student financial aid programs under Title IV, Higher Education Act of 1965 (20 U.S.C. Section 1070 et seq.).

(45) [(43)] Tour--A required, in-person inspection of the facilities and equipment pertaining to a course of instruction.

(46) [(44)] Week--Seven consecutive calendar days.

§807.7. Exemptions.

(a) A school [or educational institution] may apply to the Commission for an exemption under §132.002 or §132.003 of the Texas Education Code.

(b) The Commission shall grant the requested exemption if the Commission determines that the school [or educational institution] meets the requirements for an exemption under §132.002 or §132.003 of the Texas Education Code.

(c) The Commission may deny or revoke an exemption in the same manner as a denial or revocation of a certificate of approval, if the Commission determines that the school [or educational institution] does not meet the requirements for the exemption under §132.002 or §132.003 of the Texas Education Code.

(d) A school [or educational institution] may appeal the denial or revocation of an exemption in accordance with the provisions of Subchapter D of the Texas Education Code.

(e) A school applying for an exemption from the provisions of Texas Education Code §132.002(a)(6) must provide evidence that:

(1) the school has a certificate of authorization from the Coordinating Board to grant baccalaureate or higher-level degrees or a letter from the Coordinating Board indicating that Coordinating Board approval is not required;

(2) the school is accredited by a Coordinating Board--recognized accrediting body;

(3) the school is in good standing with the designated accrediting body and not subject to:

(A) probation;

(B) a directive to show cause as to why accreditation should not be revoked; or

(C) any other action that, as defined by the accrediting agency, will prevent the school from seeking approval of its degree programs; and

(4) at least a simple majority (51 percent) of credits earned in the educational programs of the school are transferable to educational programs that are:

(A) at an equivalent or higher academic level (e.g., baccalaureate to baccalaureate or higher);

(B) at a junior college, college, or university supported entirely or partly by taxation from a local or state source; and

(C) within the same local/regional service area as the offered program, as determined by the Agency.

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

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40 TAC §807.5

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed repeal affects Texas Government Code, Chapter 552.

§807.5. Exemptions.

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SUBCHAPTER B. CERTIFICATES OF APPROVAL

40 TAC §807.11, §807.15

The amendments are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Government Code, Chapter 552.

§807.11. Original Approvals.

(a) A complete application for an original certificate of approval shall consist of the following:

(1) a completed application form provided by the Commission;

(2) complete and correct financial statements, as specified in this chapter, demonstrating the school is financially stable and capable of fulfilling its commitments for training;

(3) the application fee as specified in this chapter; and

(4) any other revisions or evidence necessary to bring the school's application for approval to a current and accurate status as requested by the Commission.

(b) Schools shall fully satisfy the Agency application requirements within 90 [+80] days of receipt of the original application or the application may be considered withdrawn.

(c) If a school fails to respond to a request for additional information within 21 [30] days, the Commission may withdraw the application.

(d) To reapply, a school shall submit:

(1) a complete application as required in subsection (a) of this section; and

(2) an affidavit stating that the school will not reopen until it has been issued a Certificate of Approval.

§807.15. Notification of Actions [Legal Action].

(a) Unless otherwise instructed by the Commission, a school shall notify the Commission in writing of any legal action to which the school, any of its owners, representatives, or management employees is a party.

(b) A school shall notify the Commission in writing of any legal action described in this section no later than five business days after the action is known to be filed or the school, owner, representative, or management employee is served.

(c) A school shall include, with the notice required in this section, a file-marked copy of the petition, complaint, or other legal instrument, including copies of any judgments.

(d) A school shall notify the Commission in writing no later than five business days after receiving notice of any change in accreditation status or Title IV status, including but not limited to, Heightened Cash Monitoring 1 or 2, loss of eligibility, composite score, 90/10 ratio or default rate problems, or other similar changes.

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SUBCHAPTER E. SCHOOL DIRECTOR AND ADMINISTRATIVE STAFF

40 TAC §807.62

The amendment is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Government Code, Chapter 552.

§807.62. School Director Qualifications and Duties.

(a) A school director of a small school shall have administrative or management experience and shall be of good reputation.

(b) A school director of other than a small school shall be of good reputation and have a total of five years of administrative or management experience. An equivalent duration of higher education, college or university, may be substituted for each year of experience.

(c) The school shall obtain Commission approval for the school director before employment of the school director.

(d) The school director is responsible for the courses of instruction, organization of classes, designation of a liaison for Commission compliance visits, maintenance of the school facilities and proper administrative records, and all other matters related to the administration of the school, as determined by the Commission.

~~[(e) The school director shall sign and agree to the terms of the Director's Statement.]~~

(e) ~~[(f)]~~ The Commission may require the school director to attend additional training to continue approved director status if a school has more than one substantiated complaint from students during a one-year period. If the school has repeat violations from a previous year under the same director, the Commission may revoke the approval of the school director.

(f) ~~[(g)]~~ The school director shall:

(1) ensure that all facilities, including housing endorsed by the school, comply with local, city, county, municipal, state, and federal regulations such as, but not limited to, fire, building, and sanitation codes; and

(2) inspect facilities, including housing, before endorsement.

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SUBCHAPTER H. COURSES OF INSTRUCTION

40 TAC §807.122

The amendment is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Government Code, Chapter 552.

§807.122. General Information for Courses of Instruction.

(a) A school shall not apply for approval of a program that is substantially similar to a discontinued or revoked program, unless the application for approval is submitted at least one year after the date of discontinuation or revocation, and:

(1) the school's approved programs are all meeting the employment rate as referenced in §807.131(b), at the time of application; and

(2) the school submits a reimplementation plan to the Agency.

(b) [(a)] A school is not required to submit applications for additional courses of instruction or for course revisions to the Commission for approval, if the school:

(1) has been licensed for at least one year under the current ownership;

(2) is accredited by an agency recognized by the U.S. Secretary of Education; and

(3) is in good standing with its designated accrediting agency and not subject to:

(A) probation;

(B) a directive to show cause as to why accreditation should not be revoked; or

(C) any other action, as defined by the accrediting agency, that would otherwise prevent the school from seeking approval to add or revise a course of instruction.

(c) [(b)] Upon receipt of the approval of the course of instruction from the accrediting agency, the school shall provide a copy to the Commission.

(d) [(e)] The Commission may require the school director of an accredited school to file applications for nondegree programs if there have been two substantiated complaints regarding programs in the previous year.

(e) [(d)] A school submitting applications for approval of seminars shall use abbreviated forms provided by the Commission.

(f) [(e)] No class or program shall be approved by the Commission unless the school demonstrates that the program's quality, content, and length reasonably and adequately imparts the job skills and knowledge necessary for the student to obtain employment in the stated occupation.

(g) [(f)] A school may not solicit students, otherwise advertise, or conduct classes for a course of instruction prior to the Commission's approval of the course of instruction. Any such activity by the school, prior to the Commission's approval of the course of instruction, shall constitute a misrepresentation by the school and shall entitle each student in the course of instruction to a full refund of all tuition and fees paid by the student and release from all obligations.

(h) [(g)] The school shall establish and maintain a formal advisory committee of at least five members, unless the Commission approves a lesser number of persons in advance, for each type of program with course time in excess of 200 hours in length. At least annually, the committee shall evaluate the curriculum, instructional materials and media, equipment, and facilities to ensure they meet the needs of the job market. The school shall have written documentation of the evaluation available for review by the Commission. If the school does not follow an advisory committee recommendation, the school shall maintain written documentation of the justification for not following the recommendation.

(i) [(h)] If the applicant requests approval to measure courses of instruction in credit hours, the following conversion table shall be used.

(1) One academic quarter credit hour equals a minimum course time of:

(A) 10 hours of classroom lecture;

(B) 20 hours of laboratory experience; or

(C) 30 hours of externship.

(2) One academic semester credit hour is equal to a minimum course time of:

(A) 15 hours of classroom lecture;

(B) 30 hours of laboratory experience; or

(C) 45 hours of externship.

(3) The school shall calculate lecture, laboratory, and externship credit hour conversions individually for each class, rounding down to the nearest half credit hour. The school shall add the total for the credit hours for lecture, laboratory, and externship to determine the total credit hours for a class.

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SUBCHAPTER J. ADVERTISING

40 TAC §807.175

The amendment is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Government Code, Chapter 552.

§807.175. *Catalog.*

(a) The catalog shall include the following:

(1) table of contents or index;

(2) name and complete street address of the school;

(3) volume number, date of publication, and effective dates;

(4) history of any accreditations or approvals, including statement of approval and regulation by the Commission;

(5) description of space, facilities, and equipment;

(6) list of all trustees, directors, officers of the corporation, and owners;

(7) list of management staff and faculty, including education relating to the areas of instruction;

(8) tuition, fees, other charges, and applicable scholarship terms;

(9) school calendar;

(10) school hours of operation and class schedule, including the amount of time allocated for breaks and mealtimes;

(11) policies regarding enrollment, including entrance requirements, previous education credit, cancellation and refund, progress, attendance, leave of absence, and conduct;

- (12) veterans administration refund policy, if applicable;
- (13) description of courses of instruction, including the number of hours of course time of a seminar, seminar topic, lecture, lab, and externship, as well as credit hours in each class, if applicable;
- (14) description of each class;
- (15) description of the grading policy, including requirements for graduation;
- (16) description of placement assistance, if available;
- (17) statement of policies regarding grievances; and
- (18) a statement signed by the owner or director indicating that all of the information contained in the catalog is true and correct.

(b) Any classes defined as self-paced shall be noted as such in the catalog.

(c) In addition to the information contained in subsections (a) and (b) above, the catalog for a school that charges tuition and fees for a residence program or a synchronous distance education course based on more than one period shall also include a complete description of the following:

- (1) the number of periods of time and the course time scheduled in each period;
 - (2) the amount of tuition charged for each period;
 - (3) the type and amount of fees charged for each period;
- and
- (4) any other charges for each period.

(d) All changes to the catalog shall be disclosed to the Agency, using forms provided by the Agency. Failure to disclose changes may result in penalties and sanctions, including refunds.

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SUBCHAPTER N. CANCELLATION AND REFUND POLICY

40 TAC §807.262, §807.264

The amendments are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Government Code, Chapter 552.

§807.262. *Completion of Refund.*

(a) A school shall document refunds by written record indicating the date of the refund transaction, the name of the student receiving

the refund, the total amount refunded, and the specific reason for the refund. Proof of completion shall be on file within 120 days of the effective date of termination and shall include:

- (1) copies of both sides of the cancelled check;
- (2) printed proof of completed transaction of electronic funds transfer or other similar electronic means; or
- (3) documentation of an awarded credit to a credit card or other similar account.

(b) To ensure a school's good faith effort to timely complete a refund owed directly to a student, the student's file shall contain evidence of the following proof of a certified mailing of the refund to the:

- (1) student's last known address;
- (2) student's permanent address, if different from the student's last known address; or
- (3) address of the student's parent or legal guardian, if different from the student's last known and permanent addresses.

(c) If after making a good faith effort to timely complete a refund, the school is unable to complete the refund, the school shall forward to the Agency the appropriate refund amount and any pertinent student information to assist the Agency in locating the student.

(d) Unless otherwise required by another law, refunds will be made in the following order:

- (1) on behalf of the student to federal loans used to pay tuition and fees;
- (2) on behalf of the student to private loans used to pay tuition and fees;
- (3) to the student for personal loans, including credit card debt, and cash used to pay tuition and fees; and
- (4) to other funding sources, including Boards, to reimburse payments for tuition and fees.

§807.264. *Penalties Relating to Refunds.*

(a) A penalty shall be paid on any refund not completed in a timely manner as required by the Act. The penalty assessment shall begin on the first day following the expiration of the statutorily defined refund period and end on the day preceding the date the refund is completed.

(b) ~~Penalties assessed on late refunds for grants shall be paid to the tuition trust account if the amount is \$15 or less.~~ Any [other] penalty assessed on a school's late payment of student refunds shall be disbursed in the following order of priority:

- (1) to the student's account at a lending institution for the balance of principal and interest on the student loan;
- (2) to the student for tuition and fees paid directly by the student; ~~and~~
- (3) to a Board for tuition and fees paid by the Board; and
- (4) ~~[(3)]~~ to the tuition trust account for any remaining balance of assessed penalty.

(c) If the Agency determines that the method used by the school to calculate refunds is in error or the school does not routinely pay refunds within the time required by the Act, the school shall submit an agreed-upon procedures engagement [audited report] conducted by an independent CPA. The CPA shall examine all files for [accountant of the refunds due former] students who did not complete a course of study, to determine compliance with the most restrictive

of: [that includes any penalty due as specified in the Act. An audit opinion letter shall accompany a schedule of student refunds due, which discloses the following information for the four years prior to the date of the Agency's request:]

(1) the Act [student information, including name, address, and Social Security number];

(2) this chapter; or [pertinent dates, including last date of attendance and date of termination; and]

(3) the school catalog current on the date of the student's enrollment. [refund information, including amount of refund with principal, penalty, and any balance due separately stated, payee, and date and check number of payment if payment has been made.]

(d) An opinion letter shall accompany a schedule of student refunds due, disclosing the following information for the four years prior to the date of the Agency's request:

(1) student information, including name, address, and Social Security number;

(2) pertinent dates, including recorded last date of attendance, date of termination, and, if necessary, recalculated last date of attendance;

(3) recorded refund information, including amount of refund with principal, penalty, and any balance due stated separately; payee; date and check number of payment if payment has been made; any of the same categories of information resulting from recalculations; and

(4) other information requested by the Agency to demonstrate compliance.

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SUBCHAPTER O. RECORDS

40 TAC §807.281, §807.282

The amendments are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Government Code, Chapter 552.

§807.281. *General Information for Records.*

(a) A school shall permanently maintain a master student registration list (MSRL). If the school maintains the MSRL in electronic form, the school must be able to produce a printed copy immediately upon request. The MSRL must contain at least the following information:

(1) date of applicable entry;

(2) name of student;

(3) address of student including city, state, and zip code;

(4) telephone number;

(5) social security number;

(6) date of birth; and

(7) name of program.

(b) A school shall maintain current records and necessary data (physical or electronic) for each student required to be on the master student registration list to show compliance with the Act and this chapter. These records shall be:

(1) maintained on-site; ~~and~~

(2) protected against damage, loss (e.g., fire, water, theft, tampering), or misuse; and

(3) ~~[(2)]~~ made available to the Commission for inspection upon request.

(c) If applicable, the school shall maintain and ensure that copies of the accreditation authorization and letter of eligibility from the United States Department of Education are available for Commission review.

(d) Degree granting schools shall maintain a copy of the certificate of authorization from the Coordinating Board for each authorized degree program.

(e) The Commission may conduct unannounced compliance inspections.

(f) A school shall maintain complete records of all advertising, sales, and enrollment materials used by or on behalf of the school for a five-year period. Materials maintained shall include, but not be limited to, direct mail pieces, brochures, printed literature, films, leaflets, handbills, fliers, video and audiotapes disseminated through the broadcast media, materials disseminated through the print media or Internet, and sales and recruitment manuals used to instruct sales personnel.

§807.282. *Student Information and Records.*

(a) A school shall permanently maintain student transcripts of academic records. A school shall provide such transcripts to students and prospective employers at a reasonable charge if the student has fulfilled the financial obligation to the school and is neither in default nor owes a refund to any federal or state student financial aid program.

(b) A school shall retain financial records in accordance with federal retention requirements.

(c) A school shall retain all student records for at least a five-year period and these records shall include:

(1) a written record of previous education and training on a form provided by the Commission; and

(2) official transcripts from all previous postsecondary schools attended by the student.

(d) The school director shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from improper use or disclosure of any sensitive personal information collected or maintained by the school.

(e) A school shall destroy or arrange for the destruction of sensitive personal information within the school's custody or control, after any required retention periods, by:

(1) shredding;

(2) permanently removing or deleting electronic records;
or

(3) otherwise modifying the sensitive personal information in the records to make the information unreadable or indecipherable through any means; or

(4) destroying the information in accordance with any other more restrictive law or regulation the school is required to follow.

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 12, 2016.

TRD-201604042

Patricia Gonzalez

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

Earliest possible date of adoption: September 25, 2016

For further information, please call: (512) 463-9598



SUBCHAPTER R. CLOSED SCHOOLS

40 TAC §807.342

The amendment is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Government Code, Chapter 552.

§807.342. Tuition Trust Account.

(a) In a year in which the Commission determines it is necessary to charge a fee under §132.2415(b) of the Act, each school shall make a payment to the tuition trust account at the time the school renewal fee is paid.

(b) The amount in the tuition trust account, as provided in the Act, is an accrued balance. The accrued balance is the cash balance of the tuition trust account less the sum of the accrued liabilities from unpaid student refunds and teach-out claims.

(c) Disbursements shall be made from the tuition trust account for student refunds and reimbursable teach-out expenses incurred during each 12-month period ending August 31, and shall be:

(1) made first for student refunds in accordance with §132.2415(d) of the Act and §807.262 of this chapter;

(2) calculated after refunds or discharges from other funding sources have been determined;

(3) disbursed to other funding sources from any amount remaining under the limitation of §132.242(e) of the Act; and

(4) [~~(2)~~]disbursed for reimbursable teach-out expenses based upon remaining funds in the account.[; and]

~~{(3) calculated after other funding sources have been determined.}~~

(d) Following the graduation or termination of the students from the teach-out school, the teach-out school shall determine actual expenses and submit a claim for reimbursement to the Commission on

or before the date provided in the application packet. The teach-out school shall:

(1) not claim expenses for facilities, equipment, utilities, or other items which were owned, rented, used, or otherwise obligated by the school prior to the Commission's approval of the teach-out program, even though such items may be used for the teach-out program;

(2) be limited to expenses for tuition and fees that are non-recoverable from all financial resources, including grants and loans; and

(3) ensure that the sum of the tuition and fees paid to the student's account at the closed school and the teach-out school is the lesser amount the student would have been charged for the complete program at the closed school or the teach-out school.

(e) For schools in their first two years of operation that have not been required to furnish financial statements to comply with §807.35(b), the payment to the tuition trust account shall be calculated at the rate determined by the Commission using the projected gross amount of tuition and fees, as required in §807.33(c), to be charged by the school for the year in which the payment is collected. Once the school has submitted the actual amount of tuition and fees collected by the school in compliance with §807.35(b), the Commission shall reconcile the projected and actual amounts of tuition and fees collected. Upon reconciliation, the Commission shall determine if the school is entitled to a refund or must pay an additional amount to the tuition trust account.

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 12, 2016.

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Patricia Gonzalez

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

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SUBCHAPTER S. SANCTIONS

40 TAC §807.353

The amendment is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Government Code, Chapter 552.

§807.353. Administrative Penalties.

(a) An administrative penalty shall not exceed the amount specified in Texas Education Code §132.152 for each instance of a violation and shall be assessed in accordance with that section.

(b) The administrative penalty is calculated based on a penalty dollar amount and the number of instances of violation.

(c) A violation is considered a repeat violation only where notice of a violation or an administrative penalty has been issued previously for that same violation.

(d) The assessment of an administrative penalty shall not preclude the Agency from administering other sanctions, up to and including revocation of a school's certificate of approval.

(e) The following penalty matrix is for determining and assessing an administrative penalty. The absence of a particular violation from the matrix shall not preclude the Agency from assessing an administrative penalty.

Figure: 40 TAC §807.353(e)
[Figure: 40 TAC §807.353(e)]

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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Patricia Gonzalez

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

Earliest possible date of adoption: September 25, 2016

For further information, please call: (512) 463-9598



SUBCHAPTER T. CEASE AND DESIST ORDERS

40 TAC §807.362, §807.365

The amendments are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Government Code, Chapter 552.

§807.362. *Contents of Statement of Charges and Notice of Hearing.*

The statement of charges and notice of hearing issued by the Agency shall contain the following information:

(1) The name and last known address of the person against whom the order may be entered;

(2) A short and plain statement of the reasons the Agency believes the person is operating a career school or college without a certificate of approval; and

~~{(3) A copy of the Commission's Career Schools and Colleges rules, Title 40, Chapter 807 of the Texas Administrative Code; and}~~

~~(3) [(4)] The date, time, and location of the hearing.~~

§807.365. *Hearing Decision and Final Review by the Commission.*

(a) Within 10 days after the hearing is held, the hearing officer shall issue a written decision granting or denying the request for the issuance of a cease and desist order that includes findings of fact and conclusions of law. The hearing decision shall be mailed by certified mail, return receipt requested, and is presumed received five days from the date it is mailed. The hearing officer's decision becomes final the 15th day after receipt of the hearing decision unless an appeal is filed under subsection (b) of this section.

(b) A party that is not satisfied with the decision of the hearing officer may file a written appeal of the decision to the Commission for a final review no later than the 15th day after receipt of the hearing decision. The written appeal shall contain the party's arguments as to why the decision of the hearing officer should be reversed. ~~[A party may request oral argument on the written appeal before the Commission. If oral argument is approved, each party or its hearing representative may present argument in support of its position.]~~

(c) Upon receipt of the written appeal of the hearing officer's decision, the Commission shall consider the appeal and issue a decision promptly. ~~[If in the written appeal, oral argument is requested by a party and approved, the Commission shall schedule and hold oral argument not later than 90 days of receipt of the written appeal.]~~ The Commission shall consider the appeal on the basis of the record made before the hearing officer. The decision of the Commission shall be mailed by certified mail, return receipt requested, and is presumed received five days from the date it is mailed.

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 12, 2016.

TRD-201604045

Patricia Gonzalez

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

Earliest possible date of adoption: September 25, 2016

For further information, please call: (512) 463-9598



ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER M. MISCELLANEOUS PROGRAMS

DIVISION 3. COMPREHENSIVE REHABILITATION SERVICES FOR INDIVIDUALS WITH A TRAUMATIC BRAIN INJURY OR TRAUMATIC SPINAL CORD INJURY

1 TAC §355.9040

The Texas Health and Human Services Commission (HHSC) adopts new Division 3, Comprehensive Rehabilitation Services for Individuals with a Traumatic Brain Injury or Traumatic Spinal Cord Injury, and new §355.9040, concerning Reimbursement Methodology for Comprehensive Rehabilitation Services Program, without changes to the proposed text as published in the June 17, 2016, issue of the *Texas Register* (41 TexReg 4376) and will not be republished.

BACKGROUND AND JUSTIFICATION

This rule establishes the reimbursement methodology for the Comprehensive Rehabilitation Services (CRS) program administered by the Texas Department of Assistive and Rehabilitative Services (DARS). HHSC, under its authority and responsibility to administer and implement rates, is adopting this rule to codify the reimbursement methodology for this program, which provides services to individuals with a traumatic brain injury (TBI) or traumatic spinal cord injury (SCI).

The adopted reimbursement methodology describes the method by which HHSC will determine the rates for TBI and SCI Inpatient Comprehensive Medical Rehabilitation Services, TBI and SCI Outpatient Services, Post-Acute Brain Injury (PABI) Residential Services, and PABI and Post-Acute SCI Non-Residential Services.

COMMENTS

HHSC received written comments in opposition to the new rule from two providers: The Transitional Learning Center at Galveston and Pate Rehabilitation.

Comment: Both commenters said that HHSC's statements in the proposed rule preamble that the new rule will not require any changes in practice or additional cost to contracted providers

are incorrect. They stated the proposed rule requires changes in provider practices that will likely lead to increased provider costs. Specifically, the commenters said compliance with the rule requires increased data collection for the tier-tracking log and monthly service record, as well as additional staff time for calculating reimbursement levels on a daily and weekly basis for billing purposes. Both commenters said they will be required to add staff to meet these new documentation and billing requirements. One commenter referred to the CRS program "Standards for Providers Manual" as containing examples of costs providers will now be required to incur to meet documentation and billing requirements.

Response: HHSC disagrees that this rule requires changes in provider practices or imposes additional costs on providers to comply. This rule describes the methodology used by HHSC to calculate rates; it does not require tier tracking logs or monthly service records, nor does it address billing requirements. The commenters did not identify any language in this rule that they allege to be objectionable. For these reasons, the comments do not appear to be directed at this rule, but rather at DARS program standards as described in the CRS provider manual cited by one of the commenters.

HHSC will refer these comments to staff at DARS for consideration in the on-going development of CRS program standards. No changes were made to the rule in response to these comments.

Comment: One commenter stated the new rates are less than the per-diem the provider received in the past and will not cover its cost of providing services to DARS consumers, particularly in light of the increased costs for billing and regulatory compliance. The commenter also pointed to the "arbitrary decision of the rate setters that group session time will be cut in half" as contributing to reductions in its reimbursement.

Response: HHSC is committed to calculating payment rates that are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers to provide access to care. To develop the rates that will be effective beginning September 1, 2016, HHSC conducted a survey of CRS provider costs. Administrative, office, and facility costs reported by the responding providers were taken into consideration in setting the base component of the rates. HHSC and DARS will continue to review and monitor data from providers as the program year progresses to determine whether rate changes are necessary to account for higher costs.

Transitioning from the previous provider-specific reimbursement methodology to the methodology described in this rule means that some providers may see a reduction in reimbursement. The offsetting benefit to providers, consumers, the state, and the public will be a more transparent, consistent, and defensible rate structure.

HHSC disagrees that HHSC arbitrarily decided to cut group session time in half. This rule does not address group session time. This comment does not appear addressed at this rule but at program standards outside of the rule. No changes were made to the rule in response to this comment.

Comment: One commenter expressed concern that HHSC and DARS have developed a set of service definitions, rules, and processes that do not consider current capabilities and practices of PABI providers. The commenter stated that the reimbursement model described in this rule deeply discounts the clinical purpose and value of a professionally-directed model of rehabilitation.

Response: HHSC disagrees with this comment. The commenter did not identify any language in the rule that purportedly supports this comment. To the contrary, the methodology in this rule allows for greater specificity in payment for actual billable services performed instead of relying on a per diem that is not service specific.

No changes were made in response to this comment.

STATUTORY AUTHORITY. The new rule is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and under §531.0055, which provides the Executive Commissioner with the authority to promulgate rules for the provision of health and human services by the 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 11, 2016.

TRD-201604029

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Effective date: September 1, 2016

Proposal publication date: June 17, 2016

For further information, please call: (512) 424-6900



CHAPTER 392. PURCHASE OF GOODS AND SERVICES FOR SPECIFIC HEALTH AND HUMAN SERVICES COMMISSION PROGRAMS

SUBCHAPTER J. INDEPENDENT LIVING SERVICES PROGRAM CONTRACTS

1 TAC §392.901

The Texas Health and Human Service Commission (HHSC) adopts new Subchapter J, Independent Living Services Program Contracts, including new §392.901, concerning Independent Living Services Program Contracts, without changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4539) and will not be republished.

BACKGROUND AND JUSTIFICATION

New §392.901 implements provisions of House Bill 2463, 84th Legislature, Regular Session, 2015, effective September 1, 2015. Texas Human Resource Code §117.080(e)(2) - (5), cre-

ated by House Bill 2463, requires the adoption of rules relating to Independent Living Services (ILS) Program contracts.

COMMENTS

The 30-day comment period ended July 25, 2016. During this period, HHSC did not receive any comments regarding the new rule.

STATUTORY AUTHORITY

The new rule is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and 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 11, 2016.

TRD-201604031

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

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Proposal publication date: June 24, 2016

For further information, please call: (512) 424-6900



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 6. STATE RECORDS

SUBCHAPTER A. RECORDS RETENTION SCHEDULING

13 TAC §6.10

(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 figure in 13 TAC §6.10 is not included in the print version of the Texas Register. The figure is available in the on-line version of the June 24, 2016, issue of the Texas Register.)

The Texas State Library and Archives Commission adopts amendments to 13 TAC §6.10, regarding the Texas State Records Retention Schedule (RRS) with changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4555) pursuant to the Government Code §441.185(f). The amendment makes amendments that address new requirements set forth in Government Code §441.1855 concerning retention of contracts and related documents by state agencies. The new law requires state agencies to retain contracts and contract solicitation documents for a period of seven years, and the RRS is amended to reflect that requirement.

Comments were received regarding the amendment during the comment period. These comments and the resulting changes are identified in this preamble.

Comment: An official from Commission on State Emergency Communications commented on item 1.1.060 stating the agency does not have authority to require written minutes of every open meeting of a state agency see Tex. Att'y Gen. Op. No. GA-0727. Official requests that caution statement be revised and retention period changed to PM, or, "recordings" could be added to 1.1.058 and 1.1.060 be removed.

Response: Agency is aware of the Attorney General opinion and it is on our list of required revisions. The current rule amendments did not include revisions to this records series nor did the agency perform a full review and revision to the State Records Retention Schedule. Our goal was to make required changes concerning contract related records series. Future revisions including this recommendation will be addressed and presented at a future Commission meeting.

Comment: An official from Texas Department of Criminal Justice requested that item 4.2.005, Purchase Vouchers and 4.2.007 Expenditure Vouchers, should be changed from FE+3 to FE+7. Additionally, they commented that while the proposed changes are consistent with the language in SB20, the description of purchase vouchers in the schedule includes "orders" which are contractual procurements and should be considered such for records retention purposes.

Response: Agency agrees that "orders" being included in the description is confusing and it has been removed. Orders are covered by purchase orders as part of the Contracts records series. Agency disagrees with the other recommendation to increase retention period to FE+7. Agency's opinion is that applying 7 year retention period to purchase vouchers and expenditure vouchers is outside the scope of the law. Retaining invoices and vouchers for 7 years could be unreasonably onerous for agencies and does not appear to be the intent of SB20. If an agency desires to increase the retention period for these records series they may do so.

Comment: An official from the Office of the Attorney General recommended including grant records in the implementation of the SB20 requirement. Government Code §2261.002(1) includes grants in its definition of a contract and the State of Texas Contract Management Guide recommends applying requirements to grants. Until such time that the statute is amended to expressly exclude grants, it is recommended they be included in the implementation of SB20.

Response: Agency disagrees with recommendation. The bill sponsor for SB20, Senator Jane Nelson, did not intend for grants to be included as part of the SB20 requirements. If the statute is revised in the future to specifically include grants then agency will amend the schedule accordingly.

Comment: An official from the Office of the Governor commented that bids are scheduled under 5.3.007 and therefore should be removed from 5.1.001. Otherwise, the same record will be scheduled under two different records series.

Response: Agency agrees with recommendation and revised records description for 5.1.001.

Comment: An official from the Office of the Governor commented that an equipment history file (log of service/repair) is not a contract or agreement. Equipment Service Agreements should be removed from 5.2.008. If deemed necessary, a reference to 5.1.001 could be added to the remarks of 5.2.008 to address such agreements.

Response: Agency agrees with recommendation and revised records series and title and added note to remarks section.

Comment: An official from the Office of the Governor commented on item 5.3.007 stating SB20 does not apply to contracts executed, renewed, or amended on our before 8/31/15. There is no legal basis for changing the retention period for unsuccessful-but-evaluated pre-FY16 bids to AC+4, and in fact it would be burdensome to the agency to have to retroactively apply this retention period to older bid documentation. Recommends keeping retention period for pre-FY16 bids as FE+3.

Response: Agency agrees with recommendation and revised retention period for bids prior to 8/31/15.

Comment: An official from the Office of the Attorney General recommended excluding the new series under 5.3.007 for unaccepted bids that do not meet submission requirements from the implementation of the SB20 requirements. Procedures may vary across agencies. Some agencies may not physically accept or receive bids after the due date and time for submission. This revision would require that those bids be accepted and retained AC+2 years. This could place a burden on the agency. Some agencies may, return bids to the bidder if the bid does not meet the submission requirements.

Response: Agency disagrees with recommendation. Multiple agencies requested for the addition of this item so that agencies would be able to dispose of unaccepted bids and not have to retain for AC+7. It is our opinion that this will not require agencies to change practices. If an agency's practice is to return or not accept bids that are submitted after the submission date and return to vendor, they can continue to do so. This would not require them to retain for AC+2.

Comment: An official from the Office of the Attorney General recommended creating separate records series for unaccepted bids and add reference to new records series in Remarks for 5.3.007. It is RIM industry standard to not have more than one function/purpose or more than one retention period within the same records series.

Response: Agency understands the recommendation to create a separate records series according to RIM industry standard. However, the current format of the State Records Retention Schedule does easily allow for this revision at this time. TSLAC will add this to our list of suggested revisions and will review when we plan future revisions to the State Records Retention Schedule.

Comment: An official from the Office of the Attorney General recommended keeping caution statement for 5.3.007 from the current version of this records series in addition to adding the AC=definition in the Remarks column.

Response: Agency disagrees with recommendation. Caution statement is no longer valid since unsuccessful and successful bids are being retained for AC+7.

Comment: An official from the Office of the Attorney General recommended using the term "contract" rather than "instrument" on item 5.3.007, and recommend aligning the terminology used in the retention statement with the terminology used in the remarks statement for clarity and consistency.

Response: Agency disagrees with recommendation. Language is consistent with additional contract related records series in the schedule.

Comment: An official from the University of Texas at Austin requested clarification of retention period and Caution Note for item 5.3.009. Recommend revising AC definition to AC=Decision not to proceed with the procurement. Revise Caution Note to CAUTION: If the request for information leads to request for proposal or bid, the request for information documentation must be retained in accordance with item number 5.3.007.

Response: Agency agrees with recommendations and revised AC definition and Caution note as suggested.

Comment: An official from Texas Facilities Commission requested revisions to several records series unrelated to contracts and SB20.

Response: The current rule amendments do not include revisions to these records series nor were we conducting a full review and revision to the State Records Retention Schedule at this time. Our goal is to make required changes concerning contract related records series. TSLAC will add these to our list of suggested revisions and will review when we plan future revisions to the State Records Retention Schedule.

The amended section is adopted under Government Code §441.185(f) which grants authority to the Texas State Library and Archives Commission to prescribe a minimum retention period for any state record unless a minimum retention period for the record is prescribed by another federal or state law, regulation, or rule of court.

The adopted section affects Government Code §441.185(f).

§6.10. *Texas State Records Retention Schedule.*

A record listed in the Texas State Records Retention Schedule (Revised 4th Edition) must be retained for the minimum retention period indicated by any state agency that maintains a record of the type described. Figure: 13 TAC §6.10

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

Filed with the Office of the Secretary of State on August 11, 2016.

TRD-201604032

Sarah Jacobson

Manager, Records Management Assistance

Texas State Library and Archives Commission

Effective date: August 31, 2016

Proposal publication date: June 24, 2016

For further information, please call: (512) 463-5449



TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

SUBCHAPTER B. TREATMENT OF HORSES

16 TAC §319.110

The Texas Racing Commission adopts an amendment to 16 TAC §319.110, Health Certificate, without changes to the proposed text as published in the July 1, 2016, issue of the *Texas Register*

(41 TexReg 4753). The rule text will not be republished. The section relates to the health inspection requirements that must be met for a horse to be allowed to enter the premises of a licensed racetrack.

The adopted amendment deletes the previous requirements relating to equine infectious anemia tests and health certificates and instead substitutes a general requirement that a horse entering an association's grounds must be accompanied by a current certificate of veterinary inspection and also meet any other health inspection requirements established by the Texas Animal Health Commission (TAHC). The change will allow the Texas Racing Commission to follow the requirements of the TAHC without requiring a rule amendment each time TAHC changes its rules. Consistent with the substantive change in the rule, the adoption broadens the rule's title to reflect that it addresses more than just health certificates.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse racing and to adopt other rules to administer the Act, and §6.061, which requires the Commission to adopt rules addressing the safety of conditions on the racetrack.

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 12, 2016.

TRD-201604054

Mark Fenner

General Counsel

Texas Racing Commission

Effective date: September 1, 2016

Proposal publication date: July 1, 2016

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



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER J. FINANCIAL AID ADVISORY COMMITTEE

19 TAC §§1.149 - 1.151, 1.154

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§1.149 - 1.151, and 1.154, concerning the Financial Aid Advisory Committee, with changes to §1.150(3) of the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3217). Specifically, §1.149, regarding authority and purpose, removes redundant language. Section 1.150, regarding definitions, removes unnecessary language referring to the location of the Texas Financial Aid Information Center call center and the College for All Texans website. Section 1.150(3) removes the definition of "Commissioner" as the term is not referenced in the rule.

The proposed amendments posted in the *Texas Register* did not show the definition for "Commissioner" as stricken from the rule as indicated in the preamble. Section 1.151(a) regarding committee membership and officers adds language regarding the composition of the committee's membership to include representatives employed in the non-profit sector. Section 1.151(b)(1) - (4) language is modified to state the minimum of one representative from a health-related institution is to be included in the committee. Language is also added to clarify that the committee will be comprised of at least one student representative from a health-related institution or a four-year institution, one student representative from a two-year college sector, and one representative from the Texas Association of Student Financial Aid Administrators (TASFAA). Each will serve as a non-voting member on the committee. Language referencing the specific professional associations is removed from §1.151(c). In §1.151(e)(1) and (2) language is added to clarify the procedures for appointment of the presiding officer as well as appointment procedures in which the vice chair succeeds the presiding officer. Section 1.151(g) adds language clarifying the one-year term of the TASFAA-appointed committee member. Section 1.154(a) and (b) adds language stating that the committee will provide guidance and advice on tasks assigned to the Coordinating Board and has been renumbered accordingly.

No comments were received, however staff discovered that the proposed amendments as posted in the May 6, 2016 issue of the *Texas Register* did not show the definition for "Commissioner" as stricken from the rule as indicated in the proposed preamble and this additional change was to §1.150(3).

The amendments are adopted under Texas Education Code, §61.026 and Chapter 2110, Government Code which, provides the Coordinating Board with the authority to adopt rules regarding an advisory committee.

§1.150. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

- (1) Board--The Texas Higher Education Coordinating Board.
- (2) Center for Financial Aid Information--The state's entity for developing and disseminating information about financial aid for college, consisting of the Texas Financial Aid Information Center call center, and the College for All Texans website.
- (3) Interested persons--Persons who attend committee meetings as representatives of stakeholder entities and any other persons who have made their interest in the work of the committee known to its presiding officer. Such interested persons may participate in committee discussions, as invited by the presiding officer to do so, but do not have the authority to cast votes.

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 10, 2016.

TRD-201604019

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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Proposal publication date: May 6, 2016

For further information, please call: (512) 427-6114

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CHAPTER 4. RULES APPLYING TO
ALL PUBLIC INSTITUTIONS OF HIGHER
EDUCATION IN TEXAS
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §4.12

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §4.12, pertaining to the tracking of participation of students with intellectual and developmental disabilities (IDD) in Texas institutions of higher education, without changes to the rule as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3218). Specifically, the new section defines IDD for the purposes of tracking students and establishes that the Coordinating Board may collect information from institutions of higher education regarding the undergraduate and graduate participation of students with IDD, as required by Texas Education Code, Subchapter C, §61.0664.

The following comments were received from The University of Texas at Austin (UT-Austin):

Comment: UT-Austin expressed concern that the definition of Intellectual and Developmental Disability (IDD) in the proposed rule is ambiguous and allows for a high degree of subjectivity. UT-Austin notes that the definition as written may result in a very small number of students being reported and unreliable reporting across institutions.

Staff Response: The definition outlined in the proposed rule is based on the definition of Intellectual Disability from the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, published by the American Psychiatric Association (DSM-V). A group of experts who were convened suggested that it was best to keep the definition broad in order to allow each institution's disability services office to use their own process for identifying students with an IDD. Although the broad definition may result in differences in reporting across institutions, decisions on how or whether a student is identified as having a certain disability, such as an IDD, is up to the discretion of each institution. In addition, a more specific definition or definitions could lead to a much greater reporting burden for institutions. No changes were made as a result of this comment.

Comment: UT-Austin expressed concern that relying on data based on self-reports of Intellectual and Developmental Disability will not reflect actual numbers of students with IDD.

Staff Response: We understand that relying on self-identification by students may result in an undercounting of this population. However, we cannot require that students who have an IDD identify themselves for the purpose of this data collection, nor do we wish to encourage faculty or staff to attempt to identify a student who does not wish to register their disability with the institution. We understand the disability services offices have a role in confirming reported disabilities and we do not wish to interfere with that process. Using data from only students who self-identify, as confirmed by trained staff as meeting the definition provided in rule, both protects the privacy of students and ensures some consistency of reporting. No changes were made as a result of this comment.

Comment: UT-Austin expressed concern that the definition of "postsecondary transitional program or postsecondary program for students with IDD" in §4.12(b) is inconsistent with the require-

ment that only students in college-level coursework or technical continuing education be reported, which would exclude some students only enrolled in a transitional program (such as the UT informal classes available at UT-Austin). UT-Austin requests clarification of the apparent inconsistency.

Staff Response: The statute upon which this proposed rule is based (TEC, §61.0664) specifies that the Texas Higher Education Coordinating Board only collect data "relating to undergraduate and graduate level participation of persons with intellectual and developmental disabilities at institutions of higher education..." which is why we specify in §4.12(d) that data can only be collected on students in credit-bearing college-level coursework or technical continuing education. We include a definition for "postsecondary transitional programs or programs for students with IDD" in §4.12(b) because one of the proposed data collection elements is whether the student with IDD has ever been or is currently enrolled in one of these transitional programs. This question will serve to show how many students in these transitional programs go on to enroll in college-level course work and provide the ability to track their subsequent outcomes. No changes were made as a result of this comment.

Comment: UT-Austin requested clarification of the categories listed in §4.12(e)(1) as the category for "not identified as having an IDD" could be interpreted in many ways.

Staff Response: Coordinating Board staff agree that the categories should be explicitly defined. The categories listed in the proposed rule will be specifically described and explained in detail within the CBM manual where this item will be reported. For example, the direction that "all students who are not defined in the other options must be reported as not identified as having an IDD." No changes were made as a result of this comment.

Comment: UT-Austin expressed concern that the proposed rule requires that an Autism Spectrum Disorder be reported separately from students with an Intellectual or Developmental Disability. UT-Austin requested clarification regarding whether this determination would be made based upon additional evaluation or diagnosis. They reiterate that the definition of IDD in section (b) is ambiguous and will introduce inconsistencies across institutions.

Staff Response: At the request of practitioners, we separated out the identification of those with an Autism Spectrum Disorder but not an Intellectual Disability as this group is qualitatively different from students with Intellectual Disabilities. We are leaving the identification of the diagnosis of Autism Spectrum Disorder up to the policies of each institution. We realize this may result in inconsistencies across each institution; however, it is not the role of the Texas Higher Education Coordinating Board to prescribe what documentation or evaluation is necessary for an office of disability services to accept a diagnosis to allow for accommodations. No changes were made as a result of this comment.

The following comment was received from Texas State University:

Comment: Texas State expressed that the proposed rules in general are excellent, but requested that an additional indicator be added to the reporting requirement regarding whether the student actually received any accommodations through the institution for their disability.

Staff Response: In the opinion of the Texas Higher Education Coordinating Board staff, collecting information on whether a student with IDD receives accommodations is beyond the scope

of the statute, and would add an extra reporting requirement to office of disability services staff and reporting staff. Generally, self-identification of an IDD would be for the specific purpose of receiving accommodations. No changes were made as a result of this comment.

The new section is adopted under Texas Education Code, §61.0664, Collection and Study of Data on Participation of Persons with Intellectual and Developmental Disabilities in Higher Education, which requires the board to collect and maintain data relating to undergraduate and graduate level participation of persons with intellectual and developmental disabilities (IDD) at institutions of higher education.

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. TEXAS SUCCESS INITIATIVE

19 TAC §4.54

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §4.54, concerning the Texas Success Initiative (TSI), to incorporate into existing rules changes that address the college readiness benchmarks for the new College Board SAT examinations administered on or after March 5, 2016 without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3807). Specifically, the amendment to §4.54(a)(1)(B), the TSI exemption for the SAT examinations, would add the college readiness benchmarks set by The College Board and would provide additional clarification of rule application.

No comments were received concerning these amendments.

The amendments are adopted under Texas Education Code (TEC), §51.3062, which provides the Coordinating Board with the authority to establish policies and procedures relating to the TSI and §51.307, which provides the Coordinating Board with the authority to adopt and publish rules and regulations to effectuate the provisions of Chapter 51, Subchapter F of the TEC.

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CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §5.5

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §5.5 concerning the Uniform Admission Policy without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3220). Specifically, House Bill 2472, passed by the 84th Texas Legislature, Regular Session, repealed Texas Education Code (TEC) §51.803(e), which indicated The University of Texas at Austin would lose the authority to offer admission under TEC §51.803(a-1) after the 2017 - 2018 academic year. As a result, the institution will continue indefinitely to have the authority under TEC §51.803(a-1) to limit its automatic admission of entering first-time freshmen in the top 10 percent of their high school classes to no more than 75 percent of the institution's enrollment capacity for first-time entering undergraduate students.

No comments were received concerning these amendments.

The amendments are adopted under the Texas Education Code, §51.803, which provides the Coordinating Board with the authority to adopt rules for the Uniform Admission Policy.

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CHAPTER 13. FINANCIAL PLANNING SUBCHAPTER M. TOTAL RESEARCH EXPENDITURES

19 TAC §§13.300 - 13.304

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new Subchapter M, Total Research Expenditures, §§13.300 - 13.304, concerning standards and accounting

methods for determining total research expenditures. Section 13.302 and §13.303 are adopted with changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3220). Sections 13.300, 13.301, and 13.304 are adopted without changes. The intent of these new sections is to prescribe standards and accounting methods for total restricted research expenditures required by Texas Education Code, Chapter 62, Subchapter C, §62.053.

Four comments were received. Two comments were received from The University of Texas at Austin (UT Austin) and two comments were received from the Texas Tech University System (TTU System).

Comment: UT Austin suggested to include state appropriated trustee funds as part of the reconciliation of research expenses between Annual Financial Report (AFR) and the total Research and Development (R&D) expenditures by adding them to the AFR total, in §13.303(c)(4) of the proposed subchapter.

Staff response: No changes were made to the proposed rules. Any research expenses from state appropriated trustee funds are already part of the AFR total before any reconciliation is done. Therefore no additional reconciliation is needed. Such an addition of research expenditures from state appropriated trustee funds in §13.303(c)(4) would count these expenses twice, in effect.

Comment: UT Austin suggested to add an additional reconciliation in §13.303(c), which would be a new subsection (c)(6), by adding expenditures from the Dell Medical School that would not be reported in the AFR of the school's institution.

Staff response: No changes were made to the proposed rules. Medical schools report total research expenditures separately from their institutions. The reason is that medical schools collect and report data for different special interest areas than their academic institutions.

Comment: TTU System suggested to strike the clause "part of the Annual Financial Report" from the definition for the Sources and Uses Template, given in proposed §13.302(9).

Staff response: Staff agrees and amended the section accordingly. Without the clause the definition aligns with the existing definition for the Sources and Uses Template in 19 TAC Chapter 13, §13.122(20).

Comment: TTU System suggested to change the citation of statute giving authority to the proposed rules in §13.301. The suggestion was to strike the reference to Texas Education Code (TEC) §62.051, which establishes the Texas Research University Fund, leave the citation of §62.053, which gives expressive authority to establish standards and accounting methods, and to add a reference to TEC §62.134, which provides funds to the Core Research Support fund based on total research expenditures.

Staff response: No changes were made to the proposed rules. The wording as originally proposed cites the section of the TEC that gives authority to the Coordinating Board to prescribe the standards and accounting methods for total research expenditures. The additional reference to TEC §62.134 does not authorize but in turn cites the same §62.053 as proposed.

The rules are adopted under Texas Education Code, Chapter 62, Subchapter C, §62.053, which authorized the Coordinating Board to prescribe standards and accounting methods for determining the amount of total research funds expended.

§13.302. *Definitions.*

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

(1) Annual Financial Report (AFR)--Institutional financial report for one fiscal year as required by Texas Education Code, §51.005.

(2) Areas of Special Interest--Major research topics important to the public as listed in the Research Expenditure Survey.

(3) Coordinating Board or Board--The Texas Higher Education Coordinating Board.

(4) Research Expenditures or Expenditures--In a specific fiscal year, expenditure of funds paid out by an institution to support institutional Research and Development activities.

(5) Pass-through to sub-recipient--External award funds that are passed from one entity to a sub-recipient. The sub-recipient expends the award funds on behalf of, or in connection with, the pass-through entity.

(6) Research and Development (R&D)--All research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions:

(A) Research--The systematic study directed toward fuller scientific knowledge or understanding of the subject studied.

(B) Development--The systematic use of knowledge or understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

(C) R&D Training--R&D also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(7) Research Expenditure Survey--Instrument that establishes total R&D expenditures for each institution by research field and areas of special interest, both accounted by funding source. The survey includes a Research Expenditure Survey, specific definition of R&D, and reporting guidelines for R&D activities.

(8) Research fields--Subject areas for R&D, as listed in the Research Expenditure Survey.

(9) Sources and Uses Template--An annual survey of Texas general academic and health-related institutions to detail financial information and provide specific information about revenues and expenditures.

§13.303. *Standards and Accounting Methods for Determining Total Research Expenditures.*

(a) Each institution reports R&D expenditures annually in the Research Expenditure Survey.

(b) R&D expenditures for Texas A&M University include consolidated expenses from Texas A&M University and its service agencies.

(c) Research expenses from the AFR are reconciled to the total R&D expenditures of the Research Expenditure Survey by a:

(1) Decrease of the AFR total by the amount of R&D expenses that do not meet the narrow definition of R&D expenditures used in the Coordinating Board's Research Expenditure Survey.

(2) Increase of the AFR total by the amount of indirect costs associated with expenses for R&D as reported through the Research Expenditure Survey.

(3) Increase of the AFR total by the amount of capital outlay for research equipment, not including R&D plant expenses or construction.

(4) Increase of the AFR total by the amount of expenditures for conduct of R&D made by an institution's research foundation, or 501(c) corporation on behalf of the institution, and not reported in the institution's AFR, including indirect costs.

(5) Increase of the AFR total by the amount of pass-throughs from Texas Engineering Experiment Station, as defined for the Research Expenditure Survey.

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CHAPTER 21. STUDENT SERVICES

SUBCHAPTER C. HINSON-HAZLEWOOD COLLEGE STUDENT LOAN PROGRAM

19 TAC §§21.53 - 21.55

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §21.53 - 21.55, concerning the Hinson-Hazlewood College Student Loan Program (HHCSLP), without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3221). Specifically, §21.53 is amended to remove the definition for "career college", which does not meet the definition of an eligible institution as defined in Texas Education Code, §61.003. The section has been renumbered accordingly.

The amendments to §21.54 regarding the eligibility of institutions is to align the language in rules with the eligibility provisions in Texas Education Code, §61.003, and §21.049, therefore removing career colleges. The previous language has been stricken.

The amendments to §21.55 regarding student eligibility requirements is to remove the reference to students attending career colleges, because these institutions are not eligible to participate in the loan program. The section has been renumbered accordingly.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, Chapter 52, which states that the Coordinating Board shall administer the student loan program authorized by this chapter pursuant to Article III, §§50b-4, 50b-5, 50b-6, and 50b-7, of the Texas Constitution.

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SUBCHAPTER II. EDUCATIONAL AIDE EXEMPTION PROGRAM

19 TAC §§21.1080, 21.1081, 21.1083 - 21.1085, 21.1087, 21.1088

The Texas Higher Education Coordinating Board adopts amendments to Chapter 21, Subchapter II, §§21.1080, 21.1081, 21.1083 - 21.1085, 21.1087, and 21.1088, concerning the Educational Aide Exemption Program, with changes to §21.1083(b) of the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3223). Specifically, the amendment to §21.1080 strikes reference to the former citation, §54.214, which was re-designated as §54.363 in 2011. In §21.1080 the term "Educational Aides" has been amended to show capitalization.

Changes to §21.1081, regarding Definitions, introduce terms relevant to new requirements for students receiving continuation awards, beginning fall 2014 (Senate Bill 1210, 83rd Texas Legislature, Regular Session). Amendments to program rules are just now being made due to the lack of program funding for FY 2014 and FY 2015. The new provisions include a grade point average requirement for graduate and undergraduate students and a loss of eligibility once an undergraduate student reaches the credit hour limit for formula funding. The addition of definitions for "Continuation Award" and "Excessive Hours" caused subsequent definitions to be renumbered. In addition, the definition of "Financial Need" is revised to align with the definition found in other state programs.

The amendments to §21.1083 reflects two subsections, (a) and (b), to distinguish between the general eligibility requirements and the provisions for continuation awards. In subsection (a)(3), the section number for "Hardship Provisions" is updated from §21.1089 to §21.1088. The term "Resident" has been capitalized. New subsection (b) includes the Senate Bill 1210, 83rd Texas Legislature requirements regarding grade point average and number of completed semester credit hours for continuation awards and the proposed text as published in the May 6, 2016, issue of the *Texas Register* has been amended to remove the following language, "receiving a Continuation Award in fall 2014 or later,".

The titles for §21.1084 and §21.1085 have been updated to reflect current rules. The amendments to §21.1085(a) and (b) state that the exemption covers a student's full tuition and mandatory fee charges and only applies to courses for which an institution receives formula funding. Outdated language has been removed.

The amendments to §21.1087 adds the Texas Education Code citation, §21.050(c), which authorizes an exemption from student teaching for Educational Aide award recipients.

The amendments to §21.1088 outlines hardship provisions that institutions must follow to allow an individual, even though he or she failed to meet program grade point average requirements, to receive an exemption if that failure was due to circumstances outlined in statute as a basis for special consideration. Such circumstances include illness, caring for another person, military deployment or other just causes acceptable to the institution. In addition, in keeping with Senate Bill 1210, the new sections indicate institutions may, on a showing of good cause, allow an undergraduate to receive the exemption although he or she has completed a number of semester credit hours considered excessive under §21.1083(b) of this subchapter (relating to Continuation Awards). The former language relating to hardship provisions for recipients who are unable to remain employed for the full term has been stricken.

No comments were received regarding the amendments however, the staff discovered that the proposed text in §21.1083(b) as published in the May 6, 2016, issue of the *Texas Register* should be amended to remove the following language, "receiving a Continuation Award in fall 2014 or later,".

The amendments are adopted under the Texas Education Code, §54.363 which provides the Coordinating Board with the authority to adopt rules to implement the Educational Aide Exemption Program.

§21.1083. *Eligible Students.*

(a) To receive an award through the Educational Aide Exemption Program, a student must:

- (1) be a Resident of Texas;
- (2) have met the definition of an Educational Aide at some time during the five years preceding the term or semester for which the student is awarded his or her initial exemption;
- (3) be employed in some capacity by a school district in Texas during the full term for which the student receives the award unless granted a hardship waiver as described in §21.1088 of this title (relating to Hardship Provisions);
- (4) show Financial need;
- (5) if he or she received an exemption through this subchapter prior to the fall 2012 semester, be enrolled in courses required for teacher certification at the institution granting an exemption under this subchapter or (if enrolled in lower-level course-work), sign a statement indicating an intention to become certified as a teacher and teach in Texas;
- (6) if he or she received his or her first award through this subchapter in fall 2012 or later, be enrolled at the institution granting an exemption under this subchapter in courses required for teacher certification in one or more subject areas determined by the Texas Education Agency to be experiencing a critical shortage of teachers at the public schools in this state;
- (7) meet the academic progress standards of the institution;
- (8) follow application procedures and schedules as indicated by the Board;
- (9) have a statement on file with the institution of higher education indicating the student is registered with the Selective Service System as required by federal law or is exempt from Selective Service registration under federal law; and

(10) apply for an exemption by the end of the term for which the exemption is to apply.

(b) If a person receiving a Continuation Award at the beginning of the term or semester in which the award is received must also:

(1) if classified as an undergraduate or a graduate, be meeting the institution's financial aid grade point average requirement for making satisfactory academic progress towards a degree or certificate in accordance with the institution's policy regarding eligibility for financial aid, unless granted a hardship waiver by the institution in keeping with §21.1088 of this title (relating to Hardship Provisions); and

(2) if classified as a resident undergraduate, have not completed a number of semester credit hours that is considered to be excessive under Texas Education Code, §54.014, unless granted a hardship waiver by the institution in keeping with §21.1088 of this title (relating to Hardship Provisions). In determining the number of hours an undergraduate has completed, semester credit hours completed include transfer credit hours that count towards the person's undergraduate degree or certificate requirements, but exclude:

(A) hours earned exclusively by examination;

(B) hours earned for a course for which the person received credit toward the person's high school academic requirements; and

(C) hours earned for developmental courses that the institution required the person to take under Texas Education Code, §51.3062 or under the former provisions of Texas Education Code, §51.306.

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 KK. MATH AND SCIENCE SCHOLARS LOAN REPAYMENT PROGRAM

19 TAC §§21.2021 - 21.2029

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new Chapter 21, Subchapter KK, §§21.2021 - 21.2029 concerning the Math and Science Scholars Loan Repayment Program. Section 21.2026 is adopted with a minor change to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3225). Sections 21.2021 - 21.2025 and 21.2027 - 21.2029 are adopted without changes and will not be republished. The 83rd Texas Legislature authorized the Math and Science Scholars Loan Repayment Program. However, funds for the Program were first appropriated by the 84th Texas Legislature. The statute specifies that awards will first be made based on teaching service during the 2016-2017 school year. Texas Education Code, §61.9840 states that the Coordinating Board shall adopt rules necessary for the administration of this program.

No comments were received regarding the new rules.

The new rules are adopted under the Texas Education Code, §61.9840, which authorizes the Coordinating Board to adopt rules necessary for the administration of the Math and Science Scholars Loan Repayment Program.

§21.2026. Eligibility for Disbursement of Award.

To be eligible for disbursement of a loan repayment award, a teacher must:

(1) for teachers having a probationary teaching certificate during the initial year in the Program, have received a standard teaching certificate by the beginning of the second year of employment, to qualify for a second-year award;

(2) for the first four years of employment, submit all required end-of-year forms verifying completion of one, two, three, or four consecutive years of employment as a full-time classroom teacher in a Title I school; and

(3) following the first four years of employment, submit all required end-of-service period forms verifying completion of five, six, seven, or eight consecutive years of employment as a full-time classroom teacher in any Texas public school.

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CHAPTER 25. OPTIONAL RETIREMENT PROGRAM

SUBCHAPTER A. OPTIONAL RETIREMENT PROGRAM

19 TAC §§25.3 - 25.6

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§25.3 - 25.6, concerning the Optional Retirement Program, with changes to the proposed text of §§25.3, 25.4, and 25.6 as published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3588). Section 25.5 is adopted without changes. These amendments incorporate changes in state law and IRS-related interpretations, make technical corrections and add clarifying language.

The following comments were received from the Teacher Retirement System of Texas (TRS).

Comment: TRS expressed concern that the proposed replacement throughout Ch. 25 of "appropriate ORP election forms" with a specific reference to the TRS 28 ORP election form would potentially restrict TRS' future ability to change the name of the form or to modify its format for ORP election (i.e., online election). TRS recommended removing the specific reference to the TRS 28 and using a more generic description, such as requiring

the individual to elect ORP "in the appropriate form and manner as determined by TRS" or by "signing the form prescribed by TRS."

Staff response: THECB staff's intention in proposing that "appropriate ORP election forms" should be changed to a specific reference to the TRS 28 form is to make it clear to institutional staff and ORP-eligible employees that the TRS 28 is the official ORP election form and as such, is the only form that an ORP-eligible employee can use to elect to participate in ORP in lieu of TRS. Institutions provide ORP-eligible employees with additional local forms that are required to be completed as part of the process to enroll in ORP but these additional forms are sometimes misinterpreted by ORP-eligible employees as the actual election form, which could result in a failure to timely elect ORP. Specifying the name of the official election form in the rules would help reduce this confusion. Staff responded to this comment by adding "or its successor" when the specific name of the form is used. TRS indicated that this adjustment would address their concern.

The changes based on this comment are adopted in §§25.3(11)(A), 25.4(f), 25.4(f)(1)(A), 25.4(g)(1)(A), 25.4(g)(2), 25.4(i), and 25.6(a)(4).

Comment: TRS expressed concern that the proposed removal of the text indicating that employees must "submit" their signed TRS 28 form to the institution might be misinterpreted by employees to mean that they can send the signed form directly to TRS, which would be problematic because the institution must complete a certification statement on the form before it is submitted to TRS. Additionally, the proposed deletion of references to submitting the TRS 28 to the institution could result in a delay between the time the employee signs the form and submits it, which could be problematic for determining whether a timely election has been made. TRS recommended that the proposed deletion of the references to submitting the TRS 28 not be made.

Staff response: THECB staff agrees with this recommendation and has removed the proposed deletions of the references to submitting the TRS 28 form except in §25.4(g), which establishes the ORP Participation Start Date. TRS has indicated that in cases where a form is submitted within a few days of the signature date, TRS will use the signature date (rather than the submission date) as the date of election. The Participation Start Date is based on the election date, so this subsection should not include references to the submission date, only the signature date.

The changes based on this comment are adopted in §§25.3(11)(A), 25.4(f), 25.4(f)(1)(A), 25.4(i), and 25.6(a)(4).

Comment: TRS expressed concern that part of the proposed additional text in the definition of "Initial ORP Eligibility Date" in §25.3(7) could be confused with the minimum amount of employment necessary to be eligible for active TRS membership (which is one of the requirements to become eligible to elect ORP).

Staff response: THECB staff agrees with this comment and has removed the proposed new text in §25.3(7) that could cause the confusion ("including employment in an ORP-eligible position that is expected to be full-time (i.e., 100 percent effort) for a period of at least one full semester or four and one-half months").

The following comment was received from The University of Texas System:

Comment: UT System expressed concern that the proposed deletion of §25.4(o)(4) and the proposed new text in

§25.4(o)(2)(A) - (C) could cause IRS-related issues for institutions that are attempting to rectify an administrative error that resulted in an ORP-eligible employee not being timely provided notice of his or her eligibility to elect ORP. The proposed deletion of §25.4(o)(4) would eliminate authority for institutions to automatically correct a "Failure to Notify" error by extending the 90-day ORP election period. The proposed new text would prohibit institutions from extending an employee's 90-day ORP election period for any reason. UT System indicated that the proposed changes would place institutions "between a rock and a hard place" when using the IRS correction programs that are available to plan sponsors in these situations. UT System recommended that §25.4(o)(4) not be deleted and that the proposed new text in §25.4(o)(2)(A) - (C) not be adopted.

Staff response: THECB staff agrees that the proposed changes could be problematic for institutions that are attempting to rectify a "Failure to Notify" administrative error using the IRS correction programs. Staff would like additional time to pursue further research on this concern and have removed the proposed deletion of §25.4(o)(4) and the proposed new text in §25.4(o)(2)(A) - (C).

Reference correction: THECB staff corrected a reference error in §§25.4(f)(3)(B) and 25.4(f)(5). The references were updated from §25.5(f) and (g) to §25.5(f) and (h).

The amended sections are adopted under the Texas Education Code, §61.027, which provides the Coordinating Board with general rule-making authority; Texas Government Code, §830.002(c), which provides the Coordinating Board with authority to develop policies, practices, and procedures to provide greater uniformity in the administration of ORP; §830.101(b), which provides the Coordinating Board with specific rulemaking authority to establish eligibility for participation in ORP; and §830.006(b), which provides that institutions must keep records, make certifications, and furnish to the Coordinating Board information and reports as required by the Coordinating Board to enable it to carry out its ORP-related functions.

§25.3. Definitions.

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

(1) Active Participation--Period of employment during which an ORP participant makes regular ORP contributions through payroll deduction based on the statutory percentage of the employee's salary earned during that period, which along with the matching employer contributions, are sent by the ORP employer to an authorized ORP company. A faculty member who is not employed by a Texas public institution of higher education during the three summer months but who was participating in ORP at the end of the spring semester immediately preceding the summer and who resumes ORP participation with the same or another Texas public institution of higher education in the fall semester immediately following that summer shall be considered an active participant during the three summer months.

(2) Applicable Retirement System--The Teacher Retirement System of Texas for employees of Texas public institutions of higher education and the Employees Retirement System of Texas for employees of the Board.

(3) Board--The Texas Higher Education Coordinating Board.

(4) Break in Service--A period following a participant's termination of all employment with all Texas public institutions of higher education or the Board that is at least one full calendar month in which

no ORP contribution is made, excluding the three summer months for faculty members who were participating in ORP at the end of the spring semester immediately preceding the summer and who resume ORP participation with the same or another Texas public institution of higher education in the fall semester immediately following that summer, and excluding periods of leave-without-pay. A transfer between Texas public institutions of higher education with less than a full calendar month in which no ORP contribution is made shall not be considered a break in service.

(5) ERS--Employees Retirement System of Texas.

(6) Full-time--For purposes of determining initial ORP eligibility, the term "full-time" shall mean employment for the standard full-time workload established by the institution ("100 percent effort").

(7) Initial ORP Eligibility Date--The first day of an ORP-eligible employee's 90-day ORP election period. An employee's initial ORP eligibility date shall be the first date that the employee meets all four criteria in §25.4(a) of this title (relating to Eligibility Criteria).

(8) Initial ORP Eligibility Period--The period of time an ORP participant must be employed on a full-time basis ("100 percent effort") beginning with the initial ORP eligibility date, as defined in paragraph (7) of this section, and ending after one full semester or four and one-half months.

(9) Major Department Requirement--One of the factors used to determine whether a position is ORP-eligible in the "Other Key Administrator" category as defined in §25.4(k) of this title (relating to Eligible Positions). A department or budget entity at a public institution of higher education shall meet this requirement if:

(A) the department or budget entity is considered a "major" department by the institution based on the specific organizational size and structure of that institution; and

(B) the department or budget entity has its own budget, policies and programs.

(10) ORP--Optional Retirement Program.

(11) ORP Election Period--The period of time during which ORP-eligible employees have a once-per-lifetime opportunity to elect to participate in ORP in lieu of the applicable retirement system. The ORP election period shall begin on an employee's initial ORP eligibility date, as defined in paragraph (7) of this section, and shall end on the earlier of:

(A) the date the employee makes an ORP election by signing the TRS 28 ORP election form (or its successor) or, for employees of the Board, the ORP election form provided by the Board, and submitting the ORP election form to the ORP employer for certification; or

(B) the 90th calendar day after the employee's initial ORP eligibility date, not including the initial ORP eligibility date and including the 90th calendar day. If the 90th calendar day after the initial ORP eligibility date falls on a weekend or holiday, the deadline shall be extended until the first business day after the 90th calendar day.

(12) ORP Employer--All public institutions of higher education in Texas and the Board.

(13) ORP Retiree--An individual who participated in ORP while employed with a Texas public institution of higher education or the Board and who established retiree status by meeting the applicable retiree insurance requirements and enrolling in retiree group insurance provided by ERS, The University of Texas System, or The Texas A&M University System, regardless of whether currently enrolled.

(14) Principal Activity Requirement--One of the factors used to determine whether a position is ORP-eligible based on the percent of effort required by the position to be devoted to ORP-eligible duties. The principal activity requirement shall be met if at least 51 percent of the position's duties are devoted to ORP-eligible duties in one of the ORP-eligible categories defined in §25.4(k) of this title (relating to Eligible Positions), with two exceptions:

(A) During Initial ORP Eligibility Period. During an employee's initial ORP eligibility period (when the position is required to be 100 percent effort to qualify as ORP-eligible), if the ORP-eligible duties associated with an ORP-eligible category are less than 51 percent of the activities for a particular position, the position shall be considered to meet the principal activity requirement if all of the position's other duties are ORP-eligible duties under one of the other ORP-eligible categories defined in §25.4(k) of this title (relating to Eligible Positions), for a total of 100 percent effort devoted to ORP-eligible duties, as would be the case, for example, for a position with required duties that are 50 percent instruction and/or research (faculty position) and 50 percent department chair (faculty administrator position).

(B) After Initial ORP Eligibility Period. For a participant who has completed the initial ORP eligibility period but who has not vested in ORP and who fills a position that is less than 100 percent effort but at least 50 percent effort, then the principal activity requirement shall be considered met if at least 50 percent effort is devoted to applicable ORP-eligible duties in one of the ORP-eligible categories defined in §25.4(k) of this title (relating to Eligible Positions).

(15) TRS--Teacher Retirement System of Texas.

(16) Vesting Requirement--The minimum amount of ORP participation required to attain vested status. An ORP participant shall be considered vested on the first day of the second year of active participation in lieu of the applicable retirement system, as provided in §25.5(a) of this title (relating to Vesting Requirement). A vested participant shall have ownership rights to the employer contributions in his or her ORP accounts, meaning that, upon termination of employment with all ORP employers or reaching age 70-1/2, he or she may access both the employee and employer contributions (and any net earnings) in his or her accounts. A vested participant shall remain in ORP even if subsequently employed in a position that is not ORP-eligible, as provided in §25.5(f) of this title (relating to Employment in a non-ORP-Eligible Position).

§25.4. Eligibility to Elect ORP.

(a) Eligibility Criteria. An employee shall be eligible to make a once-per-lifetime irrevocable election of ORP in lieu of the applicable retirement system if all of the following criteria are met:

(1) ORP-eligible Position: Employment in an ORP-eligible position as defined in subsection (k) of this section;

(2) 100 Percent Effort: Employment in an ORP-eligible position that is expected to be full-time (i.e., 100 percent effort) for a period of at least one full semester or four and one-half months.

(A) Initial Eligibility Period. This eligibility requirement is an employee's initial ORP eligibility period, as defined in §25.3 of this title (relating to Definitions).

(B) Combining of Percent Effort at Different Institutions Not Permitted. The 100 percent effort requirement shall be satisfied by employment with only one institution, unless an individual is simultaneously employed in ORP-eligible positions with more than one component institution under the same governing board that operates its ORP either as a single plan for all components or includes the applicable components in the same plan, in which case, the employee's

percent effort at each component may be combined to meet the minimum 100 percent effort requirement;

(3) **First Election Opportunity:** No previous opportunity to elect ORP in lieu of the applicable retirement system during the current or a prior period of employment at the same or another Texas public institution of higher education or the Board; and

(4) **Active Membership in Retirement System:** Current membership or eligibility for active membership in the applicable retirement system as provided in subsection (h) of this section.

(b) **ORP Participation after Election.** Once an employee makes an election of ORP, the employee's eligibility to continue participating in ORP shall be determined in accordance with §25.5 of this title (relating to ORP Vesting and Participation).

(c) **Non-Texas ORP Plans.** Prior enrollment, participation or vested status in any plan other than the ORP plan authorized under Texas Government Code, Chapter 830, shall have no bearing on an employee's eligibility to elect ORP, except that the employee must be eligible for active membership in the applicable retirement system as provided in subsection (h) of this section.

(d) **Separate Elections.** An election of ORP in lieu of TRS at a Texas public institution of higher education shall be considered separate and distinct from an election of ORP in lieu of ERS at the Board.

(1) An employee's prior election of ORP in lieu of ERS at the Board on or after September 1, 1994, shall have no bearing on that person's eligibility to elect ORP in lieu of TRS at a Texas public institution of higher education.

(2) An election of ORP by a Board employee prior to September 1, 1994, was made in lieu of TRS; therefore, an institution shall treat an employee's election of ORP in lieu of TRS at the Board prior to September 1, 1994, in the same manner as if the election had been made at an institution.

(3) An employee's prior election of ORP in lieu of TRS at an institution, or an employee's election of ORP in lieu of TRS at the Board prior to September 1, 1994, shall have no bearing on that person's eligibility to elect ORP in lieu of ERS at the Board.

(e) **Opportunity to Elect.**

(1) The governing board of each Texas public institution of higher education shall provide an opportunity to all eligible employees in the component institutions governed by the board to elect ORP in lieu of TRS in accordance with these rules. The Board shall provide an opportunity to all eligible employees to elect ORP in lieu of ERS in accordance with these rules.

(2) **Documentation.**

(A) ORP employers shall maintain documentation in each ORP-eligible employee's employment record that an opportunity to elect ORP was provided. Such documentation shall indicate the beginning and ending dates of the employee's ORP election period.

(B) The documentation required by this paragraph may be maintained in an electronic format in accordance with applicable provisions for such records.

(C) This paragraph applies to employees who become eligible to elect ORP on or after September 1, 2006, including employees who are hired for the Fall 2006 semester whose first active duty date is in the month of August 2006.

(f) **90-Day ORP Election Period.** An employee who meets the eligibility criteria in subsection (a) of this section shall be provided

an ORP election period, as defined in §25.3 of this title (relating to Definitions), during which an election to participate in ORP may be made by signing the TRS 28 ORP election form (or its successor) or, for employees of the Board, the ORP election form provided by the Board, and submitting the ORP election form to the ORP employer for certification.

(1) **Beginning and Ending Dates.** The 90-day ORP election period shall begin on the employee's initial ORP eligibility date, as defined in §25.3 of this title (relating to Definitions), and shall end on the earlier of:

(A) the date the employee makes an ORP election by signing the TRS 28 ORP election form (or its successor) or, for employees of the Board, the ORP election form provided by the Board, and submitting the ORP election form to the ORP employer for certification; or

(B) the 90th calendar day after the employee's initial ORP eligibility date, not including the initial ORP eligibility date and including the 90th calendar day. If the 90th calendar day after the initial ORP eligibility date falls on a weekend or holiday, the deadline shall be extended until the first business day after the 90th calendar day.

(2) **Written Notification.** In accordance with §25.6(h)(2) of this title (relating to ORP Election Period Dates), each ORP employer shall, within 15 business days of an ORP-eligible employee's initial ORP eligibility date, provide written notification to the ORP-eligible employee that indicates the beginning and ending dates of his or her ORP election period and the local procedures for submitting the election form and additional required paperwork.

(3) **Once-per-Lifetime Irrevocable Election.** An employee who is eligible to elect ORP shall have only one opportunity during his or her lifetime, including any future periods of employment in Texas public higher education, to elect ORP in lieu of the applicable retirement system, and the election may never be revoked.

(A) **Default Election.** Failure to elect ORP during the 90-day ORP election period shall be a default election to continue membership in the applicable retirement system.

(i) **ORP in Lieu of TRS.** An employee of a Texas public institution of higher education who does not elect ORP in lieu of TRS during the 90-day ORP election period shall never again be eligible to elect ORP in lieu of TRS, even if subsequently employed in an ORP-eligible position at the same or another Texas public institution of higher education.

(ii) **ORP in Lieu of ERS.** An employee of the Board who does not elect ORP in lieu of ERS during the 90-day ORP election period shall never again be eligible to elect ORP in lieu of ERS, even if subsequently employed in an ORP-eligible position at the Board.

(B) **Irrevocable.** An election of ORP shall be irrevocable. An employee who elects ORP shall remain in ORP, except as provided by §25.5(f) and (h) of this title (relating to ORP Vesting and Participation). A default election of the applicable retirement system, as described in subparagraph (A) of this paragraph shall be irrevocable. An employee who fails to elect ORP during the ORP election period shall remain in the applicable retirement system in accordance with the laws and rules governing eligibility for the retirement system.

(C) **Separate Elections.** As provided in subsection (d) of this section, an election of ORP in lieu of TRS at a Texas public institution of higher education shall be considered separate and distinct from an election of ORP in lieu of ERS at the Board; therefore, an election of ORP in lieu of one retirement system shall not preclude an eligible employee's election of ORP in lieu of the other retirement

system if subsequently employed in a position that is eligible to elect ORP in lieu of the other retirement system.

(4) **Company Selection Required at Election.** An employee who elects to participate in ORP shall select an ORP company from the ORP employer's list of authorized companies in conjunction with the election of ORP. An ORP employer shall establish a policy that failure to select an authorized company may result in disciplinary action up to and including termination of employment because retirement contributions are required by law as a condition of employment.

(5) **Waiver of Retirement System Benefits.** An election of ORP shall be a waiver of the employee's rights to any benefits that may have accrued from prior membership in the applicable retirement system, other than benefits resulting from transfers of service credit between the applicable retirement systems and reinstatement of withdrawn service credit under the ERS/TRS service transfer law, even if the participant has met the applicable system's vesting requirement. Except as provided by §25.5(f) and (h) of this title (relating to ORP Vesting and Participation) and the ERS/TRS service transfer law, an ORP participant shall not be eligible to become an active member of the applicable retirement system or receive any benefits from the system other than a return of employee contributions that may have been deposited with the system (and accrued interest, if any).

(g) **Participation Start Date.** The first day that ORP contributions are made shall be determined as follows:

(1) **Election on Initial ORP Eligibility Date.**

(A) **Employees of Institutions of Higher Education.**

(i) **New Employees.** For new employees who sign the TRS 28 ORP election form (or its successor) on or before their initial ORP eligibility date, the participation start date shall be the initial ORP eligibility date (i.e., first day of ORP-eligible employment).

(ii) **Transfers within Same Institution.** For employees who transfer from a non-ORP-eligible position to an ORP-eligible position within the same institution and who sign the TRS 28 ORP election form (or its successor) on or before their initial ORP eligibility date, the participation start date shall be the initial ORP eligibility date (i.e., first day of ORP-eligible employment), unless the initial ORP eligibility date is not the first day of the month, in which case, to avoid dual contributions to both TRS and ORP during the same month, as provided in §25.6(a)(4) of this title (relating to No Dual Contributions), the participation start date shall be the first day of the month following the month in which the initial ORP eligibility date falls.

(B) **Employees of the Board.**

(i) **New Employees.** For new Board employees who sign the ORP election form provided by the Board on or before their initial ORP eligibility date, the participation start date shall be the initial ORP eligibility date (i.e., first day of ORP-eligible employment).

(ii) **Transfers within the Board.** For Board employees who transfer from a non-ORP-eligible position at the Board to an ORP-eligible position at the Board, and who sign the ORP election form provided by the Board on or before their initial ORP eligibility date, the participation start date shall be the initial ORP eligibility date (i.e., first day of ORP-eligible employment), unless the initial ORP eligibility date is not the first day of the month, in which case, to avoid dual contributions to both ERS and ORP during the same month, as provided in §25.6(a)(4) of this title, the participation start date shall be the first day of the month following the month in which the initial ORP eligibility date falls.

(2) **Election After Initial ORP Eligibility Date.** The participation start date for ORP-eligible employees who sign the TRS 28

ORP election form (or its successor) or, for employees of the Board, the ORP election form provided by the Board, after their initial ORP eligibility date, shall be the first day of the month following the date that the form is signed, with the following exceptions:

(A) **During Month of Initial ORP Eligibility Date.** ORP employers may establish a policy that employees who elect ORP by signing the TRS 28 ORP election form (or its successor) or, for employees of the Board, the ORP election form provided by the Board, after their initial ORP eligibility date but before the end of the month in which the initial ORP eligibility date falls may be treated as if they had signed the form on or before their initial ORP eligibility date as provided by paragraph (1) of this subsection, provided the employee earns enough compensation between the date of the election and the end of the month in which the initial ORP eligibility date falls to cover the employee's ORP contribution for the entire month.

(B) **After Month of Initial ORP Eligibility Date:** ORP employers may establish a policy that employees who elect ORP by signing the TRS 28 ORP election form (or its successor) or, for employees of the Board, the ORP election form provided by the Board, after the month in which their initial ORP eligibility date falls, but before the end of the month in which the form is signed, may start participating in the month in which the form is signed rather than the first of the following month, provided the employee earns enough compensation between the date of the election and the end of the month in which the form is signed to cover the employee's ORP contribution for the entire month. To avoid partial month payments, contributions for these participants shall be based on salary earned during the entire month in which the form is signed.

(C) **Retirement System Membership Before Election.** As provided in subsection (i) of this section, ORP-eligible employees who elect ORP after their initial ORP eligibility date, except as provided in subparagraph (A) of this paragraph, shall be reported as members of the applicable retirement system for any months prior to their election of ORP.

(h) **Active Membership in Retirement System Requirement.** Participation in ORP shall be an alternative to active membership in the applicable retirement system.

(1) A TRS retiree shall not be eligible to elect ORP in lieu of TRS at a Texas public institution of higher education.

(2) An ERS retiree shall not be eligible to elect ORP in lieu of ERS at the Board.

(i) **Automatic Retirement System Enrollment.** A new employee at a Texas public institution of higher education who is eligible to elect ORP in lieu of TRS shall be automatically enrolled in TRS until an election to participate in ORP is made by signing the TRS 28 ORP election form (or its successor) and submitting the TRS 28 to the institution for certification as provided in subsection (g) of this section. A new Board employee who is eligible to elect ORP in lieu of ERS shall be automatically enrolled in ERS until an election to participate in ORP is made by signing the ORP election form provided by the Board and submitting the ORP election form to the Board as provided in subsection (g) of this section.

(j) **Dual Employment in TRS/ORP Positions at Different Employers.**

(1) **Simultaneous Retirement Plan Membership Not Permitted.**

(A) **Dual Employment with Institution and Non-Higher Education TRS-Covered Employer.**

(i) Active TRS Membership not Permitted. A member of TRS who is employed in the Texas public school system (including all Texas Independent School Districts and regional educational service centers) or with any other Texas public educational institution or state agency that is covered by TRS but does not offer ORP in lieu of TRS, and who concurrently becomes employed in an ORP-eligible position with a Texas public institution of higher education and elects to participate in ORP, may not remain an active member of TRS as an employee of the non-higher education TRS-covered employer once ORP participation has started at the institution.

(ii) No TRS Contributions. Notwithstanding the participant's employment in what would otherwise be considered a TRS-eligible position at a non-higher education TRS-covered employer, TRS contributions may not be made for the participant by that employer while he or she is actively participating in ORP, but shall resume if the employee is required to return to active TRS membership as provided in paragraph (2) of this subsection.

(B) Dual Employment with Different Institutions.

(i) Active TRS Membership not Permitted. A member of TRS who is employed with a Texas public institution of higher education in a position that is eligible for TRS but is not ORP-eligible and who becomes concurrently employed with another Texas public institution of higher education in a position that is ORP-eligible and who elects to participate in ORP, may not remain an active member of TRS once ORP participation has started.

(ii) Retirement Contributions.

(I) No TRS Contributions. Notwithstanding the participant's employment in what would otherwise be considered a TRS-eligible position at an institution, TRS contributions may not be made for the participant by that institution while he or she is actively participating in ORP at another institution, but shall resume if the employee is required to return to active TRS membership as provided in paragraph (2) of this subsection.

(II) Before Vesting in ORP. An employee who elects ORP at one institution while concurrently employed in what would otherwise be a TRS-eligible position at another institution is not eligible for ORP contributions based on the participant's TRS-only employment prior to the participant vesting in ORP.

(III) After Vesting in ORP. Once the participant vests in ORP, the institution employing the participant in a position that would otherwise be eligible for TRS shall enroll him or her in ORP.

(2) Returning to TRS.

(A) Dual Employment with Institution and Non-Higher Education TRS-Covered Employer.

(i) Termination of Employment with Institution. If the individual described in paragraph (1)(A) of this subsection terminates all employment with the institution while concurrently employed in a TRS-eligible position with a non-higher education TRS-covered employer, then, regardless of ORP vesting status, he or she shall return to active TRS membership with the non-higher education TRS-covered employer and shall be ineligible for any future ORP participation in lieu of TRS, even if subsequently employed in an ORP-eligible position with the same or another institution.

(ii) Transfer to Non-ORP Eligible Position at Institution. If, prior to meeting the ORP vesting requirement, the individual described in paragraph (1)(A) of this subsection transfers to a position at the institution that is not ORP-eligible but is eligible for TRS, then he or she shall return to active TRS membership with both the institution and the non-higher education TRS-covered employer and shall

be ineligible for any future ORP participation in lieu of TRS, even if subsequently employed in an ORP-eligible position with the same or another institution.

(iii) Transfer to Non-Benefits-Eligible Position at Institution. In accordance with §25.5(g) of this title (relating to Employment in a Non-Benefits-Eligible Position), an individual described in paragraph (1)(A) of this subsection who transfers to a non-benefits-eligible position at the institution shall not be eligible for ORP contributions and shall not be eligible for active TRS membership. This individual shall remain ineligible for TRS contributions at the non-higher education TRS-covered employer while employed in the non-benefits-eligible position at the institution. If this individual subsequently terminates all employment with the institution, then the provisions in clause (i) of this subparagraph will apply.

(B) Dual Employment with Different Institutions.

(i) Termination of Employment in ORP-eligible Position Before Vesting. If, prior to satisfying the ORP vesting requirement, the individual described in paragraph (1)(B) of this subsection terminates ORP participation by terminating employment or transferring to a non-ORP-eligible position with the same institution while concurrently employed in a TRS-eligible position with another Texas public institution of higher education, then he or she shall return to active TRS membership and shall be ineligible for any future ORP participation in lieu of TRS, even if subsequently employed in an ORP-eligible position with the same or another institution.

(ii) Termination of Employment in ORP-eligible Position After Vesting. If, after satisfying the ORP vesting requirement, the individual described in paragraph (1)(B) of this subsection terminates employment in the ORP-eligible position by terminating employment with the institution or transferring to a non-ORP-eligible position while concurrently employed in a TRS-eligible position with another Texas public institution of higher education, then he or she shall not return to TRS membership and shall continue to make ORP contributions at the other institution based on the employment in the TRS-eligible position (i.e., a benefits-eligible position) as provided in paragraph (1)(B)(ii)(III) of this subsection.

(iii) Transfer to Non-Benefits-Eligible Position. In accordance with §25.5(g) of this title, an individual described in paragraph (1)(B) of this subsection who transfers from the ORP-eligible position to a non-benefits-eligible position at the same institution shall not be eligible for ORP contributions at that institution and shall not be eligible for active TRS membership at either institution while employed in the non-benefits-eligible position.

(I) Termination Before Vesting in ORP. If this individual terminates employment in the non-benefits-eligible position before satisfying the ORP vesting requirement, then the provisions in clause (i) of this subparagraph for an individual who terminates employment in an ORP-eligible position before vesting in ORP will apply.

(II) Termination After Vesting in ORP. If this individual terminates employment in the non-benefits-eligible position after satisfying the ORP vesting requirement, then the provisions in clause (ii) of this subparagraph for an individual who terminates employment in an ORP-eligible position after vesting will apply.

(k) Eligible Positions. The following positions shall be considered ORP-eligible. Only those employees who fill ORP-eligible positions and who meet the eligibility requirements established in this chapter shall be eligible to elect ORP or to continue participating in ORP prior to vesting.

(1) Faculty Member--A member of the faculty whose duties include teaching and/or research as a principal activity, as defined

in §25.3 of this title (relating to Definitions), and who holds the title of professor, associate professor, assistant professor, instructor, lecturer, or equivalent faculty title, including "visiting professor" if the position is at least one full semester in duration.

(2) Faculty Administrator--An administrator responsible for teaching and research faculty whose principal activity, as defined in §25.3 of this title (relating to Definitions), is planning, organizing, and directing the activities of faculty and who holds the title of dean, associate dean, assistant dean, director, department chair, or head of academic department.

(3) Executive Administrator--An administrator who holds the title of chancellor, deputy chancellor, vice chancellor, associate vice chancellor, assistant vice chancellor, or the equivalent, and an administrator who holds the title of president, executive vice president, provost, vice president, associate vice president, assistant vice president, or the equivalent.

(4) Other Key Administrator--An administrator other than a faculty administrator or an executive administrator whose position is considered a key administrative position within the institution's organizational structure and that meets the requirements of this paragraph. The most common position titles in this category are director or associate director, but included titles may vary by institution based on differences in organizational structure, size, mission, etc. All positions in this category, including positions with the title of director or associate director, shall meet the following criteria:

(A) serves as director or other administrative head of a major department or budget entity, as defined in §25.3 of this title (relating to Definitions), excluding the title of assistant director unless the assistant director position has responsibility for what is considered a major department or budget entity that is within a larger department or budget entity, as may be the case at large institutions;

(B) is responsible for the preparation and administration of the budget, policies, and programs of the major department or budget entity;

(C) usually reports to the office of a chancellor, president, vice chancellor, vice president, dean, or equivalent; and

(D) is generally and customarily recruited from the same pool of candidates that other colleges and universities across the nation are recruiting from for this type of position by, for example, advertising in national publications such as the Chronicle of Higher Education or in newsletters or websites of national professional associations or at meetings of such associations.

(E) A position shall not be considered ORP-eligible under this category unless it can be reasonably demonstrated that all of the applicable criteria have been met. If there is significant ambiguity concerning whether a position meets the criteria for this category, the default finding shall be that the position is not ORP-eligible.

(5) Librarian--A professional librarian who holds, at a minimum, a master's degree in library science or information science, and whose principal activity, as defined in §25.3 of this title (relating to Definitions), is library services.

(6) Athletic Coach--An athletic coach, associate athletic coach, or assistant athletic coach whose principal activity, as defined in §25.3 of this title (relating to Definitions), is coaching, excluding an athletic trainer, and excluding an athletic director or assistant athletic director unless the principal activity is coaching rather than administrative.

(A) Athletic trainers may be included in the "professional" category if the position requires the trainer to be a physician.

(B) Athletic directors whose principal activity is not coaching normally shall be included in one of the administrator categories.

(7) Professional--An employee whose principal activity, as defined in §25.3 of this title (relating to Definitions), is performing the duties of a professional career position, including, but not necessarily limited to, physician, attorney, engineer, and architect, that meets the following criteria:

(A) requires a terminal professional degree in a recognized professional career field that requires occupation-specific knowledge and appropriate professional licensure;

(B) is a non-classified position; and

(C) is generally and customarily recruited from the same pool of candidates that other colleges and universities across the nation are recruiting from for this type of position by, for example, advertising in national publications such as the Chronicle of Higher Education or in newsletters of national professional associations or at meetings of such associations.

(D) A position shall not be considered ORP-eligible under this category unless it can be reasonably demonstrated that all of the applicable criteria have been met. If there is significant ambiguity concerning whether a position meets the criteria for this category, the default finding shall be that the position is not ORP-eligible.

(8) Board Administrative Staff--A member of the executive or professional staff of the Board, as determined by the Commissioner of Higher Education, who fills a position with the following requirements:

(A) college graduation and prior experience in higher education or experience of such kind and amounts to provide a comparable background; and

(B) national mobility requirements similar to those of faculty.

(l) Position-Required Qualifications. An employee who meets the qualifications of a "professional" or a "librarian" as defined in subsection (k) of this section shall not be considered eligible to elect ORP as a professional or librarian unless the position requires the professional or librarian qualifications, respectively, as a principal activity. For example, an attorney who fills a position that does not require that the position be filled by an attorney shall not be considered ORP-eligible based solely on the fact that the person is an attorney.

(m) Counselors. The eligibility of counselors shall be determined as follows.

(1) Faculty. If the institution has established policies that consider and treat counselors in the same manner as faculty in such areas as, for example, employment contracts, oversight, and work schedules, then ORP eligibility for a counselor position shall be determined under the same requirements as a faculty position, except that the principal activity shall be counseling rather than teaching and/or research, and the title shall be counselor rather than the faculty titles listed in that category.

(2) Staff. If the institution has established policies that consider and treat counselors in the same manner as staff rather than faculty, in such areas as, for example, employment contracts, oversight, and work schedules, then ORP eligibility for a counselor position shall not be determined under the faculty category. Depending on the duties and required qualifications, a counselor who is considered staff rather than faculty may meet the criteria for one of the non-faculty ORP-eligible positions.

(n) Review of Positions for ORP Eligibility.

(1) Comprehensive Review. ORP employers shall periodically conduct a comprehensive review of all non-classified positions to ensure that ORP eligibility requirements are being applied fairly and consistently across all departments and divisions.

(2) New Position. ORP employers shall analyze newly created non-classified positions for ORP eligibility determination and shall maintain proper documentation of the analysis and determination for future reference.

(3) Re-classified Position. ORP employers shall re-classify a position as ORP-eligible if changes in the position's responsibilities or the employer's organizational structure result in a position that meets the ORP-eligibility requirements.

(A) Option to Elect ORP. ORP employers shall provide the incumbent in a position that is re-classified as ORP-eligible an opportunity to elect ORP as if newly hired into the position.

(B) Initial ORP Eligibility Date. The incumbent's initial ORP eligibility date, as defined by §25.3 of this title (relating to Definitions), shall be the date that the re-classification is effective, unless the re-classification is retro-active to a prior month, in which case, the initial ORP eligibility date shall be the date that the employee is notified of the re-classification.

(o) Administrative Errors.

(1) Orientation Procedures. Each ORP employer shall develop and implement effective orientation and enrollment procedures to ensure appropriate and timely processing of newly eligible employees' retirement plan choices, including procedures for both new employees and current employees who transfer to an ORP-eligible position.

(2) Rectification. In the event an administrative error occurs which prevents the normal processing of an ORP-eligible employee's election, the ORP employer shall rectify the error as soon as practicable and in a manner that results in a situation that is as close to the originally expected outcome as possible, within applicable federal statutes, laws, and regulations, including IRS correction procedures, and state statutes, laws, and rules.

(3) Documentation and Prevention. When an administrative error occurs, the ORP employer shall:

(A) maintain documentation of the error and the actions taken by the ORP employer to address the problem, with a copy placed in the employee's file; and

(B) immediately develop and implement appropriate administrative procedures to avoid such errors in the future.

(4) Failure to Notify Error. If an ORP employer fails to notify an ORP-eligible employee of his or her eligible status on or before the employee's initial ORP eligibility date, the ORP employer shall notify the eligible employee as soon as the oversight is discovered. The 90-day ORP election period for the eligible employee shall begin on the date that the employee is notified, and the participation start date shall be determined in accordance with subsection (g) of this section.

(p) Texas Commissioner of Education.

(1) ORP Eligibility. Notwithstanding other provisions in this chapter, the Texas Commissioner of Education shall be eligible to elect ORP in lieu of ERS.

(2) Employment in Higher Education. Notwithstanding other provisions in this chapter, a Texas public institution of higher education shall, for the purpose of determining ORP eligibility for

a former Texas Commissioner of Education who is subsequently employed by the institution, treat an election of ORP in lieu of ERS made by the Texas Commissioner of Education at the Texas Education Agency in the same manner as if the election of ORP had been made in lieu of TRS at another Texas public institution of higher education.

§25.6. *Uniform Administration of ORP.*

(a) Contributions.

(1) Tax-Deferred. All ORP contributions shall be made on a tax-deferred basis.

(2) IRS Limits on Defined Contributions. Contributions to a participant's ORP account shall not exceed the maximum amount allowed under §415(c) of the Internal Revenue Code of 1986, as amended.

(A) 415(m) Plan. Institutions are authorized by the ORP statute to establish a plan authorized under §415(m) of the Internal Revenue Code of 1986, as amended, for a participant's ORP contributions that exceed the 415(c) limit.

(B) Stopping ORP Contributions. In the absence of a 415(m) plan, an ORP employer shall discontinue ORP contributions for participants who reach the 415(c) limit for the remainder of the applicable tax year.

(C) Interaction with TSA/TDA Program. An employee's contributions under the voluntary supplemental Tax-Sheltered Annuity/Tax-Deferred Account Program shall be included in the 415(c) limit.

(3) No Co-Mingling of ORP and non-ORP Funds.

(A) No Non-Texas ORP Funds. No non-Texas ORP funds, including any withdrawn TRS member contributions, may be rolled over or transferred to an ORP account prior to the participant's termination of ORP participation.

(B) No TSA/TDA Funds. Amounts that have been contributed by the participant through the Tax-Sheltered Annuity/Tax-Deferred Account Program may not be rolled over or transferred to an ORP account prior to the participant's termination of ORP participation.

(C) Texas ORP Contract Required. ORP contributions may only be made to a contract that is authorized by the participant's current ORP employer for Texas ORP contributions, even if the participant already has a contract with a company from a prior period of employment with another employer, whether a Texas ORP employer or not.

(4) No Dual Contributions. A contribution to the applicable retirement system and to an ORP company within the same calendar month shall not be permitted, except when a person terminates employment in a position covered by the applicable retirement system and, prior to the end of the calendar month in which the termination occurs, becomes employed in an ORP-eligible position at a different ORP employer and elects to participate in ORP by signing and submitting the TRS 28 ORP election form (or its successor) or, for employees of the Board, the ORP election form provided by the Board, on a date that results in an ORP participation start date that is prior to the end of that same calendar month, as provided in §25.4(g) of this title (relating to Participation Start Date).

(5) Eligible Compensation.

(A) Definition. For purposes of determining the amount of a participant's ORP contribution, institutions shall use the same definition of eligible compensation that is used for TRS members in §821.001 of the Texas Government Code.

(B) **IRS Limits.** The maximum amount of salary that can be taken into account for ORP purposes shall not exceed the limits established by §401(a)(17) of the Internal Revenue Code of 1986, as amended. An individual who first participated in ORP prior to September 1, 1996, regardless of a subsequent break in service, shall qualify for the "grandfathered" rate established by IRC §401(a)(17).

(C) **Stopping ORP Contributions.** An ORP employer shall discontinue ORP contributions for participants who reach the 401(a)(17) limit for the remainder of the applicable tax year.

(6) **Contribution Rates.** The amount of each participant's ORP contribution shall be a percentage of the participant's eligible compensation as established by the ORP statute and the General Appropriations Act for each biennium. Each contribution shall include an amount based on the employee rate and an amount based on the employer rate.

(A) **Employee Rate.** The employee contribution rate shall neither exceed nor be less than the rate established in the ORP statute for employee contributions.

(B) **Employer Rate.** The employer contribution rate shall consist of a state base rate (minimum), as established each biennium in the General Appropriations Act, and an optional supplemental rate, as provided in subparagraph (C) of this subsection.

(C) **Supplemental Employer Rate.** Institutions may provide a supplement to the state base rate under the following conditions:

(i) **Amount of Supplemental Rate.** The supplemental rate may be any amount that, when added to the state base rate, does not exceed the maximum employer rate established in the ORP statute. For example, if the state base rate is 6 percent and the maximum statutory rate is 8.5 percent, then the supplement may be any amount up to and including 2.5 percent.

(ii) **Component Institution Policies.** Governing boards may establish a supplemental rate policy that covers all component institutions or may establish different policies for one or more individual components.

(iii) **Annual Determination.** The governing board of each institution shall determine the amount of the supplement once per year, to be effective for the entire year.

(iv) **Method 1--All Participants.** Institutions may provide the same supplemental rate to all ORP participants, regardless of the participant's first date to participate in ORP or a break in service. If this method is selected, each ORP participant shall receive the same supplemental rate as every other participant.

(v) **Method 2--Two Groups.** Institutions may, instead of providing the same supplemental rate to all participants, provide two different supplemental rates based on a participant's first date to participate in ORP, as follows.

(I) **Grandfathered.** Each participant whose first date to participate in ORP in lieu of the applicable retirement system at any ORP employer, is prior to September 1, 1995, shall receive the same supplemental rate as other participants in this group, regardless of any break in service. This group of participants shall be referred to as the grandfathered group.

(II) **Non-Grandfathered.** Each participant whose first date to participate in ORP in lieu of the applicable retirement system at any ORP employer is on or after September 1, 1995, shall receive the same supplemental rate as other participants in this group, regard-

less of any break in service. This group of participants shall be referred to as the non-grandfathered group.

(vi) All ORP employers shall maintain documentation of a participant's first date to participate in ORP in lieu of the applicable retirement system at any ORP employer and shall provide that information to any future ORP employers of the participant for purposes of determining the participant's grandfather status. This information shall be maintained for as long as the employer's plan exists regardless of whether the ORP employer provides a supplemental employer rate contribution and regardless of the amount of any supplemental employer rate contribution provided.

(7) **Proportionality.** ORP employers shall pay ORP employer contributions from the appropriate funding source in accordance with applicable proportionality provisions, including provisions in the General Appropriations Act and §830.201 of the Texas Government Code.

(8) **Three-Day Submission Deadline.** ORP employers shall send ORP contributions to the ORP company within three business days of legal availability, except for contributions made on a supplemental payroll or contributions that are sent to a grandfathered company with less than 50 participants.

(A) **Legal Availability.** Contributions shall generally be considered legally available on payday. For ORP employers that normally pay participants on a twice-monthly basis, the three-day minimum shall apply to each payday in the month.

(B) **Grandfathered Company.** For purposes of this paragraph, a grandfathered company shall be a company that is no longer on a particular ORP employer's list of authorized ORP companies, but that continues to receive ORP contributions for certain participants as authorized by that ORP employer.

(C) **Exception Deadline.** Contributions that are exempted from the three-day submission deadline shall be sent to the company as soon as practicable, but not later than 10 business days after they are legally available.

(9) **Electronic Funds Transfer (EFT).**

(A) **Requirement.** ORP employers shall send all ORP contributions, including contributions based on a supplemental payroll and contributions sent to a grandfathered company as defined in paragraph (8) of this subsection, to each ORP company by electronic funds transfer (EFT) if the ORP employer is currently able to send funds by EFT and the company is currently able to receive funds by EFT.

(B) **Inability to Receive.** If a company is unable to receive funds by EFT, the ORP employer shall send contributions to the ORP company by check and provide the following notifications.

(i) **Certification.** The ORP employer shall certify to the Board, on the ORP employer's annual ORP report as required by subsection (g) of this section, that the company is unable to receive funds by EFT.

(ii) **Participant Notification.** At least once per fiscal year, the ORP employer shall provide notice to each participant indicating which ORP companies are unable to receive funds by EFT.

(10) **Same-Day Credit.** ORP companies shall deposit each participant's ORP contributions into the accounts and/or funds designated by the participant effective on the same business day that the contributions are received by the company if the funds are received before the close of business and on the next business day if the funds are received after the close of business. A company that does not com-

ply with this provision shall not be eligible to be authorized as an ORP company by any ORP employer.

(11) Forfeited ORP Employer Contributions. If a participant forfeits ORP employer contributions under §25.5(a) of this title (relating to Vesting Requirement), the ORP employer shall return the forfeited contributions to the originating fund in accordance with the following procedures.

(A) 93-Day Deadline for Request. Not later than 93 calendar days after the last day of the calendar month in which an unvested participant terminates all employment with all ORP employers, the ORP employer shall send a request to the ORP company or companies for a return of the ORP employer contributions that were sent to the company or companies for that participant during that period of employment. This request may be referred to as a vesting letter because it indicates that the participant has not met the vesting requirement.

(i) 93 Days is Outside Limit. An ORP employer may send the request for forfeited ORP employer contributions immediately upon a participant's termination if the ORP employer has knowledge that the participant has not become employed and is not anticipating becoming employed in a position that is eligible for ORP in lieu of the same retirement system at the same or another ORP employer within the 93-day period.

(ii) If Deadline is Missed. If the ORP employer fails to request the forfeited amounts within the 93-day deadline, then the ORP employer shall make the request immediately upon discovering the oversight, even if the participant later resumes participation after the 93-day deadline as described in subparagraph (B) of this paragraph.

(B) If Participant Returns After 93 Days. If an unvested participant returns to employment that is eligible for ORP in lieu of the same retirement system at the same or another ORP employer and resumes active participation on a date that is more than 93 calendar days after the last day of the calendar month in which he or she previously terminated participation, the participant's unvested ORP employer contributions from the prior period of employment shall still be forfeited, even if the participant subsequently satisfies the vesting requirement.

(C) Forfeited Amount. The forfeited amount shall be the actual amount of ORP employer contributions sent to the participant's ORP accounts during his or her current period of employment.

(i) Excess Amounts not Included. The forfeited amount shall not include any amounts in the participant's ORP account in excess of the actual ORP employer contributions that are attributable to net earnings.

(ii) If Account is Less than Actual Amount. The entire amount of actual ORP employer contributions shall be returned even if the account balance is less than the amount of the actual ORP employer contributions because of investment loss, transfer, or other occurrence or transaction.

(I) Company's Responsibility. The ORP company shall be responsible for making arrangements to cover any loss of unvested ORP employer contributions, so that the entire amount of actual ORP employer contributions is returned to the ORP employer upon request.

(II) Certification. Before an ORP employer may authorize a company to receive ORP contributions from unvested participants, as provided in subsection (c) of this section, the ORP employer shall require the company to certify that the entire amount of actual unvested ORP employer contributions will be returned upon request. The ORP employer may require the company to indicate what

method will be used, for example, restriction of unvested funds to money market or similar accounts.

(D) Company Response Deadline. Within 30 days of receiving the ORP employer's request for a return of unvested ORP employer contributions, the ORP company shall:

(i) process a reimbursement to the ORP employer; and

(ii) send notification of the transaction to the employee indicating the reason for the reduction in the account balance.

(E) Deposit into Originating Fund. The ORP employer shall deposit the reimbursed ORP employer contributions into the originating fund or funds in accordance with instructions from the Texas Comptroller of Public Accounts and any other applicable policies and procedures.

(F) Resumption of Participation within 93 Days.

(i) If unvested ORP employer contributions are returned to the originating fund when the participant did, in fact, resume ORP participation in lieu of the same retirement system at the same or another ORP employer within 93 calendar days of the last day of the calendar month in which the termination of participation occurred, the ORP employer that requested the reimbursement shall, immediately upon being notified of the employee's resumption of participation, return the reimbursed amount to the ORP company for re-deposit into the participant's account.

(ii) The ORP employer with which the participant resumes participation, if not the ORP employer that requested the reimbursement, shall notify the ORP employer that requested the reimbursement of the participant's status as soon as practicable after the participant resumes participation.

(iii) The entire amount of actual ORP employer contributions that were returned to the originating fund under the provisions in this paragraph shall be sent back to the company. There shall be no allowance for any earnings or losses on the ORP employer contributions that may have accrued during the time that the amounts were not in the participant's account.

(b) Withdrawal of Retirement System Funds. An employee who elects to participate in ORP may withdraw any member contributions (plus accrued interest, if any) that he or she may have accumulated in the applicable retirement system prior to the election of ORP. Withdrawn member contributions shall not be rolled over into the participant's ORP account prior to termination of ORP participation.

(c) ORP Companies.

(1) Authorized by Each ORP Employer. Each ORP employer shall establish its own list of companies that are authorized to provide ORP products to that employer's ORP participants. Governing boards with more than one component institution may establish one list for all components or separate lists for one or more component institutions.

(2) Qualified Companies. Companies authorized by an ORP employer shall be qualified to do business in the state of Texas as determined by the Texas Department of Insurance, the Texas State Securities Board, and any other applicable state or federal agency.

(3) Minimum Number of Companies.

(A) Minimum of Four. Each ORP employer shall authorize a minimum of four qualified companies, including at least one company that offers 403(b)(1) annuity accounts and at least one company that offers 403(b)(7) custodial accounts.

(B) **Variety of Choices.** Each ORP employer's list of authorized companies and products shall provide a reasonable variety of choices among types of accounts and funds.

(C) **No Maximum Number.** Each ORP employer may authorize as many ORP companies as the ORP employer deems appropriate.

(4) **Return of Unvested Employer Contributions.** Before an ORP employer may authorize a company to receive ORP contributions from unvested participants, the ORP employer shall require the company to certify that the entire amount of actual unvested ORP employer contributions will be returned upon request, in accordance with the procedures in paragraph (a)(11) of this section. The ORP employer may require the company to indicate what method will be used, for example, restriction of unvested funds to money market or similar accounts.

(5) **Authorization Policies and Procedures.** Each ORP employer shall be responsible for establishing local policies and procedures for authorizing or certifying companies to provide ORP products to the ORP employer's ORP participants. Governing boards with more than one component institution may establish one policy for all components or separate policies for one or more component institutions.

(A) **Consultants.** ORP employers may enlist the assistance of consultants or other outside parties to develop selection criteria.

(B) **Objective Selection Process.** ORP employers may utilize an objective process to review the quality of ORP products and services and select ORP companies and products using pre-determined standards either in a competitive selection process or in a minimum criteria process. Standards may include performance relative to peer products in the same asset class, costs and fees paid by the participant to participate in the investment products, financial stability of the company, company ratings, and service to participants, including type of service delivery model, company financial counseling, and other services for participating employees. ORP employers may establish additional standards that must be met by ORP companies to remain on the ORP employer's list of authorized companies, such as minimum participation standards.

(C) **Participant Requests.** ORP employers shall not be required to authorize any ORP company, company representative, or product requested by any participant, although ORP employers may take such requests into account if it may be done in accordance with applicable laws, rules and policies.

(D) **Periodic Review of Policies.** Each ORP employer shall periodically review and update its authorization or certification policies and procedures.

(E) **Periodic Re-Authorization.** Each ORP employer shall periodically re-authorize or re-certify companies.

(6) **Participant's Change of Companies.**

(A) **Two Opportunities per Year.** Each ORP employer shall provide ORP participants with at least two opportunities during each fiscal year to select a different company from the ORP employer's list of authorized companies. The opportunities may be provided on set dates during the year or on a flexible individualized basis.

(B) **Two Changes per Year.** Each ORP employer shall allow a participant to change his or her company selection on either or both of the opportunities provided by the ORP employer under subparagraph (A) of this paragraph.

(C) **Effective within 35 Days.** The ORP employer shall start sending the participant's ORP contributions to his or her newly selected company beginning with the next payroll period if practicable, but not later than 35 days after the date the participant signs and submits the appropriate forms to the ORP employer.

(i) **Problems.** If the ORP employer cannot comply with this deadline due to circumstances beyond the ORP employer's control, the ORP employer shall notify the participant of the problem and shall provide the participant with an opportunity to change his or her company selection.

(ii) **Additional Change.** A participant's change of companies made in accordance with clause (i) of this subparagraph shall not be counted against the number of changes required under subparagraph (B) of this paragraph.

(D) **Prior Contributions.** Amounts contributed by the participant to previously selected ORP companies, including ORP contributions made during prior periods of employment with the same or another ORP employer, shall be under the same statutory distribution restrictions as the contributions in the participant's account with his or her newly selected ORP company.

(E) **Transfers of Prior Contributions.**

(i) Each ORP employer shall include a provision in the employer's ORP plan that permits participants to execute a contract exchange to transfer ORP funds that were contributed during the current or prior periods of employment with the ORP employer to another ORP company that is authorized by the employer to receive the funds. A contract exchange shall not be counted against the number of changes required under subparagraph (B) of this paragraph.

(ii) Each ORP employer may include provisions in the employer's ORP plan that permit participants to transfer ORP funds from one ORP employer's plan to another ORP employer's plan provided both employer plans include provisions authorizing such plan-to-plan transfers.

(7) **Grandfathered Companies.**

(A) ORP employers may allow participants to continue contributing to an ORP company that is no longer on the ORP employer's list of authorized companies. Such a company shall be referred to as a grandfathered company.

(B) Institutions may allow participants who directly transfer from another Texas public institution of higher education to continue contributing to the same ORP company that they were contributing to at their prior ORP employer, provided the institution verifies that the contract includes the statutory distribution restrictions.

(8) **Confirmation of ORP Contributions.** ORP employers shall require ORP companies that receive contributions for the ORP employer's ORP participants to submit confirmation of receipt of funds directly to each participant at least quarterly. The confirmation shall contain the date and amount of each ORP contribution received during the reporting period.

(9) **Confirmation of Funds Transfer.** ORP employers shall require ORP companies that receive contributions for the ORP employer's ORP participants to, immediately upon execution of a transfer from one fund or investment or account to another fund or investment or account, submit a confirmation directly to the participant, unless specifically waived by the participant in writing. The confirmation shall include all transfer information, including a statement of any applicable charges.

(10) Required Company Reports. Each ORP employer shall require all ORP companies that receive contributions for the ORP employer's ORP participants to submit, at least annually, a report or reports to each participant having ORP accounts with that company, including accounts that are no longer receiving current contributions, containing the information indicated in paragraphs (11), (12) and (13) of this subsection.

(11) For all accounts, the following information shall be provided:

- (A) name and address of the participant;
- (B) identifying number;
- (C) total payments received during the reporting period;
- (D) expense charges during the reporting period;
- (E) net payments during the reporting period;
- (F) total value of account at the end of the reporting period; and

(G) net cash surrender value of account at the end of the reporting period reflecting all potential charges against the account if it were surrendered for cash as of the last day of the reporting period.

(12) For fixed and variable annuity accounts, the following additional information shall be provided:

(A) interest rate or rates paid on the account from the previous reporting period to the end of the current reporting period; and

(B) where multilevel rates of interest were paid on an account, a breakdown showing the amount in the participant's account at each interest level, the amount of interest earned at each interest level, and the rates of interest. An ORP company may exclude the information required by this subparagraph concerning multilevel rates of interest from the annual report, but if this information is not provided on at least an annual basis, the company shall provide it at any time upon the participant's request.

(13) For variable annuity and custodial accounts, the following additional information shall be provided:

(A) units of each fund or investment or account purchased during the reporting period;

(B) total units of each fund or investment in the account at the end of the reporting period; and

(C) value of unit of each fund or investment or account at the end of the reporting period.

(14) Optional Information. ORP employers may require ORP companies to provide participants with other information in addition to the reporting requirements in paragraph (10) of this subsection, including, but not limited to:

- (A) additional account-related information;
- (B) information about the company; and
- (C) general educational information related to investments.

(15) Authorized Company Representatives.

(A) Designated Representatives. ORP employers may require ORP companies to designate representatives, or may require that the company and the ORP employer jointly designate representatives, who are authorized to communicate directly with the ORP em-

ployer's ORP-eligible employees concerning the company and its products.

(B) Restricted Number. ORP employers may restrict the number of representatives authorized to represent each company.

(C) Brokers. ORP employers may authorize brokers who represent more than one authorized company. Such authorization may be in addition to the number of designated representatives of a particular company.

(D) Representative's ORP Knowledge. ORP employers may require ORP companies to certify that their designated representatives are sufficiently trained and knowledgeable about ORP, including an understanding of the statutory distribution restrictions that must be included in all ORP contracts.

(E) Responsibility to Correct Mistakes. ORP employers may require a company to fully rectify, at the company's cost, any mistakes made by a designated company representative concerning the delivery of incorrect ORP information and any resulting problems.

(16) Solicitation Practices. Each ORP employer shall establish the following procedures related to company solicitation practices.

(A) Sales Presentations. Authorized representatives shall be permitted to make sales presentations to ORP-eligible employees on the ORP employer's premises, under the following conditions:

(i) only at the employee's request;

(ii) as a guest of the employee and ORP employer;

and

(iii) in compliance with the ORP employer's applicable policies and procedures.

(B) Prohibited Gifts. ORP company representatives shall be prohibited from providing gifts or monetary rewards directly or indirectly to any employee of the ORP employer for information on newly eligible employees.

(C) Bulk Campaigning Prohibited. Authorized representatives shall be responsible for providing appropriate sales literature and service at locations designated by the ORP employer. Unless specifically authorized by the ORP employer, ORP company representatives shall be prohibited from using campus bulk mailing (including electronic mail) or telephone campaigning.

(D) Violations. ORP employers shall reserve the right to restrict solicitation privileges of authorized representatives based on violations of the solicitation procedures in this paragraph and each ORP employer's local policies and procedures.

(d) Qualified Domestic Relations Orders (QDROs).

(1) Company Responsibilities. Each ORP employer shall ensure that all ORP contracts include a provision that the ORP company is solely responsible for determining whether a domestic relations order is qualified and payable in accordance with Texas Government Code, Chapter 804. In lieu of requiring a contractual provision, ORP employers may require companies to certify, as part of the ORP employer's ORP company authorization process as provided in subsection (c) of this section, that the ORP company is solely responsible for determining whether a domestic relations order is qualified and payable in accordance with Texas Government Code, Chapter 804.

(2) Company Interpretation. ORP employers may include criteria relating to an ORP company's interpretation of Texas Government Code, Chapter 804, in the ORP employer's ORP company au-

thorization or certification process as provided in subsection (c) of this section.

(e) Investment Advisory Fees. Participants may pay certain investment advisory fees with tax-deferred funds in their ORP account in accordance with the following conditions.

(1) Investment advisory fees may only be paid with amounts in a participant's ORP account in accordance with the following provisions.

(A) The investment advisory fees for each fiscal year shall not exceed two percent of the annual value of the participant's account as of the last day of that fiscal year.

(B) The fees shall be paid directly to a registered investment advisor that provides advice to the participant.

(C) The investment advisor to whom the fees are paid shall be registered with the Securities and Exchange Commission and any other applicable federal or state agencies, and shall be engaged full-time in the business of providing investment advice.

(D) The participant and the investment advisor shall enter into a contract for a term of no more than one year. A contract that automatically renews each year shall be considered acceptable as long as both parties have the right to sever the relationship, with reasonable notification, at any time.

(2) An ORP employer shall not prohibit participants from utilizing this right and shall not restrict the payment percentage to less than two percent.

(3) An ORP employer may include in its ORP company authorization or certification process, as provided in subsection (c) of this section, a provision that prohibits commissions to an individual who also receives investment advisory fees for the same ORP account.

(4) An ORP company may request the ORP employer to sign a statement that investment advisory fees are permissible under the plan to provide assurance to the company that it is releasing ORP funds to the advisor in accordance with applicable ORP provisions.

(A) An ORP employer shall not sign the company's form indicating that investment advisory fees are permissible under the plan unless the ORP employer has received satisfactory documentation that the four conditions described in paragraph (1) of this subsection have been met.

(B) An ORP employer shall not sign a form that actually authorizes the payments because that is a relationship between the advisor, the participant and the company.

(f) Distribution Restrictions.

(1) Restricted Access.

(A) No Pre-Termination Access unless Age 70-1/2. ORP participants shall not access any of their ORP funds by any means (including partial or full withdrawals) until the earlier of the date that they:

(i) terminate all employment with all ORP employers; or

(ii) reach age 70-1/2 years.

(B) No Loans or Hardship Withdrawals.

(i) Loans, financial hardship withdrawals, or any other method that provides a participant with any type of access to ORP funds prior to the earlier of termination of employment or attainment of age 70-1/2 shall not be permitted.

(ii) ORP products may provide for loans or hardship withdrawals after the participant's termination of employment or attainment of age 70-1/2, if permissible under applicable laws, regulations and plan provisions.

(C) Previously Contributed Amounts. ORP contributions made during prior periods of employment with the same or another ORP employer and ORP contributions made to previously selected ORP companies with the current ORP employer shall be under the same statutory distribution restrictions as the contributions in the participant's current active account.

(D) Employment Transfer is not a Termination. A participant's transfer of employment between Texas public institutions of higher education without a break in service, as defined in §25.3 of this title (relating to Definitions), shall not be considered a termination of employment for ORP purposes, unless the new position is non-benefits-eligible, as defined in §25.5(g) of this title (relating to Employment in a Non-Benefits-Eligible Position).

(E) Transfer of Funds is not a Termination. A transfer of ORP funds between ORP accounts or ORP companies (contract exchange) shall not be considered a termination of employment for ORP purposes.

(F) Simultaneous Contributions and Withdrawals. An ORP participant shall not simultaneously make ORP contributions and withdraw funds from ORP accounts unless that participant is at least age 70-1/2.

(G) Documentation of Restrictions. ORP employers shall ensure that all ORP contracts specifically contain the statutory ORP distribution restriction provisions, which are sometimes referred to as the ORP endorsement.

(2) Authorization to Release ORP Funds. An ORP company shall not release any ORP funds to a participant until receipt of notification from the participant's ORP employer that a break in service or retirement has occurred, except when the participant has reached age 70-1/2, in which case, the ORP company may release funds upon verification that the participant has reached age 70-1/2. The ORP employer's termination notification may be referred to as a vesting letter because it indicates whether the participant has met the ORP vesting requirement.

(A) Unvested Participants. If a participant terminates prior to meeting the vesting requirement, the ORP employer's notification shall include a request for the return of the participant's forfeited ORP employer contributions, as provided in §25.6(a)(11) of this title (relating to Forfeited ORP Employer Contributions).

(B) Vested Participants. If a participant terminates after meeting the vesting requirement, all funds shall be available in accordance with applicable federal law, plan provisions and contractual provisions, but non-ORP-related early withdrawal penalties, such as additional federal income taxes or contractual surrender fees, may apply depending on factors such as the participant's product selection and age at termination.

(3) Prohibited Distribution by ORP Company. If an ORP company provides a participant with any access to ORP funds prior to the earlier of the participant's termination of employment with all ORP employers or attainment of age 70-1/2, then the ORP employer, as the plan sponsor, and the ORP company, as the trustee of the funds, shall rectify the situation in accordance with applicable IRS procedures.

(g) ORP Employer Reports.

(1) Required Information. All ORP employers shall submit the following information to the Board:

- (A) number of ORP participants;
- (B) amount of contributions sent to ORP companies;
- (C) list of ORP-eligible positions; and
- (D) any other information required by the Board.

(2) Annual Report.

(A) Format. The required information shall be provided in a reporting format developed by the Board, which may include an electronic format.

(B) Due Date. The required information shall be reported on a fiscal year basis and shall normally be due on October 1 of each year for the most recent fiscal year ending August 31.

(3) Additional Information as Needed. ORP employers shall provide additional information to the Board as needed to carry out its functions under the ORP statute, which may be in the form of ad hoc reports, formal or informal surveys, or other format, and may be requested in an electronic format.

(h) Required Notices to Employees.

(1) Basic Information for Newly Eligible Employees. On or before an ORP-eligible employee's initial ORP eligibility date, which is the first day of his or her 90-day ORP election period, each institution shall provide the ORP-eligible employee with written introductory information on ORP developed by the Board and titled, "An Overview of TRS and ORP for Employees Eligible to Elect ORP."

(A) Uniform and Unbiased. The purpose of this notification requirement is to ensure that all employees who become eligible to elect ORP are provided general, uniform and unbiased information on which to base their decision.

(B) Electronic Notification. An institution may meet this notification requirement by:

- (i) placing a link on its website to the Board's ORP website;
- (ii) providing the ORP-eligible employee with local internet/intranet access to the link to the Board's ORP website; and
- (iii) within the required timeframe, notifying the ORP-eligible employee in writing of the location of the link to the Board's ORP website.

(2) ORP Election Period Dates. Each ORP employer shall, within 15 business days of an ORP-eligible employee's initial ORP eligibility date, provide written notification to the ORP-eligible employee that indicates the beginning and ending dates of his or her ORP election period and the local procedures for submitting the election form and additional required paperwork.

(3) Participant's ORP Responsibilities. On or before an ORP-eligible employee's initial ORP eligibility date, which is the first day of his or her 90-day ORP election period, each ORP employer shall provide written notification to the ORP-eligible employee that:

- (A) an election of ORP entails certain responsibilities for the employee, including selection and monitoring of ORP companies and investments; and
- (B) the ORP employer has no fiduciary responsibility for the market value of a participant's ORP investments or for the financial stability of the ORP companies chosen by the participant.

(4) Possible Retiree Group Insurance Eligibility. ORP employers shall include in their normal out-processing procedures for ter-

minated employees, a notification to ORP participants that includes the following information:

- (A) the participant's possible future eligibility for retiree group insurance as an ORP retiree;
- (B) the ORP employer's policies for handling certification that an ORP participant meets the eligibility requirements for enrollment in retiree group insurance as an ORP retiree; and
- (C) for ORP employers that are covered under the group insurance program administered by ERS, a caution to the participant to refrain from withdrawing all of his or her ORP funds if the participant enrolls in the group insurance program administered by ERS as an ORP retiree or anticipates enrolling at a later date.
- (D) The notification may be either general in nature or specific to each participant.

(5) Verification of Notification Receipt. ORP employers shall develop forms and/or procedures to carry out the notification requirements in this subsection that provide documentation of the employee's acknowledgement of receipt of this information, including the date of receipt, such as a signature or electronic verification.

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 10, 2016.

TRD-201604027
 Bill Franz
 General Counsel
 Texas Higher Education Coordinating Board
 Effective date: August 30, 2016
 Proposal publication date: May 20, 2016
 For further information, please call: (512) 427-6114



TITLE 22. EXAMINING BOARDS
PART 16. TEXAS BOARD OF
PHYSICAL THERAPY EXAMINERS
CHAPTER 322. PRACTICE

22 TAC §322.1

The Texas Board of Physical Therapy Examiners adopts an amendment to §322.1, concerning Provision of Services, without changes to the proposed text as published in the June 3, 2016, issue of the *Texas Register* (41 TexReg 3970).

The amendment to 22 TAC §322.1(d) adds the requirement for direct physical therapist-to-patient interaction during the reevaluation process and eliminates the requirement for a reexamination of the patient which implies completion of a comprehensive screening and testing process including patient history, systems review, and tests and measures.

No comments were received regarding the proposed amendment.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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 15, 2016.

TRD-201604134

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: September 4, 2016

Proposal publication date: June 3, 2016

For further information, please call: (512) 305-6900



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.76

The Texas State Board of Public Accountancy adopts an amendment to §501.76, concerning Records and Work Papers, without changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3827). The rule will not be republished.

The amendment to §501.76 clarifies what constitutes Records and Work Papers and other minor revisions.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is 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 10, 2016.

TRD-201604028

Jerry Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: August 30, 2016

Proposal publication date: May 27, 2016

For further information, please call: (512) 305-7842



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 39. PRIMARY HEALTH CARE SERVICES PROGRAM

SUBCHAPTER B. TEXAS WOMEN'S HEALTH PROGRAM

25 TAC §§39.31 - 39.45

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), adopts the repeal of §§39.31 - 39.45, concerning the Texas Women's Health Program without changes as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3234) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The Texas Women's Health Program operates within the department's Preventive and Primary Care Unit's (PPCU) Primary Health Care Services Program, which has statutory authority to provide to eligible clients primary health care services, including family planning services and health screenings. The Texas Women's Health Program provides clients - women ages 18-44 who are at or below 185% of the federal poverty level - with family planning and related services, including annual contraceptives, testing for breast and cervical cancer, testing for sexually transmitted infections (STIs), and treatment for certain STIs.

In 2014, the Sunset Advisory Commission reviewed the Texas Health and Human Services enterprise, including its women's health programs. In December 2014, the Sunset Commission issued the management decision to require HHSC to consolidate the women's health care programs in order to improve service and efficiency for clients and providers. This decision included the recommendation to consolidate the existing Texas Women's Health Program at HHSC and the Expanded Primary Health Care Program at the department into one program and division at HHSC.

In response to the Sunset Commission's recommendations, the 84th Legislature enacted Texas Government Code, §531.0201(a)(2)(C) to transfer client services functions performed by the department to HHSC. Texas Government Code, §531.0204(a)(1) and (3)(A) were also enacted to require the Executive Commissioner of HHSC to develop a transition plan which included an outline of the HHSC's reorganized structure, and to define client services functions.

Furthermore, the 2016-17 General Appropriations Act, H.B. 1, 84th Legislature, Regular Session, 2015, merged the women's health strategies (DSHS Strategy B.1.3., Family Planning Services, and Strategy B.1.4., Community Primary Care Services) into a single strategy within the HHSC Budget (HHSC Strategy D.2.3., Women's Health Services). To increase access to women's health and family planning services, Rider 76, Article II, allocated \$100 million for the new women's health programs.

The transition plan developed by HHSC pursuant to Texas Government Code, §531.0204, included the transfer of women's health services performed in the HHSC Texas Women's Health Program and the department's Expanded Primary Health Care Program and Family Planning Program to HHSC as of September 1, 2015. HHSC's transition plan also details the consolidation of the Texas Women's Health Program and Expanded Primary Health Care Program.

On July 1, 2016, HHSC consolidated the Texas Women's Health Program and the Expanded Primary Healthcare Program into a new program fully funded by state general revenue. The new program was named the Healthy Texas Women Program. The Healthy Texas Women Program will be a successor program to the Medicaid Women's Health Program and therefore subject to Texas Human Resources Code, §32.024(c-1).

SECTION-BY-SECTION SUMMARY

New rules for the Healthy Texas Women Program are adopted under HHSC in 1 TAC Part 15, Chapter 382, Subchapter A. As a result, §§39.31 - 39.45 governing the department's Texas Women's Health Program are no longer necessary and must be repealed.

COMMENTS

The department, on behalf of HHSC, did not receive any comments regarding the proposed repeal of rules during the comment period.

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

These repeals are authorized generally by Health and Safety Code, §12.001 and §1001.071, and more specifically by Health and Safety Code, §§31.002(a)(4)(C) and (H), 31.003, and 31.004, under which DSHS may establish a program providing primary health care services, including family planning services and health screenings, and adopt rules governing the type of services to be provided, the eligibility of recipients, and administration of the program. In addition, Government Code, §531.0055 and Health and Safety Code, §1001.075, 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 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 12, 2016.

TRD-201604122

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: September 1, 2016

Proposal publication date: May 6, 2016

For further information, please call: (512) 776-6972



CHAPTER 56. FAMILY PLANNING

25 TAC §§56.1 - 56.15, 56.18, 56.19

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), adopts the repeal of §§56.1 -

56.15, 56.18 and 56.19, concerning the Family Planning Program without changes as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3235) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The Family Planning Program provides statewide family planning services to low-income women and men who do not have other sources of payment for services. The target population is women and men of reproductive age who are at or below 250% of the Federal Poverty Level. Family planning services include preventive health, medical, counseling, and educational services.

The repeal of the rules implements the Sunset Commission's recommendation that the administration of the Family Planning Program be transferred to HHSC from the department. New Family Planning Program rules are adopted under 1 TAC, Part 15, Chapter 382, Subchapter B, concerning the Family Planning Program. In response to the Sunset Commission's recommendation, the 84th Texas Legislature enacted Texas Government Code, §531.0201(a)(2)(C), to transfer client services functions performed by the department to HHSC. Texas Government Code, §531.0204(a)(1) and (3)(A) were also enacted to require the Executive Commissioner of the HHSC to develop a transition plan which included an outline of the HHSC's reorganized structure, and a definition of client services functions.

The transition plan developed by HHSC pursuant to Texas Government Code, §531.0204, included the transfer of women's health services performed by the department's Family Planning Program to HHSC as of September 1, 2015. HHSC's transition plan also details the expansion of the Family Planning Program to serve more women with a larger array of services. HHSC's updated Family Planning Program began operating on July 1, 2016.

SECTION-BY-SECTION SUMMARY

The repeal of §§56.1 - 56.15, 56.18 and 56.19 will remove the Family Planning Program rules from the department rules in its entirety. New Family Planning Program rules are adopted under HHSC in 1 TAC, Part 15, Chapter 382, Subchapter B, concerning the Family Planning Program.

COMMENTS

The department, on behalf of HHSC, did not receive any comments regarding the proposed repeal of rules during the comment period.

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code, §531.0055, and Texas 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 Texas Health and Safety Code, Chapter 1001.

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 12, 2016.

TRD-201604129

Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: September 1, 2016
Proposal publication date: May 6, 2016
For further information, please call: (512) 776-6972

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CHAPTER 61. CHRONIC DISEASES
SUBCHAPTER C. BREAST AND CERVICAL
CANCER SERVICES

25 TAC §61.33

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopts an amendment to §61.33, concerning the Breast and Cervical Cancer Services (BCCS) Program, without changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2085). The section will not be republished.

BACKGROUND AND PURPOSE

The BCCS Program provides access to high-quality breast and cervical cancer screening and diagnostic services for eligible Texas women who are unable to access the same care through other funding sources or programs. Services may include clinical breast examinations and mammograms to screen for breast cancer, and pelvic examinations and Pap tests to screen for cervical cancer. Diagnostic services and case management are also provided for women with abnormal breast or cervical cancer screening results.

The BCCS Program is the access point for women to apply for Medicaid for breast and cervical cancer services in order to access cancer treatment. Services are provided through contracts with non-profit agencies, local health departments, hospitals, and community health centers.

The purpose of the amendment is to revise language describing which providers are eligible to apply and be reimbursed for providing services in the BCCS Program. The amendment is necessary to comply with Article II, Rider 72 (relating to the BCCS Program) of the General Appropriations Act for State Fiscal Years 2016 and 2017 (House Bill 1, 84th Legislature, Regular Session, 2015, Art. II, at II-72). Article II, Rider 72 specifies that BCCS funds may be used to compensate only providers that satisfy the eligibility requirements for the Texas Women's Health Program (TWHP), except in very limited circumstances. Accordingly, BCCS providers must be eligible to participate in the TWHP and comply with the relevant TWHP statute, which can be found in Texas Human Resources Code, §32.024(c-1), and rules in 25 Texas Administrative Code, §39.33 and §39.38. Rider 72 also enables the department to compensate local providers, for BCCS purposes, that are not eligible to participate in the TWHP if the department is unable to locate a sufficient number of TWHP eligible providers in a certain region.

SECTION-BY-SECTION SUMMARY

New §61.33(a) requires BCCS providers to be eligible to participate in the TWHP in order to participate in BCCS and to be reimbursed for services provided in the BCCS Program. Specifically, §61.33(a) requires BCCS providers to comply with the TWHP requirements set forth under 25 TAC, Subchap-

ter B, §39.33 (relating to Definitions) and §39.38 (relating to Health-Care Providers), including the requirement that providers do not perform or promote elective abortions, and are not affiliates of entities that perform or promote elective abortions. The term "affiliate" is defined in §39.33(1), and the term "promote" is defined in §39.38(c).

New §61.33(b) allows the department to contract with providers, for purposes of the BCCS Program, that are not eligible to participate in the TWHP, if the department is unable to locate a sufficient number of TWHP eligible providers in a certain region. Section 61.33(b) sets forth a list of non-exhaustive factors that the department will use when determining whether a certain region has a sufficient number of TWHP eligible providers.

New §61.33(c) requires BCCS providers to provide the department, or its designee, with all requested information to determine the provider's compliance with program requirements.

New §61.33(d) provides that if the department, or its designee, determines that a BCCS provider has failed to comply with the requirements of this section, then the department, or its designee, will disqualify the provider from BCCS.

New §61.33(e) provides that if a BCCS provider is disqualified, the department, or its designee, will take appropriate action to assist an impacted BCCS client to find an alternative provider, and will recoup any funds paid to the disqualified provider for BCCS performed during the period of disqualification.

COMMENTS

The department did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code, §531.0055(e), and Texas 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 Texas Health and Safety Code, Chapter 1001.

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 12, 2016.

TRD-201604132

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: September 1, 2016

Proposal publication date: March 18, 2016

For further information, please call: (512) 776-6972

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TITLE 31. NATURAL RESOURCES AND
CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 9. EXPLORATION AND LEASING OF STATE OIL AND GAS

SUBCHAPTER D. PAYING ROYALTY TO THE STATE

31 TAC §9.51

BACKGROUND AND ANALYSIS

On behalf of the School Land Board ("SLB"), the General Land Office ("GLO") adopts an amendment to 31 TAC §9.51 (relating to Royalty and Reporting Obligations to the State) by adding a new subsection (b)(3)(E)(iv), without changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4952). The amended text will not be republished.

The adopted amendment clarifies the procedures and standards for the reduction by the SLB of interest charged or penalties assessed under Texas Natural Resources Code §52.131 or any other interest or penalties assessed by the Land Commissioner relating to unpaid or delinquent royalties, or unfiled or delinquent reports.

COMMENTS BY THE PUBLIC

The GLO did not receive any comments on the amendments.

STATUTORY AUTHORITY

This adopted amendment to 31 TAC §9.51 is adopted pursuant to the authority set out in Texas Natural Resources Code (1) §52.131(j), which states that the SLB may provide procedures and standards for reduction of interest charged or penalties assessed under Texas Natural Resources Code §52.131 or any other interest or penalties assessed by the Land Commissioner relating to unpaid or delinquent royalties, and (2) §52.131(h), which states that the Land Commissioner may establish by rule a reasonable penalty for late filing of reports or any other instrument to be filed pursuant to Texas Natural Resources Code, Chapter 52.

STATUTES AFFECTED

Texas Natural Resources Code Chapter 52 is affected by this 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 15, 2016.

TRD-201604137

Anne L. Idsal

Chief Clerk, Deputy Land Commissioner

General Land Office

Effective date: September 4, 2016

Proposal publication date: July 8, 2016

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



PART 4. SCHOOL LAND BOARD

CHAPTER 151. OPERATIONS OF THE SCHOOL LAND BOARD

31 TAC §151.6

The School Land Board (SLB) adopts an amendment to 31 Texas Administrative Code §151.6, relating to the Procedures for the Release of Funds from the Real Estate Special Fund Account, without changes to the proposed text as published July 8, 2016, issue of the *Texas Register* (41 TexReg 4953). The adopted text will not be republished.

INTRODUCTION AND BACKGROUND

The adopted amendment to §151.6(1)(c) more accurately reflects how the Chief Investment Officer of the Texas General Land Office will calculate for the School Land Board (SLB) the amounts of money available for release from the Real Estate Special Fund Account (RESFA) to either the Available School Fund (ASF) or the State Board of Education (SBOE) for investment in the Permanent School Fund (PSF), as required by Section 51.413(b) of the Texas Natural Resources Code.

COMMENTS BY THE PUBLIC

The GLO did not receive any comments on the amendments.

STATUTORY AUTHORITY

The amendment is adopted under Texas Natural Resources Code, Chapter 51, including §51.407 and §51.413(b), which authorizes the board to adopt rules to establish the procedure to be used to determine the amount and date of any transfer of money from the RESFA to either the ASF or the SBOE for investment in the PSF.

STATUTES AFFECTED

Texas Natural Resources Code §51.413 and §32.061 are affected by this adopted rulemaking action.

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 15, 2016.

TRD-201604141

Anne L. Idsal

Chief Clerk, Deputy Land Commissioner

School Land Board

Effective date: September 4, 2016

Proposal publication date: July 8, 2016

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



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 97. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §97.2 and new §97.202 in Chapter 97, Licensing Standards for Home and Community Support Services Agencies. The amendment to §97.2 is

adopted with changes to the proposed text published in the April 22, 2016, issue of the *Texas Register* (41 TexReg 2880). The amendment to §97.202 is adopted without changes to the proposed text.

The amendment and new section are adopted, in part, to implement House Bill 4001, 84th Legislature, Regular Session, 2015, which amends Texas Health and Safety Code, Chapter 142, governing home and community support services agencies (HCSSA). House Bill 4001 adds habilitation as a service that a HCSSA provides and defines "habilitation" as services described in Texas Government Code §534.001 that are delivered by a licensed HCSSA. Therefore, the adoption allows a licensed HCSSA to provide habilitation and requires those services to be provided in accordance with Title 40, Texas Administrative Code, Chapter 97. The adoption does not require an entity providing habilitation to obtain a HCSSA license if the entity does not provide any other service for which a license is required - home health, hospice, or personal assistance services. The adoption also includes minor editorial changes for clarity and consistency.

DADS received written comments from the Coalition for Nurses in Advanced Practice. A summary of the comment and the response follows.

Comment: A commenter requested that the definition of "advanced practice nurse" in §97.2 be changed to "advanced practice registered nurse" to reflect changes to the Nursing Practice Act in 2013. The commenter further requested amending the definition of "practitioner" to change the term "advanced practice nurse" to "advanced practice registered nurse."

Response: The agency agrees that the term "advanced practice registered nurse" should replace "advanced practice nurse." The agency has added a definition of "advanced practice registered nurse" and used the term in the definition of "practitioner." The term "advanced practice nurse" cannot be deleted from the definitions because the term is used in sections of Chapter 97 that are not being amended. Therefore, the definition of "advanced practice nurse" has been amended to mean an "advanced practice registered nurse" and when all uses of the term "advanced practice nurse" in Chapter 97 have been removed, the term can be eliminated from the definitions.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §97.2

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Health and Safety Code, Chapter 142 which authorizes the executive commissioner to license and regulate home and community support services agencies.

§97.2. Definitions.

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

(1) Accessible and flexible services--Services that are delivered in the least intrusive manner possible and are provided in all settings where individuals live, work, and recreate.

(2) Administration of medication--The direct application of any medication by injection, inhalation, ingestion, or any other means to the body of a client. The preparation of medication is part of the administration of medication and is the act or process of making

ready a medication for administration, including the calculation of a client's medication dosage; altering the form of the medication by crushing, dissolving, or any other method; reconstitution of an injectable medication; drawing an injectable medication into a syringe; preparing an intravenous admixture; or any other act required to render the medication ready for administration.

(3) Administrative support site--A facility or site where an agency performs administrative and other support functions but does not provide direct home health, hospice, or personal assistance services. This site does not require an agency license.

(4) Administrator--The person who is responsible for implementing and supervising the administrative policies and operations of a home and community support services agency and for administratively supervising the provision of all services to agency clients on a day-to-day basis.

(5) ADS--Alternative delivery site. A facility or site, including a residential unit or an inpatient unit:

(A) that is owned or operated by an agency providing hospice services;

(B) that is not the hospice's principal place of business, which for the purposes of this definition, means it is not the parent agency;

(C) that is located in the geographical area served by the hospice; and

(D) from which the hospice provides hospice services.

(6) Advanced practice nurse--An advanced practice registered nurse.

(7) Advanced practice registered nurse--A person licensed by the Texas Board of Nursing as an advanced practice registered nurse. The term is synonymous with "advanced practice nurse."

(8) Advisory committee--A committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup, established for the purpose of obtaining advice or recommendations on issues or policies that are within the scope of a person's responsibility.

(9) Affiliate--With respect to an applicant or license holder that is:

(A) a corporation--means each officer, director, and stockholder with direct ownership of at least 5.0 percent, subsidiary, and parent company;

(B) a limited liability company--means each officer, member, and parent company;

(C) an individual--means:

(i) the individual's spouse;

(ii) each partnership and each partner thereof of which the individual or any affiliate of the individual is a partner; and

(iii) each corporation in which the individual is an officer, director, or stockholder with a direct ownership or disclosable interest of at least 5.0 percent.

(D) a partnership--means each partner and any parent company; and

(E) a group of co-owners under any other business arrangement--means each officer, director, or the equivalent under the specific business arrangement and each parent company.

- (10) Agency--A home and community support services agency.
- (11) Applicant--The owner of an agency that is applying for a license under the statute. This is the person in whose name the license will be issued.
- (12) Assistance with self-administration of medication--Any needed ancillary aid provided to a client in the client's self-administered medication or treatment regimen, such as reminding a client to take a medication at the prescribed time, opening and closing a medication container, pouring a predetermined quantity of liquid to be ingested, returning a medication to the proper storage area, and assisting in reordering medications from a pharmacy. Such ancillary aid includes administration of any medication when the client has the cognitive ability to direct the administration of their medication and would self-administer if not for a functional limitation.
- (13) Association--A partnership, limited liability company, or other business entity that is not a corporation.
- (14) Audiologist--A person who is currently licensed under the Texas Occupations Code, Chapter 401, as an audiologist.
- (15) Bereavement--The process by which a survivor of a deceased person mourns and experiences grief.
- (16) Bereavement services--Support services offered to a family during bereavement. Services may be provided to persons other than family members, including residents of a skilled nursing facility, nursing facility, or intermediate care facility for individuals with an intellectual disability or related conditions, when appropriate and identified in a bereavement plan of care.
- (17) Biologicals--A medicinal preparation made from living organisms and their products, including serums, vaccines, antigens, and antitoxins.
- (18) Boarding home facility--An establishment defined in Texas Health and Safety Code §260.001(2).
- (19) Branch office--A facility or site in the service area of a parent agency from which home health or personal assistance services are delivered or where active client records are maintained. This does not include inactive records that are stored at an unlicensed site.
- (20) Care plan--
- (A) a written plan prepared by the appropriate health care professional for a client of the home and community support services agency; or
- (B) for home dialysis designation, a written plan developed by the physician, registered nurse, dietitian, and qualified social worker to personalize the care for the client and enable long- and short-term goals to be met.
- (21) Case conference--A conference among personnel furnishing services to the client to ensure that their efforts are coordinated effectively and support the objectives outlined in the plan of care or care plan.
- (22) Certified agency--A home and community support services agency, or portion of the agency, that:
- (A) provides a home health service; and
- (B) is certified by an official of the Department of Health and Human Services as in compliance with conditions of participation in Social Security Act, Title XVIII (42 United States Code (USC) §1395 et seq.).
- (23) Certified home health services--Home health services that are provided by a certified agency.
- (24) CFR--Code of Federal Regulations. The regulations and rules promulgated by agencies of the Federal government that address a broad range of subjects, including hospice care and home health services.
- (25) CHAP--Community Health Accreditation Program, Inc. An independent, nonprofit accrediting body that publicly certifies that an organization has voluntarily met certain standards for home and community-based health care.
- (26) Chief financial officer--An individual who is responsible for supervising and managing all financial activities for a home and community support services agency.
- (27) Client--An individual receiving home health, hospice, or personal assistance services from a licensed home and community support services agency. This term includes each member of the primary client's family if the member is receiving ongoing services. This term does not include the spouse, significant other, or other family member living with the client who receives a one-time service (for example, vaccination) if the spouse, significant other, or other family member receives the service in connection with the care of a client.
- (28) Clinical note--A dated and signed written notation by agency personnel of a contact with a client containing a description of signs and symptoms; treatment and medication given; the client's reaction; other health services provided; and any changes in physical and emotional condition.
- (29) CMS--Centers for Medicare and Medicaid Services. The federal agency that administers the Medicare program and works in partnership with the states to administer Medicaid.
- (30) Complaint--An allegation against an agency regulated by DADS or against an employee of an agency regulated by DADS that involves a violation of this chapter or the statute.
- (31) Community disaster resources--A local, statewide, or nationwide emergency system that provides information and resources during a disaster, including weather information, transportation, evacuation, and shelter information, disaster assistance and recovery efforts, evacuee and disaster victim resources, and resources for locating evacuated friends and relatives.
- (32) Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an agency or other person.
- (A) A controlling person includes:
- (i) a management company or other business entity that operates or contracts with others for the operation of an agency;
- (ii) a person who is a controlling person of a management company or other business entity that operates an agency or that contracts with another person for the operation of an agency; and
- (iii) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of an agency, is in a position of actual control or authority with respect to the agency, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the agency.
- (B) A controlling person, as described by subparagraph (A)(iii) of this paragraph, does not include an employee, lender, se-

cured creditor, or other person who does not exercise formal or actual influence or control over the operation of an agency.

(33) Conviction--An adjudication of guilt based on a finding of guilt, a plea of guilty, or a plea of nolo contendere.

(34) Counselor--An individual qualified under Medicare standards to provide counseling services, including bereavement, dietary, spiritual, and other counseling services to both the client and the family.

(35) DADS--Department of Aging and Disability Services.

(36) Day--Any reference to a day means a calendar day, unless otherwise specified in the text. A calendar day includes weekends and holidays.

(37) Deficiency--A finding of noncompliance with federal requirements resulting from a survey.

(38) Designated survey office--A DADS Home and Community Support Services Agencies Program office located in an agency's geographic region.

(39) Dialysis treatment record--For home dialysis designation, a dated and signed written notation by the person providing dialysis treatment which contains a description of signs and symptoms, machine parameters and pressure settings, type of dialyzer and dialysate, actual pre- and post-treatment weight, medications administered as part of the treatment, and the client's response to treatment.

(40) Dietitian--A person who is currently licensed under the laws of the State of Texas to use the title of licensed dietitian or provisional licensed dietitian, or who is a registered dietitian.

(41) Disaster--The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or man-made cause, such as fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, epidemic, air contamination, infestation, explosion, riot, hostile military or paramilitary action, or energy emergency. In a hospice inpatient unit, a disaster also includes failure of the heating or cooling system, power outage, explosion, and bomb threat.

(42) ESRD--End stage renal disease. For home dialysis designation, the stage of renal impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

(43) Functional need--Needs of the individual that require services without regard to diagnosis or label.

(44) Habilitation--Habilitation services, as defined by Texas Government Code §534.001, provided by an agency licensed under this chapter.

(45) Health assessment--A determination of a client's physical and mental status through inventory of systems.

(46) Home and community support services agency--A person who provides home health, hospice, habilitation, or personal assistance services for pay or other consideration in a client's residence, an independent living environment, or another appropriate location.

(47) Home health aide--An individual working for an agency who meets at least one of the requirements for home health aides as defined in §97.701 of this chapter (relating to Home Health Aides).

(48) Home health medication aide--An unlicensed person issued a permit by DADS to administer medication to a client under the Texas Health and Safety Code, Chapter 142, Subchapter B.

(49) Home health service--The provision of one or more of the following health services required by an individual in a residence or independent living environment:

(A) nursing, including blood pressure monitoring and diabetes treatment;

(B) physical, occupational, speech, or respiratory therapy;

(C) medical social service;

(D) intravenous therapy;

(E) dialysis;

(F) service provided by unlicensed personnel under the delegation or supervision of a licensed health professional;

(G) the furnishing of medical equipment and supplies, excluding drugs and medicines; or

(H) nutritional counseling.

(50) Hospice--A person licensed under this chapter to provide hospice services, including a person who owns or operates a residential unit or an inpatient unit.

(51) Hospice aide--A person working for an agency licensed to provide hospice services who meets the qualifications for a hospice aide as described in §97.843 of this chapter (relating to Hospice Aide Qualifications).

(52) Hospice homemaker--A person working for an agency licensed to provide hospice services who meets the qualifications described in §97.845 of this chapter (relating to Hospice Homemaker Qualifications).

(53) Hospice services--Services, including services provided by unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a client or a client's family as part of a coordinated program consistent with the standards and rules adopted under this chapter. These services include palliative care for terminally ill clients and support services for clients and their families that:

(A) are available 24 hours a day, seven days a week, during the last stages of illness, during death, and during bereavement;

(B) are provided by a medically directed interdisciplinary team; and

(C) may be provided in a home, nursing facility, residential unit, or inpatient unit according to need. These services do not include inpatient care normally provided in a licensed hospital to a terminally ill person who has not elected to be a hospice client. For the purposes of this definition, the word "home" includes a person's "residence" as defined in this section.

(54) Independent living environment--A client's residence, which may include a group home, foster home, or boarding home facility, or other settings where a client participates in activities, including school, work, or church.

(55) Individual and family choice and control--Individuals and families who express preferences and make choices about how their support service needs are met.

(56) Individualized service plan--A written plan prepared by the appropriate health care personnel for a client of a home and community support services agency licensed to provide personal assistance services.

(57) Inpatient unit--A facility, also referred to as a hospice freestanding inpatient facility, that provides a continuum of medical or nursing care and other hospice services to clients admitted into the unit and that is in compliance with:

(A) the conditions of participation for inpatient units adopted under Social Security Act, Title XVIII (42 United States Code §1395 et seq.); and

(B) standards adopted under this chapter.

(58) IRoD--Informal review of deficiencies. An informal process that allows an agency to refute a deficiency or violation cited during a survey.

(59) JCAHO--Joint Commission on Accreditation of Healthcare Organizations. An independent, nonprofit organization for standard-setting and accrediting in-home care and other areas of health care.

(60) Joint training--Training provided by DADS at least semi-annually for home and community support services agencies and DADS surveyors on subjects that address the 10 most commonly cited violations of federal or state law by home and community support services agencies as published in DADS annual reports.

(61) LAR--Legally authorized representative. A person authorized by law to act on behalf of a client with regard to a matter described in this chapter, and may include a parent of a minor, guardian of an adult or minor, managing conservator of a minor, agent under a medical power of attorney, or surrogate decision-maker under Texas Health and Safety Code, §313.004.

(62) Licensed vocational nurse--A person who is currently licensed under Texas Occupations Code, Chapter 301, as a licensed vocational nurse.

(63) Life Safety Code (also referred to as NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(64) Local emergency management agencies--The local emergency management coordinator, fire, police, and emergency medical services.

(65) Local emergency management coordinator--The person identified as the emergency management coordinator by the mayor or county judge in an agency's service area.

(66) Manager--An employee or independent contractor responsible for providing management services to a home and community support services agency for the overall operation of a home and community support services agency including administration, staffing, or delivery of services. Examples of contracts for services that will not be considered contracts for management services include contracts solely for maintenance, laundry, or food services.

(67) Medication administration record--A record used to document the administration of a client's medications.

(68) Medication list--A list that includes all prescription and over-the-counter medication that a client is currently taking, including the dosage, the frequency, and the method of administration.

(69) Mitigation--An action taken to eliminate or reduce the probability of a disaster, or reduce a disaster's severity or consequences.

(70) Multiple location--A Medicare-approved alternate delivery site that meets the definition in 42 CFR §418.3.

(71) Notarized copy--A sworn affidavit stating that attached copies are true and correct copies of the original documents.

(72) Nursing facility--An institution licensed as a nursing home under the Texas Health and Safety Code, Chapter 242.

(73) Nutritional counseling--Advising and assisting individuals or families on appropriate nutritional intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status, with the goal being health promotion, disease prevention, and nutrition education. Nutritional counseling may include the following:

(A) dialogue with the client to discuss current eating habits, exercise habits, food budget, and problems with food preparation;

(B) discussion of dietary needs to help the client understand why certain foods should be included or excluded from the client's diet and to help with adjustment to the new or revised or existing diet plan;

(C) a personalized written diet plan as ordered by the client's physician or practitioner, to include instructions for implementation;

(D) providing the client with motivation to help the client understand and appreciate the importance of the diet plan in getting and staying healthy; or

(E) working with the client or the client's family members by recommending ideas for meal planning, food budget planning, and appropriate food gifts.

(74) Occupational therapist--A person who is currently licensed under the Occupational Therapy Practice Act, Texas Occupations Code, Chapter 454, as an occupational therapist.

(75) Operating hours--The days of the week and the hours of day an agency's place of business is open as identified in an agency's written policy as required by §97.210 of this chapter (relating to Agency Operating Hours).

(76) Original active client record--A record composed first-hand for a client currently receiving services.

(77) Palliative care--Intervention services that focus primarily on the reduction or abatement of physical, psychosocial, and spiritual symptoms of a terminal illness. It is client and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and facilitating client autonomy, access to information, and choice.

(78) Parent agency--An agency that develops and maintains administrative controls and provides supervision of branch offices and alternate delivery sites.

(79) Parent company--A person, other than an individual, who has a direct 100 percent ownership interest in the owner of an agency.

(80) Person--An individual, corporation, or association.

(81) Person with a disclosable interest--Any person who owns at least a 5.0 percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 142. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the agency.

(82) Personal assistance services--Routine ongoing care or services required by an individual in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes:

(A) personal care;

(B) health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Texas Board of Nursing through a memorandum of understanding with DADS in accordance with Texas Health and Safety Code, §142.016; and

(C) health-related tasks provided by unlicensed personnel under the delegation of a registered nurse or that a registered nurse determines do not require delegation.

(83) Personal care--The provision of one or more of the following services required by an individual in a residence or independent living environment:

(A) bathing;

(B) dressing;

(C) grooming;

(D) feeding;

(E) exercising;

(F) toileting;

(G) positioning;

(H) assisting with self-administered medications;

(I) routine hair and skin care; and

(J) transfer or ambulation.

(84) Pharmacist--A person who is licensed to practice pharmacy under the Texas Pharmacy Act, Texas Occupations Code, Chapter 558.

(85) Pharmacy--A facility defined in the Texas Occupations Code, §551.003(31), at which a prescription drug or medication order is received, processed, or dispensed.

(86) Physical therapist--A person who is currently licensed under Texas Occupations Code, Chapter 453, as a physical therapist.

(87) Physician--This term includes a person who is:

(A) licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code, Chapter 155;

(B) licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of a client and orders home health or hospice services for the client, in accordance with the Texas Occupations Code, §151.056(b)(4); or

(C) a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice, in accordance with the Texas Occupations Code, §151.052(a)(8).

(88) Physician assistant--A person who is licensed under the Physician Assistant Licensing Act, Texas Occupations Code, Chapter 204, as a physician assistant.

(89) Physician-delegated task--A task performed in accordance with the Texas Occupations Code, Chapter 157, including orders signed by a physician that specify the delegated task, the individual to whom the task is delegated, and the client's name.

(90) Place of business--An office of a home and community support services agency that maintains client records or directs home health, hospice, habilitation, or personal assistance services. This term includes a parent agency, a branch office, and an alternate delivery site. The term does not include an administrative support site.

(91) Plan of care--The written orders of a practitioner for a client who requires skilled services.

(92) Practitioner--A person who is currently licensed in a state in which the person practices as a physician, dentist, podiatrist, or a physician assistant, or an advanced practice registered nurse.

(93) Preparedness--Actions taken in anticipation of a disaster.

(94) Presurvey conference--A conference held with DADS staff and the applicant or the applicant's representatives to review licensure standards and survey documents, and to provide consultation before the survey.

(95) Progress note--A dated and signed written notation by agency personnel summarizing facts about care and the client's response during a given period of time.

(96) Psychoactive treatment--The provision of a skilled nursing visit to a client with a psychiatric diagnosis under the direction of a physician that includes one or more of the following:

(A) assessment of alterations in mental status or evidence of suicide ideation or tendencies;

(B) teaching coping mechanisms or skills;

(C) counseling activities; or

(D) evaluation of the plan of care.

(97) Recovery--Activities implemented during and after a disaster response designed to return an agency to its normal operations as quickly as possible.

(98) Registered nurse delegation--Delegation by a registered nurse in accordance with:

(A) 22 TAC Chapter 224 (concerning Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(B) 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(99) Residence--A place where a person resides, including a home, a nursing facility, a convalescent home, or a residential unit.

(100) Residential unit--A facility that provides living quarters and hospice services to clients admitted into the unit and that is in compliance with standards adopted under the Texas Health and Safety Code, Chapter 142.

(101) Respiratory therapist--A person who is currently licensed under Texas Occupations Code, Chapter 604, as a respiratory care practitioner.

(102) Respite services--Support options that are provided temporarily for the purpose of relief for a primary caregiver in providing care to individuals of all ages with disabilities or at risk of abuse or neglect.

(103) Response--Actions taken immediately before an impending disaster or during and after a disaster to address the immediate and short-term effects of the disaster.

(104) Restraint--A restraint is:

(A) A manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a client in a hospice inpatient unit to move his or her arms, legs, body, or head freely, but does not include a device, such as an orthopedically prescribed device, a surgical dressing or bandage, a protective helmet, or other method that involves the physical holding of the client for the purpose of:

- (i) conducting a routine physical examination or test;
- (ii) protecting the client from falling out of bed; or
- (iii) permitting the client to participate in activities without the risk of physical harm, not including a physical escort; or

(B) A drug or medication when used as a restriction to manage a client's behavior or restrict the client's freedom of movement in a hospice inpatient unit, but not as a standard treatment or medication dosage for the client's condition.

(105) RN--Registered nurse. A person who is currently licensed under the Nursing Practice Act, Texas Occupations Code, Chapter 301, as a registered nurse.

(106) Seclusion--The involuntary confinement of a client alone in a room or an area in a hospice inpatient unit from which the client is physically prevented from leaving.

(107) Section--A reference to a specific rule in this chapter.

(108) Service area--A geographic area established by an agency in which all or some of the agency's services are available.

(109) Skilled services--Services in accordance with a plan of care that require the skills of:

- (A) a registered nurse;
- (B) a licensed vocational nurse;
- (C) a physical therapist;
- (D) an occupational therapist;
- (E) a respiratory therapist;
- (F) a speech-language pathologist;
- (G) an audiologist;
- (H) a social worker; or
- (I) a dietitian.

(110) Social worker--A person who is currently licensed as a social worker under Texas Occupations Code, Chapter 505.

(111) Speech-language pathologist--A person who is currently licensed as a speech-language pathologist under Texas Occupations Code, Chapter 401.

(112) Statute--The Texas Health and Safety Code, Chapter 142.

(113) Substantial compliance--A finding in which an agency receives no recommendation for enforcement action after a survey.

(114) Supervised practical training--Hospice aide training that is conducted in a laboratory or other setting in which the trainee

demonstrates knowledge while performing tasks on an individual. The training is supervised by a registered nurse or by a licensed vocational nurse who works under the direction of a registered nurse.

(115) Supervising nurse--The person responsible for supervising skilled services provided by an agency and who has the qualifications described in §97.244(c) of this chapter (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications). This person may also be known as the director of nursing or similar title.

(116) Supervision--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(117) Support services--Social, spiritual, and emotional care provided to a client and a client's family by a hospice.

(118) Survey--An on-site inspection or complaint investigation conducted by a DADS representative to determine if an agency is in compliance with the statute and this chapter or in compliance with applicable federal requirements or both.

(119) Terminal illness--An illness for which there is a limited prognosis if the illness runs its usual course.

(120) Unlicensed person--A person not licensed as a health care provider. The term includes home health aides, hospice aides, hospice homemakers, medication aides permitted by DADS, and other unlicensed individuals providing personal care or assistance in health services.

(121) Unsatisfied judgments--A failure to fully carry out the terms or meet the obligation of a court's final disposition on the matters before it in a suit regarding the operation of an agency.

(122) Violation--A finding of noncompliance with this chapter or the statute resulting from a survey.

(123) Volunteer--An individual who provides assistance to a home and community support services agency without compensation other than reimbursement for actual expenses.

(124) Working day--Any day except Saturday, Sunday, a state holiday, or a federal holiday.

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 12, 2016.

TRD-201604074

Lawrence Hornsby

General Counsel

Department of Aging and Disability Services

Effective date: September 1, 2016

Proposal publication date: April 22, 2016

For further information, please call: (512) 438-3791



SUBCHAPTER C. MINIMUM STANDARDS FOR ALL HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

DIVISION 1. GENERAL PROVISIONS

40 TAC §97.202

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Health and Safety Code, Chapter 142 which authorizes the executive commissioner to license and regulate home and community support 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.

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Lawrence Hornsby

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Department of Aging and Disability Services

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For further information, please call: (512) 438-3791



PART 15. TEXAS VETERANS COMMISSION

CHAPTER 460. FUND FOR VETERANS' ASSISTANCE PROGRAM

The Texas Veterans Commission (Commission) adopts amendments to Title 40, Part 15, Chapter 460, Subchapter A, §460.10, concerning Limitations on Grant Funds; Subchapter B, §460.21, concerning Monitoring Activities; and Subchapter C, §460.31, concerning Noncompliance without changes to the proposed text as published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3629). The amendments will not be republished.

The amended rules are adopted following a comprehensive review of the chapter under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The Commission has determined that the need for these rules continues to exist but that they should be amended to update obsolete references to provide current citations to the Code of Federal Regulations which provide a government-wide framework for grants management. Previous federal regulations found in OMB Circulars are now superseded by recent modifications to the Uniform Grant Guidance in the Code of Federal Regulations.

No comments were received regarding the proposed amendments.

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE FUND FOR VETERANS' ASSISTANCE PROGRAM

40 TAC §460.10

STATUTORY AUTHORITY

The amended rules are adopted under Texas Government Code §434.010, which provides the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency; and Texas Government

Code §434.017, which authorizes the Commission to establish rules governing the award of grants by the Commission.

The amendments implement the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200.

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 12, 2016.

TRD-201604046

H. Karen Fastenau Meisel

General Counsel

Texas Veterans Commission

Effective date: September 1, 2016

Proposal publication date: May 20, 2016

For further information, please call: (512) 463-1549



SUBCHAPTER B. MONITORING ACTIVITIES

40 TAC §460.21

STATUTORY AUTHORITY

The amended rules are adopted under Texas Government Code §434.010, which provides the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency; and Texas Government Code §434.017, which authorizes the Commission to establish rules governing the award of grants by the Commission.

The amendments implement the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200.

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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H. Karen Fastenau Meisel

General Counsel

Texas Veterans Commission

Effective date: September 1, 2016

Proposal publication date: May 20, 2016

For further information, please call: (512) 463-1549



SUBCHAPTER C. CORRECTIVE ACTION

40 TAC §460.31

STATUTORY AUTHORITY

The amended rules are adopted under Texas Government Code §434.010, which provides the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency; and Texas Government Code §434.017, which authorizes the Commission to establish rules governing the award of grants by the Commission.

The amendments implement the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200.

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 12, 2016.

TRD-201604048

H. Karen Fastenau Meisel

General Counsel

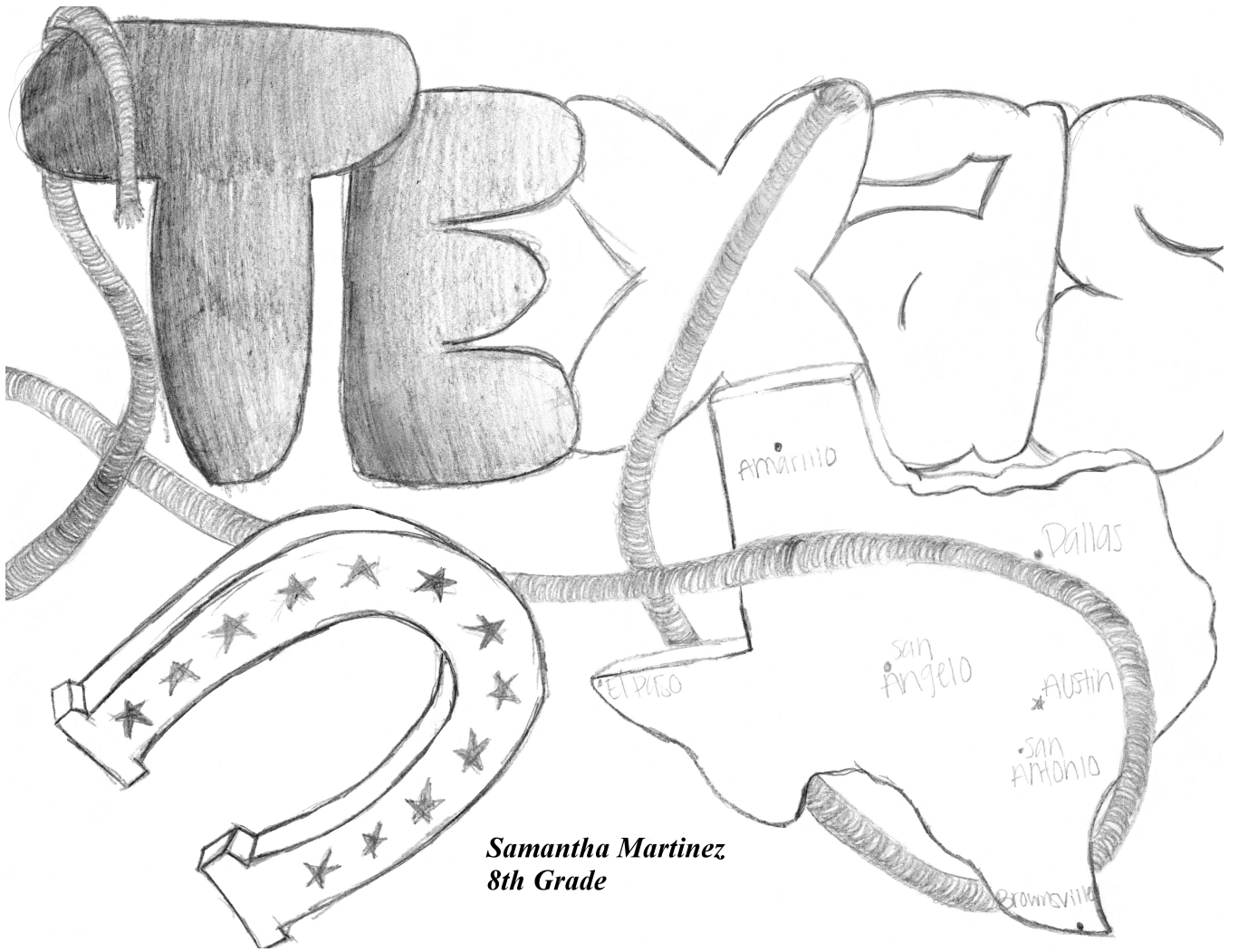
Texas Veterans Commission

Effective date: September 1, 2016

Proposal publication date: May 20, 2016

For further information, please call: (512) 463-1549





Samantha Martinez
8th Grade

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Employees Retirement System of Texas

Title 34, Part 4

Pursuant to the notice of the proposed rule review published in the February 14, 2014, issue of the *Texas Register* (39 TexReg 1005), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC) Chapter 81, Insurance, pursuant to Texas Government Code §2001.039, to determine whether the reason for adopting the rules in Chapter 81 continues to exist. No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reason for adopting the rules in 34 TAC Chapter 81 continues to exist, and therefore, the Board readopts Chapter 81 with amendments as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4960). Chapter 81 was adopted with changes by the Board at its August 16, 2016, meeting. This completes ERS' review of 34 TAC Chapter 81, Insurance.

TRD-201604197

Paula A. Jones

Deputy Executive Director and General Counsel

Employees Retirement System of Texas

Filed: August 16, 2016



Texas Optometry Board

Title 22, Part 14

The Texas Optometry Board readopts without change the following rules contained in Title 22, Chapter 277, of the Texas Administrative Code, after reviewing the rules and finding that the reasons for initially adopting the rules continue to exist: §277.1. Complaint Procedures, §277.2. Disciplinary Proceedings, §277.3. Probation, §277.4. Reinstatement, §277.5. Convictions, §277.6. Administrative Fines and Penalties, §277.7. Patient Records, §277.8. Emergency Temporary Suspension or Restriction, §277.9. Alternative Dispute Resolution, and §277.10. Remedial Plans.

The proposed rule review was published in the June 17, 2016, issue of the *Texas Register* (41 TexReg 4499). No comments were received.

The rule review was conducted pursuant to Texas Government Code §2001.039. This concludes the review of rules in Chapter 277.

The Texas Optometry Board readopts without change the following rules contained in Title 22, Chapter 279, of the Texas Administrative Code, after reviewing the rules and finding that the reasons for initially

adopting the rules continue to exist: §279.1. Contact Lens Examination, §279.2. Contact Lens Prescriptions, §279.3. Spectacle Examination, §279.4. Spectacle and Ophthalmic Devices Prescriptions, §279.5. Dispensing Ophthalmic Materials, §279.9. Advertising, §279.10. Professional Identification, §279.11. Relationship with Dispensing Optician - Books and Records, §279.12. Relationship with Dispensing Optician - Separation of Offices, §279.13. Board Interpretation Number Thirteen, §279.14. Patient Files, §279.15. Board Interpretation Number Fifteen and §279.16. Telehealth Services.

The proposed rule review was published in the June 17, 2016, issue of the *Texas Register* (41 TexReg 4499). No comments were received.

The rule review was conducted pursuant to Texas Government Code §2001.039. This concludes the review of rules in Chapter 279.

The Texas Optometry Board readopts without change the following rules contained in Title 22, Chapter 280, of the Texas Administrative Code, after reviewing the rules and finding that the reasons for initially adopting the rules continue to exist: §280.1. Application for Certification, §280.2. Required Education, §280.3. Certified Therapeutic Optometrist Examination, §280.5. Prescription and Diagnostic Drugs for Therapeutic Optometry, §280.6. Procedures Authorized for Therapeutic Optometrists, §280.8. Optometric Glaucoma Specialist: Required Education, Examination and Clinical Skills Evaluation, §280.9. Application for Licensure as Optometric Glaucoma Specialist, §280.10. Optometric Glaucoma Specialist: Administration and Prescribing of Oral Medications and Anti-Glaucoma Drugs, and §280.11. Treatment of Glaucoma by an Optometric Glaucoma Specialist.

The proposed rule review was published in the June 17, 2016, issue of the *Texas Register* (41 TexReg 4499). No comments were received.

The rule review was conducted pursuant to Texas Government Code §2001.039. This concludes the review of rules in Chapter 280.

TRD-201604201

Chris Kloeris

Executive Director

Texas Optometry Board

Filed: August 17, 2016



Texas Board of Physical Therapy Examiners

Title 22, Part 16

The Texas Board of Physical Therapy Examiners adopts the review of the following chapters in accordance with Texas Government Code §2001.039:

Chapter 321, concerning Definitions; Chapter 322, concerning Practice; Chapter 323, concerning Powers and Duties of the Board; Chapter 325, concerning Organization of the Board; Chapter 327, concerning Compensation; Chapter 329, concerning Licensing Procedure; Chapter 335, concerning Professional Title; Chapter 337, concerning Display of License; Chapter 339, concerning Fees; Chapter 341, concerning License Renewal; Chapter 342, concerning Open Records; Chapter 343, concerning Contested Case Procedure; Chapter 344, concerning Administrative Fines and Penalties; Chapter 346, concerning Practice Settings for Physical Therapy; and Chapter 347, concerning Registration of Physical Therapy Facilities.

The proposed notice of intent to review rules was published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3921).

No comments were received on the proposed rule review.

The Texas Board of Physical Therapy Examiners has assessed whether the reasons for adopting or readopting the rules continue to exist. The Texas Board of Physical Therapy Examiners finds that the rules in the chapters are needed, reflect current legal and policy considerations, and reflect current procedures of the Texas Board of Physical Therapy Examiners. The reasons for initially adopting the rules continue to exist. The Texas Board of Physical Therapy Examiners readopts the chapters.

TRD-201604135

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Filed: August 15, 2016



Texas Veterans Commission

Title 40, Part 15

Chapter 460. Fund for Veterans' Assistance Program

The Texas Veterans Commission (Commission) has completed its review of 40 TAC Chapter 460, relating to Fund for Veterans' Assistance Program.

The notice of proposed rule review was published in the May 22, 2015, issue of the *Texas Register* (40 TexReg 2793). The Commission received no comments regarding the proposed rule review.

After completing its review of 40 TAC Chapter 460, the Commission determined that the reasons for initially adopting the rules continue to exist. Furthermore, the review process indicated that amendments were necessary to delete outdated references and update the proper authorities cited. Such amendments were proposed and published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3629).

Elsewhere in this issue of the *Texas Register*, the Commission concurrently adopts the amendments to 40 TAC Chapter 460. Therefore, the Commission readopts Chapter 460 with amendments as published in the May 20, 2016, issue of the *Texas Register* (41 TexReg 3629) and adopted by the Commission at its August 10, 2016 meeting.

This notice concludes the Commission's review of 40 TAC Chapter 460.

TRD-201604030

H. Karen Fastenau Meisel

General Counsel

Texas Veterans Commission

Filed: August 11, 2016



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §228.10(b)(1)

Component I: Governance	Evidence
19 TAC §228.20(b): The representative nature of an advisory committee.	Records of advisory committee membership reflecting at least three of the groups listed in this subsection; and Advisory committee meeting attendance records.
19 TAC §228.20(b): Input provided by an advisory committee.	Advisory committee member input reflected in the advisory committee minutes.
19 TAC §228.20(b): EPP informed advisory committee members of their roles and responsibilities.	Advisory committee training materials, date(s), attendance records; or Advisory committee handbook with acknowledgement of receipt by advisory committee member; or Letter of invitation with roles and responsibilities outlined and acknowledged by invitee as to accept or decline; or Bylaws acknowledged receipt by advisory committee member.
19 TAC §228.20(b): Advisory committee meeting.	Dated minutes of each advisory committee meeting.
19 TAC §228.20(e): The EPP provided notice of amendments to its approved program.	Record of notification to TEA.
19 TAC §228.20(f): The EPP provided notice and received approval of amendments to its approved program.	Record of approval or denial from TEA.
19 TAC §228.20(g): The EPP published a calendar of activities.	Calendar posted on EPP website.
19 TAC §228.10(a): The EPP has met the requirements for approval.	EPP accreditation status on file with TEA.
19 TAC §228.10(b): The EPP has met the requirements for continuing approval.	EPP accreditation status on file with TEA.
19 TAC §228.10(c): The EPP has met the requirements to offer clinical teaching.	EPP clinical teaching status on file with TEA.
19 TAC §228.10(d): The EPP has met the requirements to offer a certification class and/or category.	EPP certification class and/or category status on file with TEA.
19 TAC §228.10(e): The EPP provided notice of an additional location.	Record of letter(s) on letterhead signed by an EPP's legally authorized agent or representative sent by email or regular mail.
19 TAC §228.15: The EPP has met the requirements for consolidation or closure.	EPP notice of consolidation or closure; and EPP notification of candidates; and EPP completion of required SBEC and TEA actions. If closing, EPP notification of representative.
19 TAC §228.17: The EPP has met the requirements for changing ownership.	EPP notice of change of ownership.

Component II: Admission	Evidence
19 TAC §227.1(c): The EPP has informed applicants of the required information.	Website; or Recruitment information; or Orientation materials; or Admission material.
19 TAC §227.10(a)(1) and (2): Candidates have met the required institution of higher education (IHE) enrollment or degree requirements.	Original transcripts.
19 TAC §227.10(e): Out-of-country candidates have met the required degree requirement.	Official transcript evaluated by approved vendor with equivalent report issued.
19 TAC §227.10(a)(3)(A): Candidates have met the minimum grade point average (GPA) requirement.	Official transcripts; and Documentation of calculations to determine GPA in the last 60 hours.
19 TAC §227.10(a)(3)(B) and (D): Candidates that have been admitted with a GPA less than the 2.5 minimum have met the requirements for the GPA exception.	Program policy; and Documentation signed by the director that certifies each applicant's work, business, or career experience demonstrates achievement equivalent to the academic achievement represented by the GPA requirement; and Pre-Admission Content Test score report.
19 TAC §227.10(a)(4): Applicants demonstrated content knowledge prior to admission.	Official transcripts; and Record of calculation of content hours by course; and Score report for a comparable examination approved by TEA; or Score report for Pre-Admission Content Test.
19 TAC §227.10(a)(5): Applicants demonstrated basic skills prior to admission.	Score reports; or Official transcripts bearing TSI requirements.
19 TAC §227.10(a)(6): Applicants demonstrated proficiency in English language skills prior to admission.	Official transcripts with degree from U.S. university or college; or A letter from the out-of-country institution stating the language of instruction is English; or Official TOEFL scores.
19 TAC §227.10(a)(7): A screening device has been used to determine applicant admission.	Completed application; and Interview with standard questions and evaluated with a rubric and cut score; or Other screening instrument evaluated with a rubric and cut score.
19 TAC §227.10(a)(8): Applicants have met other academic criteria for admission.	Application for admission; and Records of academic requirements; and Academic requirements are published on website, or catalogues, or brochures, or orientation materials.

Component II: Admission	Evidence
19 TAC §227.10(b): Applicants have met additional admission requirements.	Records of admission requirements; and Documentation of published requirements in candidate records; and Admission requirements are published on website, or catalogues, or brochures, or orientation materials.
19 TAC §227.10(c): The EPP has appropriately admitted applicants who have transferred from other EPPs.	Transfer form; and Application for admission; and Official transcripts.
19 TAC §227.10(d): Career and Technical Education applicants have been admitted with the required documentation of licensure and experience.	License and/or other supporting documentation of work experience; and Statement of qualifications; and Diploma or Transcript.
19 TAC §227.17(a): Applicants have been formally admitted to the EPP.	Required admission documents; and Written formal admission offer letter; and Written and dated formal admission acceptance letter.
19 TAC §227.17(e) and (f): Candidates were admitted prior to beginning coursework and training or receiving approval to test.	Written and dated formal admission acceptance letter; and Coursework record with start and completion dates; and Testing history.
19 TAC §227.15(a): Applicants admitted on a contingency basis met all admission requirements relating to contingency admission.	Written contingency admission offer letter; and Written and dated contingency admission acceptance letter; and Required admission documents; and Official transcripts; and Information from university confirming date of graduation; and Program records indicating which semester admission applies.
19 TAC §241.5(c), Principal; and 19 TAC §242.5(c), Superintendent: Candidates admitted met all admission requirements.	Screening instrument with rubric and cut score.
19 TAC §242.5(a): Superintendent applicants were admitted with required degree requirements.	Official transcript.

Component III: Curriculum	Evidence
19 TAC §228.30(a): The curriculum is based on approved educator standards.	Charts identifying alignment of educator standards in curriculum; and Application of educator standards identified in syllabi/course outlines; or Application of educator standards identified in course/training lesson plans.
19 TAC §228.30(a): The curriculum addresses the relevant Texas Essential Knowledge and Skills (TEKS).	Charts identifying alignment of educator standards in curriculum; and Syllabi/course outlines identifying training in using TEKS to inform instruction and assessment; or Instructor lesson plans reflecting instruction and use of TEKS.
19 TAC §228.40(a): The EPP uses assessments to measure candidate progress.	Syllabi/course outlines reflecting assessments of knowledge and skills; and Assessments based on educator standards; and Assessments that measure mastery of knowledge and skills in course content.
19 TAC §228.30(b): The curriculum is research-based.	Syllabi/course outlines with bibliographies/references.
19 TAC §228.30(c)-(e): The required subject matter has been included in the curriculum for candidates seeking initial certification in any certification class.	Charts identifying alignment of educator standards in curriculum; and Syllabi/course outlines; or Coursework.

Component IV: Coursework, Training, Program Delivery, and Ongoing Support	Evidence
19 TAC §228.35(a)(1): The EPP provides candidates with adequate preparation and training.	Candidate testing history; and Syllabi/course outlines; and Program benchmarks; and Degree plan/transcripts.
19 TAC §228.35(a)(2): Coursework and/or training meets requirements.	Syllabi/course outline; or Coursework.
19 TAC §228.35(a)(3): Candidates complete coursework and training prior to EPP completion and standard certification.	Program benchmarks; and Attendance records; and Program schedule of courses/modules; and Degree plan/transcripts for each candidate reviewed.

Component IV: Coursework, Training, Program Delivery, and Ongoing Support	Evidence
19 TAC §228.35(a)(4)(A): The EPP has procedures for allowing relevant military experiences.	Policies and procedures in handbooks; and Advisory committee minutes; or Admission information; or Orientation material; or Website information.
19 TAC §228.35(a)(4)(B): The EPP has procedures for allowing prior experience, education, or training.	Policies and procedures in handbooks; and Advisory committee minutes; or Admission information; or Orientation material; or Website information.
19 TAC §228.35(a)(5): Coursework and training that is offered online meets standards.	Accreditation documentation; or Quality assurance documentation; or THECB compliance documentation.
19 TAC §228.35(b): Candidates for initial teacher certification receive the required number of hours of coursework and training.	Document tracking hours for courses; or Degree plans; or Transcripts; or Program Course/Module Schedule; or Benchmarks.
19 TAC §228.35(b)(1): Candidates have completed the field-based experience requirements prior to clinical teaching or internship.	Start date of clinical teaching or internship; and Field-based experience observation log reflecting date, subject area, grade level, campus, district, time in and time out, and interaction with students; verifying signatures of observed teacher; and Reflections of observation.
19 TAC §228.35(b)(2): Candidates have completed the required coursework and/or training prior to clinical teaching or internship.	Start date of clinical teaching or internship; and Document tracking hours for courses; or Degree plans; or Transcripts; or Program Course/Module Schedule; or Benchmarks.
19 TAC §228.35(c): Candidates seeking initial certification in a class other than classroom teacher have completed the required clock hours of coursework and/or training.	Document tracking hours for courses; or Degree plans; or Transcripts; or Program Course/Module Schedule; or Benchmarks.

Component IV: Coursework, Training, Program Delivery, and Ongoing Support	Evidence
19 TAC §228.35(d): Late hire candidates have completed the pre-internship requirements.	<p>Record of coursework completed (start and end dates); and</p> <p>Field-based experience observation log reflecting date, subject area, grade level, campus, district, time in and time out, and interaction with students; verifying signatures of observed teacher; and</p> <p>Reflections of observation; and</p> <p>Record of assignment date.</p>
19 TAC §228.35(e)(1)(A): Teacher candidates complete required field-based experiences.	<p>Field-based experience observation log reflecting date, subject area, grade level, campus, district, time in and time out, and interactions with students; verifying signatures of observed teacher; and</p> <p>Reflections of observation.</p>
19 TAC §228.35(e)(1)(B): Field-based experience via electronic transmission or other video or technology-based method meets requirements.	<p>Field-based observation log reflecting date, subject area, and grade level; verifying signatures of program staff; and</p> <p>Reflections of observation.</p>
19 TAC §228.35(e)(2)(A) and (B): Candidates seeking initial teacher certification have completed clinical teaching.	<p>Clinical teaching placement lists with placement information including start and end dates, start and end time; grade level, subject area, cooperating teacher name, and field supervisor assigned; and</p> <p>Clinical teaching log including dates, start and end times each day; verified by cooperating teacher.</p>
19 TAC §228.35(e)(2)(C)(i): Candidates seeking initial teacher certification have completed an internship.	<p>Completed statement of eligibility; and</p> <p>Internship placement lists with placement information including tests passed, start and end dates, start and end times, district, campus, grade level, subject area, mentor, and field supervisor assigned.</p> <p>If more than 30 days of internship are missed:</p> <ul style="list-style-type: none"> • Request letter from candidate; and • Approval by appropriate program staff; and • Identified start date and end date of internship; and • Make-up plan if more than thirty days; and • Documentation of make-up time.

Component IV: Coursework, Training, Program Delivery, and Ongoing Support	Evidence
19 TAC §228.35(e)(2)(C)(iii): Candidates complete additional internship assignments that meet requirements for an internship and are appropriately supervised by the EPP.	Record of coursework completed; and Completed statement of eligibility; and Internship placement lists with placement information including tests passed, start and end dates, start and end times, district, campus, grade level, subject areas, mentor, and field supervisor assigned; and Intern or probationary certificates; and Field supervisor observation logs; and Letter from school district.
19 TAC §228.35(e)(2)(C)(iv): Candidates hold probationary or intern certificates while completing internship assignments.	Intern or probationary certificate.
19 TAC §228.35(e)(2)(C)(v): Additional internships recommended by the EPP have met the requirements for allowing candidates to complete additional internships.	Record of successful or unsuccessful internship; and Deficiency plan; and Benchmarks.
19 TAC §228.35(e)(2)(C)(vi)(I): The EPP supports the candidate during an additional internship unless the internship is ended early due to issuance of a standard certificate.	Standard certificate.
19 TAC §228.35(e)(2)(C)(vi)(II) The EPP supports the candidate during an additional internship unless the internship is ended early because the candidate is non-renewed by, resigns from, or is terminated by the employer.	Written notice from candidate; and Written notice to candidate; and Written notice to TEA.
19 TAC §228.35(e)(2)(C)(vi)(III): The EPP supports the candidate during an additional internship unless the internship is ended early because the candidate is released from the EPP.	Written notice to candidate; and Written notice to school or district; and Written notice to TEA.
19 TAC §228.35(e)(2)(C)(vi)(IV): The EPP supports the candidate during an additional internship unless the internship is ended early because the candidate withdraws from the EPP.	Written notice to program; and Written notice to candidate; and Written notice to school or district; and Written notice to TEA.
19 TAC §228.35(e)(2)(E): The EPP requested and was approved for an exception to the clinical teaching option.	Record of approval from SBEC.
19 TAC §228.35(e)(2)(F): Candidate training included experiences with a full range of professional responsibilities including the start of the school year.	Documentation of field-based experiences and/or clinical teaching experiences.

Component IV: Coursework, Training, Program Delivery, and Ongoing Support	Evidence
19 TAC §228.35(e)(3): An internship or clinical teaching experience was completed at a Head Start Program that meets requirements.	Teacher certification and mentor training records; and Federal and TEA approval records; and Records documenting Head Start student population; and Head Start curriculum.
19 TAC §228.35(e)(4) and (5): The internship or clinical teaching experiences take place in setting that meets requirements.	Internship or clinical teaching placement lists with placement information including tests passed, start and end dates, start and end times, district, campus, grade level, subject areas, mentor, and field supervisor assigned; and Statement of eligibility.
19 TAC §228.35(e)(6)(A) and (B): Candidates seeking certification in a class other than classroom teacher complete a practicum that meets the requirements.	Field supervisor observation logs reflecting educator standards based activities; and Practicum information with start and end dates, district, campus, site, and field supervisor assigned.
19 TAC §228.35(e)(6)(C)(i): An intern or probationary certificate has been issued to a candidate for a certification class other than classroom teacher who meets the requirements and conditions.	Statement of eligibility; and Program requirements; and Testing history.
19 TAC §228.35(e)(6)(C)(ii): Additional practicums recommended by the EPP have met the requirements for allowing candidates to complete additional practicums.	Record of successful or unsuccessful practicum; and Deficiency plan; and Benchmarks.
19 TAC §228.35(e)(7): The EPP applied and received approval for a candidate to complete field-based experience, clinical teaching, internship, or practicum in an out-of-state or out-of-country placement.	Record of approval from TEA.
19 TAC §228.35(f): Candidates placed in clinical teaching, internship, or practicum assignments were assigned cooperating teachers, mentors, or site supervisors as appropriate.	Candidate placement information showing date of placement, name of candidate, name of cooperating teacher/mentor/site supervisor, subject area, grade level, supervising administrator name, campus name, and district name.

Component IV: Coursework, Training, Program Delivery, and Ongoing Support	Evidence
<p>19 TAC §228.2(12) and (23): The cooperating teachers and mentors were trained and held the required credentials.</p>	<p>Service record; and Teaching certificate; and Evidence of training; and Evidence of accomplishment as an educator includes:</p> <ul style="list-style-type: none"> • Evaluations that include evidence of student learning; or • Campus or district reports that include evidence of student learning; or • Letters of recommendation that include evidence of student learning. <p>Documentation from EPP and campus or district administrator is required if an individual with the required credentials is not available.</p>
<p>19 TAC §228.2(30): The site supervisors were trained and held the required credentials.</p>	<p>Service record; and Educator certificate; and Evidence of training; and Evidence of accomplishment as an educator includes:</p> <ul style="list-style-type: none"> • Evaluations that include evidence of student learning; or • Campus or district reports that include evidence of student learning; or • Letters of recommendation that include evidence of student learning. <p>Documentation from EPP and campus or district administrator is required if an individual with the required credentials is not available.</p>
<p>19 TAC §228.35(f): The EPP provided scientifically-based training to cooperating teachers, mentors, and site supervisors.</p>	<p>Training materials and dated attendance records with signatures; or School district/ESC certificate of completion; or Cooperating teacher/mentor/site supervisor handbook acknowledgement; or Training materials and dated attendance information for online training.</p>
<p>19 TAC §228.35(g): Candidates have been assigned to field supervisors who held the required credentials.</p>	<p>Candidate placement information showing date of placement and field supervisor assigned; and Records of field supervisor certification, degree, experience, and/or continuing professional education; and Field supervisor logs.</p>

Component IV: Coursework, Training, Program Delivery, and Ongoing Support	Evidence
19 TAC §228.35(g) and (h): Field supervisors have been trained.	Training material and dated attendance records with signature of field supervisor; or Handbook acknowledged with field supervisor signature; or Training materials and dated attendance information for online training. After 9/1/2017, certificate of completion of TEA-approved observation training.
19 TAC §228.35(g): Field supervisors made the required initial contact.	Field supervisor log; or Emails; or Phone records; or Other electronic communication.
19 TAC §228.35(g): For each observation, the field supervisor has held the required conferences with each candidate. Each candidate has received written feedback that meets the requirements.	Documentation verifying pre-conference and individualized post-conference; and Observation documents signed by candidate and field supervisor with date, start and stop time, subject, and grade level with record of instructional strategies observed.
19 TAC §228.35(g): The field supervisor has provided a copy of the written observation feedback to the required individuals.	Observation instrument with cooperating teacher, mentor, and/or campus supervisor signature; or Email with delivery/read receipt; or Dated copy of letter on program letterhead sent with observation results.
19 TAC §228.35(g): The candidate receives informal observations and ongoing coaching as appropriate.	Field supervisor log; or Email records with delivery/read receipts; or Phone records; or Observation forms; or Other electronic records of observation and coaching.
19 TAC §228.35(g): The field supervisor collaborates with the required individuals.	Field supervisor log; or Email records with delivery/read receipts; or Phone records; or Signed observation forms.
19 TAC §228.35(g)(1)-(8): Formal observations conducted by field supervisors meet the requirements for duration, frequency, and format.	Observation forms signed by candidate and field supervisor with date, start and stop time, subject, and grade level with record of instructional strategies observed.

Component IV: Coursework, Training, Program Delivery, and Ongoing Support	Evidence
19 TAC §228.35(h): Candidates seeking certification in a class other than Classroom Teacher are assigned to field supervisors who have the required education and credentials.	Candidate placement information showing date of placement and field supervisor assigned; and Records of field supervisor certification, degree, experience, and continuing professional education; and Field supervisor logs.
19 TAC §228.35(h): Field supervisors make required initial contact with candidates.	Email with delivery/read receipt; or Phone or face-to-face record in field supervisor log with date and verifying signatures of field supervisor and candidate; or Course syllabi with first contact class noted with attendance records.
19 TAC §228.35(h): For each observation, the field supervisor has held the required conferences with each candidate. Each candidate has received the required written feedback.	Documentation verifying pre-conference and individualized post-conference; and Observation documents signed by candidate and field supervisor with date, start and stop time, subject, and grade level with record of instructional strategies observed.
19 TAC §228.35(h): The field supervisor has provided a copy of the written observation feedback to the candidate's site supervisor.	Field supervisor log; or Email records with delivery/read receipts; or Signed observation forms.
19 TAC §228.35(h): The field supervisor provides informal observations and coaching as appropriate.	Field supervisor log; or Email records with delivery/read receipts; or Phone records; or Observation forms; or Other electronic records of observation and coaching.
19 TAC §228.35(h): The field supervisor collaborates with the candidate and site supervisor throughout the practicum experience.	Field supervisor log; or Email records with delivery/read receipts; or Phone records; or Signed observation forms.
19 TAC §228.35(h)(1)-(4): Observations conducted by field supervisors meet the requirements for duration, frequency, and format.	Observation forms signed by candidate and field supervisor with date, start and stop time, subject, and grade level, with record of instructional strategies observed; and/or Field supervisor contact log with date and signatures.
19 TAC §228.35(i): A candidate seeking certification as a teacher has been exempt from completing field-based experience, clinical teaching or internship by meeting requirements.	Record from the THECB documenting exemption eligibility.

Component IV: Coursework, Training, Program Delivery, and Ongoing Support	Evidence
19 TAC §228.35(i)(2): A candidate that currently is or was a JROTC instructor has been exempt from completing field-based experience, clinical teaching, or internship by meeting requirements.	Service record; or Record of current employment.
19 TAC §241.10(b), Principal; 19 TAC §242.10(b), Superintendent; 19 TAC §239.10(b), Counselor; 19 TAC §239.50(a), Librarian; 19 TAC §239.82(a), Educational Diagnostician; 19 TAC §239.92(a), Reading Specialist; and 19 TAC §239.100(c), Master Teachers: During the practicum, candidates demonstrate proficiency in the standards.	Field supervisor logs of educator standards based activities with verifying signatures; or Candidate journals which reflect standards; or Completed educator standards based projects and activities.

Component V: Assessment and Evaluation of Candidates and Program	Evidence
19 TAC §228.40(a): The EPP has established benchmarks to measure candidate progress.	Benchmarks.
19 TAC §228.40(b): The EPP has processes to ensure candidates are prepared to be successful on their content examinations.	Candidate document(s) reflecting meeting criteria for testing with date; and Syllabi/course outlines; or Benchmarks.
19 TAC §228.40(c): A candidate who is prepared in different certification in which the candidate was admitted.	Written request of candidate.
19 TAC §228.40(d): The EPP has a process for determining that formally admitted candidates are prepared to take certification examinations.	Criteria for testing published; and Dated record verifying criteria met.
19 TAC §228.40(e): The EPP uses information from a variety of sources to evaluate program design and delivery.	Evaluation plan detailing the activity, timeline, person responsible; and Data results from internal and external sources; and Dated evaluation reports; and Advisory committee minutes.

Component VI: Professional Conduct	Evidence
19 TAC §228.50: EPP staff and candidates adhere to the Educators' Code of Ethics.	Signed statement by staff and candidates of reading, understanding and abiding.

Component VII: Complaints Procedures	Evidence
19 TAC §228.70(b)(1): The EPP has sent a copy of the EPP complaint procedure to TEA.	Complaint process on file with TEA.
19 TAC §228.70(b)(2): The EPP has posted on its website the complaint policy and a link to the TEA complaints website.	Web posting.

Component VII: Complaints Procedures	Evidence
19 TAC §228.70(b)(3): The EPP complaint policy is posted on-site.	Notification posting at physical site.
19 TAC §228.70(b)(4): The EPP provides written information about filing complaints.	Written information for candidate available.

Component VIII: Certification procedures	Evidence
19 TAC §230.13(a)(1): The candidate has met the appropriate degree and/or experience requirements.	Official transcripts; and/or Documentation of experience.
19 TAC §230.13(b)(2): The candidate has met the appropriate preparation, experience, and/or licensure certification, or registration requirements.	Documentation of preparation, experience, and/or licensure certification, or registration requirements.
19 TAC §230.13(a)(2) and (b)(3): The candidate has completed an EPP.	Record of EPP completion.
19 TAC §230.13(a)(3) and (b)(4): The candidate has passing scores on required certification examinations.	Testing history.
19 TAC §241.20, Principal; 19 TAC §242.20, Superintendent; 19 TAC §239.20, Counselor; 19 TAC §239.60, Librarian; 19 TAC §239.84, Educational Diagnostician; 19 TAC §239.93, Reading Specialist; and 19 TAC §239.100, Master Teachers: Candidates have passed appropriate certification examinations.	Testing history.
19 TAC §241.20, Principal; 19 TAC §242.20, Superintendent; 19 TAC §239.20, Counselor; 19 TAC §239.60, Librarian; 19 TAC §239.84, Educational Diagnostician; and 19 TAC §239.93, Reading Specialist: Candidates have met the degree requirement.	Official transcripts.
19 TAC §241.20, Principal, and 19 TAC §239.84, Educational Diagnostician; Candidates have met the certification requirement.	Valid classroom teaching certificate.
19 TAC §242.20, Superintendent: Candidates have met the certificate requirement.	Principal certificate or equivalent.
19 TAC §241.20, Principal; 19 TAC §239.20, Counselor; 19 TAC §239.60, Librarian; 19 TAC §239.84, Educational Diagnostician; and 19 TAC §239.93, Reading Specialist: Candidates have met the creditable years of teaching experience requirement.	Official service records.
19 TAC §241.20, Principal; 19 TAC §242.20, Superintendent; 19 TAC §239.20, Counselor; 19 TAC §239.60, Librarian; 19 TAC §239.84, Educational Diagnostician; and 19 TAC §239.93, Reading Specialist: Candidates have successfully completed an EPP.	Record of EPP completion.

Component VIII: Certification procedures	Evidence
<p>19 TAC §239.101, Master Reading Teacher: Candidates either</p> <p>1) hold the Reading Specialist Certificate & complete an EPP;</p> <p>OR</p> <p>2) hold a valid teaching certificate with the required creditable years of service, and complete an EPP.</p>	<p>Reading Specialist Certificate; and</p> <p>Record of EPP completion; or</p> <p>Valid teaching certificate; and</p> <p>Official service records; and</p> <p>Record of EPP completion.</p>
<p>19 TAC §239.102, Master Mathematics Teacher: Candidates hold a valid teaching certificate, the required creditable years teaching experience, and complete an EPP.</p>	<p>Valid teaching certificate; and</p> <p>Official service records; and</p> <p>Record of EPP completion.</p>
<p>19 TAC §239.103, Master Technology Teacher: Candidates either</p> <p>1) hold the Technology Applications Certificate or the Technology Education Certificate, and complete an EPP;</p> <p>OR</p> <p>2) hold a valid teaching certificate with the required creditable years of teaching experience and complete an EPP</p>	<p>Technology Application or Technology Education Certificate; and</p> <p>Record of EPP completion; or</p> <p>Valid teaching certificate; and</p> <p>Official service records; and</p> <p>Record of EPP completion.</p>
<p>19 TAC §239.104, Master Science Teacher: Candidates hold a valid teaching certificate with the required creditable years of teaching experience, and complete an EPP.</p>	<p>Valid teaching certificate; and</p> <p>Official service records; and</p> <p>Record of EPP completion.</p>

Component IX: Integrity of Data Submission	Evidence
<p>19 TAC §229.3(f)(1): The EPP has reported required data in an accurate and timely manner.</p>	<p>Met timeline for reporting; and</p> <p>Accuracy of ASEP reports.</p>

Figure: 19 TAC §229.3(f)(1)

Section A: Determination of Accreditation Status			
Data required to support Texas Education Code (TEC), §21.045(a), and 19 TAC §229.4, disaggregated by gender, race, and ethnicity			
Accountability System Data	Description of Data	Required Submission Date and Method of Reporting	
1	Results of certification examinations prescribed under TEC, §21.048(a)	Pass rate as defined in 19 TAC §229.4(a)(1).	Certification test scores will be uploaded into the Accountability System for Educator Preparation (ASEP). Texas Education Agency (TEA) staff will analyze the data and report it on the TEA website.
2	Beginning teacher performance	The percentage of beginning teachers rated sufficiently prepared or well prepared on a survey completed by administrators.	Administrators of first-year teachers will complete a survey evaluating first-year teacher performance by June 15 of each year. TEA staff will analyze the data and report it on the TEA website.
3	Student achievement	The achievement, including the improvement of achievement, of students taught by beginning teachers for the first three years.	Date and method of collection when available. TEA staff will analyze the data and report it on the TEA website.
4	Frequency, duration, and quality of field supervisor guidance	The percentage of candidates who received the required number of field observations of the required duration. Percentage of teacher candidates indicating that their field support during clinical teaching and internships was satisfactory.	By September 15 of each year, each Educator Preparation Program (EPP) will document field supervision in a format determined by TEA staff. Teacher candidates will complete an exit survey indicating the quality of their preparation by August 31 of the year the candidate completed an EPP. TEA staff will analyze the data and report it on the TEA website.
5	Teacher Satisfaction Survey	By program and year, the percentage of new teachers at the end of their first year of teaching after earning a standard certificate who indicate they were sufficiently prepared for their first year in the classroom on a teacher satisfaction survey.	Teachers will complete a survey evaluating the quality of preparation from their EPP by August 31 of their first year as a teacher after earning a standard certificate. TEA staff will analyze the data and report it on the TEA website.

Section B: Annual Performance Report			
Data required to support TEC, §21.045(b), disaggregated by gender, race, and ethnicity			
Accountability System Data		Description of Data	Required Submission Date and Method of Reporting
1	Acceptance Rate	The percentage of applicants who are admitted to the program each year.	TEA staff will analyze the data and report it on the TEA website.
2	Number of applicants	Report submitted by the EPP. This is the number of candidates who applied to be admitted to the program during the academic year.	By September 15 of each year, each EPP will submit data in a format designated by TEA staff for the preceding academic year. Data will be reported on the TEA website.
3	Number of candidates admitted	Report submitted by the EPP. This is the number of candidates who were admitted during the academic year.	By September 15 of each year, each EPP will submit data in a format designated by TEA staff for the preceding academic year. Data will be reported on the TEA website.
4	Number of candidates retained	Report submitted by the EPP. This is the number of candidates who have been admitted to the EPP but have not completed the EPP.	By September 15 of each year, each EPP will submit data in a format designated by TEA staff for the preceding academic year. Data will be reported on the TEA website.
5	Number of candidates completing all EPP requirements	Report submitted by the EPP.	By September 15 of each year, each EPP will submit data in a format designated by TEA staff for the preceding academic year. Data will be reported on the TEA website.
6	Number of candidates employed as beginning teachers under standard teaching certificates by no later than the first anniversary of completing the program	Number and percentage of completers who have earned a standard certificate and are employed in the school system.	TEA staff will use completer data as reported in B.5 with Educator Certification Online System (ECOS) and Public Education Information Management System (PEIMS) Fall Snapshot data. TEA staff will analyze the data and report it on the TEA website.
7	Time required for candidates with probationary teaching certificates to be issued standard teaching certificates	Number of days between the first probationary certificate effective date and the first standard certificate effective date.	TEA staff will analyze the data and report it on the TEA website.
8	Number of candidates retained in the profession	Number and percentage of persons who are still employed in the school system five (5) years after earning a standard certificate.	TEA staff will use completer data as reported in B.5 with ECOS and PEIMS Fall Snapshot data. TEA staff will analyze the data and report it on the TEA website.

Section B: Annual Performance Report Data required to support TEC, §21.045(b), disaggregated by gender, race, and ethnicity			
Accountability System Data		Description of Data	Required Submission Date and Method of Reporting
9	All information required by federal law	Reports submitted by the EPPs in accordance with federal law.	EPPs will submit data required by federal law to the U.S. Department of Education or its agents in accordance with deadlines set by those entities. TEA website will include a link to the Title II website to enhance access to the data.
10	Percentage of all tests passed	The number of candidates who passed a certification examination approved by an EPP divided by the number of attempts by candidates on examinations approved by an EPP.	Certification test scores will be uploaded into ASEP. TEA staff will analyze testing contractor or ASEP data and report it on the TEA website.

Section C: Consumer Information Regarding Educator Preparation Programs Data required to support TEC, §21.0452			
Accountability System Data		Description of Data	Required Submission Date and Method of Reporting
1	EPP status based on adherence to the standards	Accreditation Rating as described by TEC, §21.0451(a).	Determined annually by the State Board for Educator Certification (SBEC).
2	Optional EPP designation or ranking as provided by TEC, §21.0452(e)	Consumer Information designation or ranking based on data from TEC, §21.0452(b)(1).	If optional designations or ratings are determined by the SBEC, TEA staff will report it on the TEA website.
3	Annual Performance Report data	Data elements submitted or calculated as required by TEC, §21.045(b). See Section B.	TEA staff will analyze the data and report it on the TEA website.
4	Average overall grade point average of persons admitted to the program	The average overall grade point average of persons admitted to the program as required by 19 TAC §227.19.	By September 15 of each year, each EPP will submit data in a format designated by TEA staff for the preceding academic year. TEA staff will analyze the data and report it on the TEA website.
5	Average grade point average in specific subject areas	The average grade point average in courses that are related to the certificate class and/or category in which candidates were admitted to the program.	By September 15 of each year, each EPP will submit data in a format designated by TEA staff for the preceding academic year. TEA staff will analyze the data and report it on the TEA website.
6	Average admitted grade point average	The average grade point average used to admit persons to the program as required by 19 TAC §227.19.	By September 15 of each year, each EPP will submit data in a format designated by TEA staff for the preceding academic year. TEA staff will analyze the data and report it on the TEA website.

Section C: Consumer Information Regarding Educator Preparation Programs
Data required to support TEC, §21.0452

Accountability System Data		Description of Data	Required Submission Date and Method of Reporting
7	Average GRE® scores and date	The overall and subject-specific GRE® scores used to admit candidates to the program.	If required for admission to the institution, programs will submit GRE® scores and test date for each candidate by September 15 of each year in a format determined by TEA staff. TEA staff will analyze the data and report it on the TEA website.
8	Average SAT® scores and date	The overall and subject-specific SAT® scores used to admit candidates to the program.	If required for admission to the institution, programs will submit SAT® scores and test date for each candidate by September 15 of each year in a format determined by TEA staff. TEA staff will analyze the data and report it on the TEA website.
9	Average ACT® scores and date	The overall and subject-specific ACT® scores used to admit candidates to the program.	If required for admission to the institution, programs will submit ACT® scores and test date for each candidate by September 15 of each year in a format determined by TEA staff. TEA staff will analyze the data and report it on the TEA website.
10	The degree to which persons who complete a program are successful in obtaining standard certification	The number and percentage of persons completing a program who earn their standard certificate.	TEA staff will use completer data as reported in B.5 with ECOS data. TEA staff will analyze the data and report it on the TEA website.
11	The extent to which the program prepares teachers to effectively teach students with disabilities	Percentage of new teachers in an academic year who report being sufficiently prepared to teach students with disabilities, or who are rated as being sufficiently prepared to teach students with disabilities.	TEA staff will use survey data from principals and new teachers to identify the percentage of teachers from each EPP who are sufficiently prepared. TEA staff will analyze the data and report it on the TEA website.
12	The extent to which the program prepares teachers to effectively teach students of limited English proficiency	Percentage of new teachers in an academic year who report being sufficiently prepared to teach students of limited English proficiency, or who are rated as being sufficiently prepared to teach students of limited English proficiency.	TEA staff will use survey data from principals and new teachers to identify the percentage of teachers from each EPP who are sufficiently prepared to teach students of limited English proficiency. TEA staff will analyze the data and report it on the TEA website.

Section C: Consumer Information Regarding Educator Preparation Programs
 Data required to support TEC, §21.0452

Accountability System Data		Description of Data	Required Submission Date and Method of Reporting
13	Success preparing candidates to integrate technology effectively into curricula and instruction	Percentage of new teachers in an academic year who report being sufficiently prepared to integrate technology effectively into curricula and instruction, or who are rated as being sufficiently prepared to integrate technology effectively into curricula and instruction.	TEA staff will use survey data from principals and new teachers to identify the percentage of teachers from each EPP who are sufficiently prepared to integrate technology effectively into curricula and instruction. TEA staff will analyze the data and report it on the TEA website.
14	Success preparing candidates to use technology to collect, manage, and analyze data to improve teaching and learning	Percentage of new teachers in an academic year who report being sufficiently prepared to use technology to collect, manage, and analyze data to improve teaching and learning, or who are rated as being sufficiently prepared to use technology to collect, manage, and analyze data to improve teaching and learning.	TEA staff will use survey data from principals and new teachers to identify the percentage of teachers from each EPP who are sufficiently prepared to use technology to collect, manage, and analyze data to improve teaching and learning. TEA staff will analyze the data and report it on the TEA website.
15	Average ratio of field supervisors to candidates	The number of teacher candidates observed in the field per field supervisor observing candidates in the field, reported for the academic year, fall semester, and spring semester.	By September 15 of each year, each EPP will document field supervision in a format determined by TEA staff. TEA staff will analyze the data and report it on the TEA website.
16	Results of exit surveys given to program participants	The percentage of candidates who rate the field supervision as always or almost always providing the components of structural guidance and ongoing support.	TEA staff will administer an exit survey to interns and clinical teachers before they complete a program. TEA staff will analyze the data and report it on the TEA website.
17	Results of surveys given to school principals	The percentage of first-year teachers from each EPP who are appraised as sufficiently prepared.	TEA staff will administer a survey to principals of first year teachers. TEA staff will analyze the data and report it on the TEA website.
18	Results of satisfaction surveys given to beginning teachers	The percentage of new teachers who report they were sufficiently prepared or well prepared at the end of their first year of teaching with a standard certificate.	TEA staff will administer a satisfaction survey to new teachers near the end of their first year of teaching with a standard certificate. TEA staff will analyze the data and report it on the TEA website.

Appendix: Demographics Guidelines

ASEP will collect ethnicity and race information for candidates using the 1977 categories as well as using the new federal categories developed in 1997 as required by the United States Department of Education (USDE). The new federal category system requires that ethnicity and race be collected separately. It allows individuals to select multiple races. It requires all responses to be collected, but when reporting aggregate data to the USDE, a different set of categories is used for aggregate reporting. Beginning with the 2016-2017 academic year, educator preparation programs will report this information using the new categories only. The new categories are as follows:

Ethnicity	Race
Hispanic or Latino	American Indian or Alaska Native
Not Hispanic or Latino	Asian
	Black or African American
	Hawaiian or other Pacific Islander
	White

Aggregate Reporting Categories
Hispanic or Latino
American Indian or Alaska Native
Asian
Black or African American
Hawaiian or Other Pacific Islander
White
Two or more races

Figure: 40 TAC 748.303(a)

Serious Incident	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?	(i) To Law enforcement? (ii) If so, when?
(1) A child dies while in your care.	(A)(i) YES (A)(ii) Within 2 hours after the child's death.	(B)(i) YES (B)(ii) Within 2 hours after the child's death.	(C)(i) YES (C)(ii) Immediately, but no later than 1 hour after the child's death.
(2) A substantial physical injury or critical illness that a reasonable person would conclude needs treatment by a medical professional or hospitalization.	(A)(i) YES (A)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(B)(i) YES (B)(ii) Report as soon as possible, but no later than 24 hours after the incident or occurrence.	(C)(i) NO (C)(ii) Not Applicable.
(3) Allegations of abuse, neglect, or exploitation of a child; or any incident where there are indications that a child in care may have been abused, neglected, or exploited.	(A)(i) YES (A)(ii) As soon as you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable.
(4) Physical abuse committed by a child against another child. For the purpose of this subsection, physical abuse occurs when there is substantial physical injury, excluding any accident; or failure to make a reasonable effort to prevent an action by another person that results in	(A)(i) YES (A)(ii) As soon as you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable.

Serious Incident	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?	(i) To Law enforcement? (ii) If so, when?
substantial physical injury to a child.			
(5) Sexual abuse committed by a child against another child. For the purpose of this subsection, sexual abuse is: conduct harmful to a child's mental, emotional or physical welfare, including nonconsensual sexual activity between children of any age, and consensual sexual activity between children with more than 24 months difference in age or when there is a significant difference in the developmental level of the children; or failure to make a reasonable effort to prevent sexual conduct harmful to a child.	(A)(i) YES (A)(ii) As soon as you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable.
(6) A child is indicted, charged, or arrested for a crime, not including being issued a ticket at school by law enforcement or any other citation that does not result in the child being detained; or when law enforcement responds to an alleged incident at the operation.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of it.	(B)(i) YES (B)(ii) As soon as you become aware of it.	(C)(i) NO (C)(ii) Not applicable.
(7) A child developmentally or chronologically under 6 years old is absent from your operation and cannot be located, including the removal of a child by an unauthorized person.	(A)(i) YES (A)(ii) Within 2 hours of notifying law enforcement.	(B)(i) YES (B)(ii) Within 2 hours of notifying law enforcement.	(C)(i) YES (C)(ii) Immediately upon determining the child is not on the premises and the child is still missing.

Serious Incident	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?	(i) To Law enforcement? (ii) If so, when?
(8) A child developmentally or chronologically 6 to 12 years old is absent from your operation and cannot be located, including the removal of a child by an unauthorized person.	(A)(i) YES (A)(ii) Within 2 hours of notifying law enforcement, if the child is still missing.	(B)(i) YES (B)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.	(C)(i) YES (C)(ii) Within 2 hours of determining the child is not on the premises, if the child is still missing.
(9) A child 13 years old or older is absent from your operation and cannot be located, including the removal of a child by an unauthorized person.	(A)(i) YES (A)(ii) No later than 2 hours from when the child's absence is discovered and the child is still missing.	(B)(i) YES (B)(ii) No later than 2 hours from when the child's absence is discovered and the child is still missing.	(C)(i) YES (C)(ii) No later than 2 hours from when the child's absence is discovered and the child is still missing.
(10) A child in your care contracts a communicable disease that the law requires you to report to the Department of State Health Services (DSHS) as specified in 25 TAC Chapter 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(C)(i) NO (C)(ii) Not applicable.
(11) A suicide attempt by a child.	(A)(i) YES (A)(ii) As soon as you become aware of the incident.	(B)(i) YES (B)(ii) As soon as you become aware of the incident.	(C)(i) NO (C)(ii) Not applicable.

Figure: 40 TAC 748.303(d)

Serious Incident	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?
(1) Any incident that renders all or part of your operation unsafe or unsanitary for a child, such as a fire or a flood.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(2) A disaster or emergency that requires your operation to close.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after the incident.	(B)(i) YES (B)(ii) As soon as possible, but no later than 24 hours after the incident.
(3) An adult who has contact with a child in care contracts a communicable disease noted in 25 TAC 97, Subchapter A, (relating to Control of Communicable Diseases).	(A)(i) YES, unless the information is confidential. (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.	(B)(i) YES, if their child has contracted the communicable disease or has been exposed to it. (B)(ii) As soon as possible, but no later than 24 hours after you become aware of the communicable disease.
(4) An allegation that a person under the auspices of your operation who directly cares for or has access to a child in the operation has abused drugs within the past seven days.	(A)(i) YES (A)(ii) Within 24 hours after learning of the allegation.	(B)(i) NO (B)(ii) Not applicable.
(5) An investigation of abuse or neglect by an entity other than Licensing of an employee, professional level service provider, contract staff, volunteer, or other adult at the operation.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become	(B)(i) NO (B)(ii) Not applicable.

Serious Incident	(i) To Licensing? (ii) If so, when?	(i) To Parents? (ii) If so, when?
	aware of the investigation.	
(6) An arrest; indictment; a county or district attorney accepts an "Information" regarding an official complaint against an employee, professional level service provider, contract staff, volunteer, or other adult at the operation alleging commission of any crime as provided in §745.651 of this title (relating to What types of criminal convictions may affect a person's ability to be present at an operation?); or when law enforcement responds to an alleged incident to the operation.	(A)(i) YES (A)(ii) As soon as possible, but no later than 24 hours after you become aware of the situation.	(B)(i) NO (B)(ii) Not applicable.

Figure: 40 TAC 748.313

Serious incident	Documentation
(1) Child death, substantial physical injury, or a suicide attempt reportable under §748.303(a)(1), (2), and (11) of this title (relating to When must I report and document a serious incident?).	Any emergency behavior interventions implemented on the child within 48 hours prior to the serious incident.
(2) Any substantial physical injury reportable under §748.303(a)(2) of this title that resulted from a short personal restraint.	Documentation of the short personal restraint, including the precipitating circumstances and specific behaviors that led to the emergency behavior intervention.
(3) Child absent without permission.	(A) Any efforts made to locate the child; (B) The date and time you notified the parent(s) and the appropriate law enforcement agency and the names of the persons with whom you spoke regarding the child's absence and subsequent location or return to the operation; and (C) If the parent cannot be located, dates and times of all efforts made to notify the parent regarding the child's absence and subsequent location or return to the operation.
(4) Any physical or sexual abuse committed by a child against another child reportable under §748.303(a)(4) or (5) of this title.	The difference in size, age, and developmental level of the children involved in the physical or sexual abuse.

Figure: 40 TAC 748.563(c)

Options:	Educational qualifications:	Professional qualifications:
Option 1	A master's degree or higher from an accredited college or university; or a bachelor's degree from an accredited college or university in social work or other human services field.	One year of documented full-time work experience in a residential child-care operation, or related field of child and family services.
Option 2	A bachelor's degree from an accredited college or university.	Two years of documented full-time work experience in a residential child-care operation, or related field of child and family services.

Figure: 40 TAC 748.1219

If:	Then:
<p>(1) You intend to provide treatment services for a child with an emotional disorder or autism spectrum disorder</p>	<p>(A) The admission assessment must include a written, dated, and signed:</p> <ul style="list-style-type: none"> (i) Psychiatric evaluation or psychological evaluation including the child's diagnosis; or (ii) Psychosocial assessment as defined in §748.43 of this title (relating to What do certain words and terms mean in this chapter?). <p>(B) A psychiatric evaluation, psychological evaluation, or psychosocial assessment must have been completed within:</p> <ul style="list-style-type: none"> (i) 14 months of the date of admission, if the child is coming from another regulated placement; or (ii) Six months of the date of admission, if the child is not coming from another regulated placement. <p>(C) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(D) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p>
<p>(2) You intend to provide treatment services for a child with an intellectual disability</p>	<p>(A) The admission assessment must include a written, dated, and signed:</p> <ul style="list-style-type: none"> (i) Psychological evaluation with psychometric testing, including the child's diagnosis; or (ii) Psychosocial assessment as defined in §748.43 of this title. <p>(B) A psychological evaluation or psychosocial assessment must be completed within 14 months of the date of admission.</p> <p>(C) A psychological evaluation must:</p> <ul style="list-style-type: none"> (i) Be performed by a licensed psychologist who has experience with intellectual disabilities or published scales; (ii) Include the use of standardized tests to determine the intellectual functioning of a child. The test results must be documented in the evaluation; (iii) Determine and document the child's level of adaptive functioning; and (iv) Indicate manifestations of an intellectual

If:	Then:
	<p>disability as defined in the Diagnostic and Statistical Manual of Mental Disorders 5 (DSM-5).</p> <p>(D) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(E) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p>
<p>(3) You intend to provide treatment services for a child with primary medical needs</p>	<p>(A) The admission assessment must have a licensed physician's signed, written orders as the basis for the child's admission. An evaluation from a health care professional must confirm that the child can be cared for appropriately in a general residential operation.</p> <p>(B) The written orders and/or hospital discharge must include orders for:</p> <ul style="list-style-type: none"> (i) Medications; (ii) Treatments; (iii) Diet; (iv) Range-of-motion program at stated intervals; (v) Habilitation, as appropriate; and (vi) Any special medical or developmental procedures. <p>(C) The admission assessment must include the reason(s) for choosing treatment services for the child.</p> <p>(D) The admission assessment must include consideration given to any history of inpatient or outpatient treatment.</p>
<p>(4) The child's behavior and/or history within the last two months indicates that the child is an immediate danger to self or others</p>	<p>(A) The admission assessment must include a written, dated, and signed:</p> <ul style="list-style-type: none"> (i) Psychiatric evaluation or psychological evaluation, including the child's diagnosis; or (ii) Psychosocial assessment as defined in §748.43 of this title. <p>(B) A psychiatric evaluation or psychological evaluation must include:</p> <ul style="list-style-type: none"> (i) The child's diagnosis, if applicable; (ii) An assessment of the child's needs and potential danger to self or others; and (iii) Recommendations for care, treatment, and further evaluation. If the child is admitted, the recommendations must become part of the

If:	Then:
	child's service plan and must be implemented. (C) A psychiatric evaluation, psychological evaluation, or psychosocial assessment must have been completed within: (i) 14 months of the date of admission, if the child is coming from another regulated placement; or (ii) Six months of the date of admission, if the child is not coming from another regulated placement.

Figure: 40 TAC 748.1337(b)

Type of Service	Items that must be included:
(1) Child-care services	<p>(A) The child's needs identified in the admission assessment, in addition to basic needs related to day-to-day care and development, including:</p> <ul style="list-style-type: none"> (i) Medical needs, including scheduled medical exams and plans for recommended follow-up treatment; (ii) Dental needs, including scheduled dental exams and plans for recommended follow-up treatment; (iii) Intellectual functioning, including any testing and plans for recommended follow-up; (iv) Developmental functioning, including any developmental delays and plans to improve or remediate developmental functioning; (v) Educational needs and how those needs will be met, including planning for high school completion and post-secondary education and training, if appropriate, and any school evaluations or recommendations; (vi) Plans for normalcy, including: <ul style="list-style-type: none"> (I) Social, extracurricular, recreation, and leisure activities; and (II) Integrating the child into the community and community activities, as appropriate; (vii) Therapeutic needs, including plans for psychiatric evaluation, psychological evaluation, psychosocial assessment or follow-up treatment, testing, and the use of psychotropic medications; and (viii) Cultural identity needs, including assisting children in connecting with their culture in the community; <p>(B) Plans for maintaining and improving the child's relationship with family members, including recommendations for visitation and contacts between the child and the child's parents, the child and the child's siblings, and the child and the child's extended family;</p> <p>(C) Recent information from the current caregiver's evaluation of the child's behavior and level of functioning;</p> <p>(D) Specific goals and strategies to meet the child's needs, including instructions to caregivers responsible for the care of the child. Instructions must include specific information about:</p> <ul style="list-style-type: none"> (i) The child's personal trauma history; (ii) Level of supervision required; (iii) The child's trauma triggers; (iv) Methods of responding that improve a child's ability to trust, to feel safe, and to adapt to changes in the

Type of Service	Items that must be included:
	<p>child's environment;</p> <ul style="list-style-type: none"> (v) Discipline techniques; (vi) Behavior intervention techniques; (vii) Plans for trips and visits away from the operation; <p>and</p> <ul style="list-style-type: none"> (viii) Any actions the caregivers must take or conditions the caregivers must be aware of to meet the child's special needs, such as medications, medical care, dietary needs, therapeutic care, how to communicate with the child, and reward systems; <p>(E) If the child is 13 years old or older, a plan for educating the child in the following areas:</p> <ul style="list-style-type: none"> (i) Healthy interpersonal relationships; (ii) Healthy boundaries; (iii) Pro-social communication skills; (iv) Sexually transmitted diseases; and (v) Human reproduction; <p>(F) If the child is 14 years old or older, plans for the caregivers to assist the child in obtaining experiential life-skills training to improve the child's transition to independent living. Plans must:</p> <ul style="list-style-type: none"> (i) Be tailored to a child's skills and abilities; and (ii) Include training in practical activities that include, but are not limited to, grocery shopping, meal preparation, cooking, using public transportation, performing basic household tasks, and money management, including balancing a checkbook; <p>(G) For children 16 years old and older, preparation for independent living, including employment opportunities, if appropriate;</p> <p>(H) For children who exhibit high-risk behaviors:</p> <ul style="list-style-type: none"> (i) Plans to minimize the risk of harm to the child or others, such as special instructions for caregivers, sleeping arrangements, or bathroom arrangements; and (ii) A specific safety contract developed between the child and staff that addresses how the child's safety needs will be maintained; <p>(I) Expected outcomes of placement for the child and estimated length of stay in care;</p> <p>(J) Plans for discharge;</p> <p>(K) The names and roles of persons who participated in the development of the child's service plan;</p> <p>(L) The date the service plan was developed and completed;</p> <p>(M) The effective date of the service plan; and</p>

Type of Service	Items that must be included:
	(N) The signatures of the service planning team members that were involved in the development of the service plan.
(2) Treatment services	For children receiving treatment services, the plan must address all of the child's waking hours and include: (A) The child-care services planning requirements noted in paragraph (1) of this subsection; (B) A description of the emotional, behavioral, and physical conditions that require treatment services; (C) A description of the emotional, behavioral, and physical conditions the child must achieve and maintain to function in a less restrictive setting, including any special treatment program and/or other services and activities that are planned to help the child achieve and to function in a less restrictive setting; and (D) A list of emotional, physical, and social needs that require specific professional expertise, and plans to obtain the appropriate professional consultation and treatment for those needs. Any specialized testing, recommendations, and/or treatment must be documented in the child's record.
(3) Treatment services for children with an intellectual disability	(A) The child-care and treatment services planning requirements noted requirements noted in paragraph (1) and (2) of this subsection; (B) A minimum of one hour per day of visual, auditory, and tactile stimulation to enhance the child's physical, neurological, and emotional development; (C) An educational or training plan encouraging normalization appropriate to the child's functioning; and (D) Career planning for older adolescents who are not receiving treatment services for a severe or profound intellectual disability.
(4) Transitional living program	(A) Child-care service planning requirements noted in paragraph (1) of this subsection; (B) Plans for encouraging the child to participate in community life and to form interpersonal relationships/friendships outside the transitional living program, such as extra-curricular recreational activities; (C) Plans for education related to meal planning, meal preparation, grocery shopping, public transportation, searching for an apartment, and obtaining utility services; (D) Career planning, including assisting the child in enrolling in an educational or vocational job training program; (E) Money management and assisting the child in

Type of Service	Items that must be included:
	<p>establishing a personal bank account;</p> <p>(F) Assisting the child with how to access resources, such as medical and dental care, counseling, mental health care, an attorney, the police, and other emergency assistance;</p> <p>(G) Assisting the child in obtaining the child's social security number, birth certificate, and a driver's license or a Department of Public Safety identification card, as needed; and</p> <p>(H) Problem-solving, such as assessing personal strengths and needs, stress management, reviewing options, assessing consequences for actions taken and possible short-term and long-term results, and establishing goals and planning for the future.</p>

Figure: 40 TAC 748.1345

Type of Treatment Service	The roles of professional level service providers in service planning include:
(1) Emotional disorder and autism spectrum disorder	<p>(A) Reviewing the child's diagnoses;</p> <p>(B) Reviewing the identified needs and the plan for treatment based on the child's diagnoses;</p> <p>(C) Reviewing the techniques, strategies, and therapeutic interventions that are planned for the child to improve adaptive functioning; and</p> <p>(D) Reviewing any medications prescribed for a child with special review of psychotropic medications; the presence or absence of medication side effects, including the effects of the medications on the child's behavior; laboratory findings; and any reason the child should not use a medication.</p>
(2) Intellectual disability	<p>(A) Assessing the child's educational needs and progress toward meeting those needs;</p> <p>(B) Ensuring coordination between educators, caregivers, operation employees, and other professionals involved in the child's treatment; and</p> <p>(C) Providing information to the education system on the strategies and techniques used with the child in the operation.</p>
(3) Primary medical needs	<p>(A) Reviewing any medications prescribed for a child;</p> <p>(B) Recommending any special equipment needed by a child; and</p> <p>(C) Reviewing special instructions and training to caregivers for the daily care of the child.</p>

Figure: 40 TAC 748.1381

Type of Service	Review and Update
(1) Child-care services	At least 180 days from the date of the child's last service plan.
(2) Treatment services for emotional disorder, autism spectrum disorder, or primary medical needs	At least 90 days from the date of the child's last service plan.
(3) Treatment services for intellectual disabilities	In the first year of care, the plan must be reviewed at least every 180 days from the date of the child's last service plan. Thereafter, the plan must be reviewed at least annually from the date of the child's last service plan review.

Figure: 40 TAC 748.3701

Types of service	The caregivers must:
(1) Child-care services	(A) Ensure that opportunities to participate in community activities, such as school sports or other extracurricular school activities, religious activities, or local social events, are available to the child; and (B) Organize community activities, religious activities, or local social events that are available to the child.
(2) Treatment services	(A) Meet the requirements in paragraph (1)(A) of this chart; (B) Ensure that each child receiving treatment services has an individualized recreation plan designed by the service planning team or professionals who are qualified to address the child's individual needs, that the plan is implemented, and that the plan is revised by the service planning team or qualified professionals, as needed; and (C) Ensure that medical and physical support are given if the recreational and leisure-time activities require it for a child who is receiving treatment services for primary medical needs, autism spectrum disorder, or intellectual disability.

Figure: 40 TAC 748.3757(a)

If the age of the youngest child is...	Then the Swimming Child/Adult Ratio is
0 to 23 months old	1:1
2 years old	2:1
3 years old	3:1
4 years old	4:1
5 years old or older	You must meet the applicable child/caregiver ratios as provided in §748.1003 of this title (relating to For purposes of the child/caregiver ratio, how many children can a single caregiver care for during the children's waking hours?).

Figure: 40 TAC §807.353(e)

Violation	First Offense: Penalty	Repeat Offenses: Penalty	Definition of Instance
<p><u>Failure of a small school transitioning to a large school to notify the Agency of status change, timely apply, or remit increased fees</u></p> <p>[Small school transitioning to a large school:</p> <ul style="list-style-type: none"> ● Failure to notify Agency of the school's status change; ● Failure to timely apply; or Failure to remit increased fees.] 	\$250	<p>[Second Offense: \$500</p> <p>Third and Subsequent Offenses: \$1,000]</p> <p><u>NA</u></p>	<u>Per violation</u>
<p><u>Failure to disclose to the Agency changes in tuition, fees, or other charges</u></p> <p>[Failure to disclose tuition, fees, or other charges, including increases, to the Agency]</p>	\$250	<p>Second Offense: \$500</p> <p>[Third and] Subsequent Offenses: \$1,000</p>	<u>Per violation</u>
<p><u>Failure to provide the Agency notice of a change of address prior to permanently vacating the school facility</u></p> <p>[Vacating the school facility without providing prior notification to the Agency of a change of address]</p>	\$250	<p>Second Offense: \$500</p> <p>[Third and] Subsequent Offenses: \$1,000</p>	<u>Per violation</u>
<p>Failure to maintain records demonstrating compliance with requirements of statute or rule</p>	\$250	<p>Second Offense: \$500</p> <p>[Third and] Subsequent Offenses: \$1,000</p>	<u>Per record or student record</u>
<p><u>Failure to properly destroy or arrange for the destruction of sensitive personal information in the school's custody or control</u></p>	\$250	<p>Second Offense: \$500</p> <p>Subsequent Offenses: \$1,000</p>	<u>Per student affected</u>
<p><u>Failure to protect student records against damage, loss, or misuse</u></p>	\$250	<p>Second Offense: \$500</p> <p>Subsequent Offenses: \$1,000</p>	<u>Per record or student record</u>
<p>Failure to provide complete and accurate information as required by the Agency</p>	\$250	<p>Second Offense: \$500</p> <p>[Third and] Subsequent Offenses: \$1,000</p>	<u>Per violation</u>
<p>Failure to ensure a staff member has taken required training <u>and been</u> approved by the Agency</p>	\$500	<p>[Second and] Subsequent Offenses: \$1,000</p>	<u>Per staff member</u>

Failure to provide an instructor who meets necessary qualifications and whose application was submitted within required time frames	\$500	[Second and] Subsequent Offenses: \$1,000	<u>Per instructor</u>
Failure to make arrangements satisfactory to the Agency for the completion of a discontinued course of instruction	\$500	[Second and] Subsequent Offenses: \$1,000	<u>Per course of instruction</u>
[Failure to respond to a request or direction from the Agency]	[\$500]	[Second and Subsequent Offenses: \$1,000]	
Making a false statement in an application to the Agency	\$500	[Second and] Subsequent Offenses: \$1,000	<u>Per violation</u>
Failure to maintain the [schools] instructors, facilities, equipment, or courses of instruction and outcomes on the basis of which approval was issued	\$500	[Second and] Subsequent Offenses: \$1,000	<u>Per course of instruction</u>
Failure to disclose limitations on transferability of courses of instruction to a prospective student	\$500	[Second and] Subsequent Offenses: \$1,000	<u>Per student affected</u>
Advertising that financial aid is available or advertising that financial aid may be available for a program for which it is not available	\$500	[Second and] Subsequent Offenses: \$1,000	<u>Per student affected</u>
Failure to establish that a student met the approved admission requirements when the student was enrolled	\$750	[Second and] Subsequent Offenses: \$1,000	<u>Per student affected</u>
Failure to submit the annual program completion, job placement, and employment data required by the Agency by the required due date	\$750	[Second and] Subsequent Offenses: \$1,000	<u>Per school</u>
Failure to submit annual financial statements no later than 180 days from the close of the school's or college's fiscal year	\$750	[Second and] Subsequent Offenses: \$1,000	<u>Per school</u>
Transfer of all students from one school location to another school location, by an owner with multiple school locations, without Agency approval	\$750	[Second and] Subsequent Offenses: \$1,000	<u>Per violation</u>
Dismissal of all students contrary to the school's class schedule as printed in the school catalog for reasons not approved by the Agency	\$750	[Second and] Subsequent Offenses: \$1,000	<u>Per dismissal event</u>
Operating a school without a certificate of approval	\$1,000	[Second and] Subsequent Offenses: \$1,000	<u>Per school</u>

Teaching a course of instruction or revised course of instruction that has not been approved by the Agency	\$1,000	[Second and] Subsequent Offenses: \$1,000	<u>Per course of instruction</u>
Using advertising that is false, misleading, or deceptive, including the misrepresentation of degrees other than those approved by the Coordinating Board	\$1,000	[Second and] Subsequent Offenses: \$1,000	<u>Per student affected</u>
Failure to notify the Agency of the discontinuance of the course of instruction or the operation of a school or college within 72 hours of cessation of classes, and to make available accurate records as required	\$1,000	[Second and] Subsequent Offenses: \$1,000	<u>Per course of instruction</u>
Solicitation of a prospective student in violation of statutory and rule requirements	\$1,000	[Second and] Subsequent Offenses: \$1,000	<u>Per student affected</u>
Any misrepresentation	\$1,000	[Second and] Subsequent Offenses: \$1,000	<u>Per misrepresentation</u>
Failure to file a complete application for renewal at least 30 days before the expiration date of the certificate of approval	10% of renewal fee not less than \$200 and not more than \$1,000	[Second and] Subsequent Offenses: 10% of renewal fee, not less than \$200 and not more than \$1,000	<u>Per application</u>
Failure to pay any fee or penalty installment by the required due date	50% of the total amount of the fee	50% of the total amount of the fee	<u>Per failure</u>
Paying a refund late	A rate established annually by the Commission	A rate established annually by the Commission	<u>Per refund</u>

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 Animal Health Commission

Renewal Notice of Award

In accordance with Government Code, Chapter 2254, Subchapter B, the Texas Animal Health Commission (TAHC) publishes this notice of a consultant contract award for the Field Program Specialist Consultant, #554-6-441r1. The notice for request for proposals was published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9787).

The consultant will continue assisting in completing epidemiological investigation reports on affected Tuberculosis (TB) herds detailing possible sources of infection, methods employed to eliminate TB, and trace-outs of exposed animals. These reports will be reviewed by the State Epidemiologist and USDA-APHIS-VS officials. In addition to TB work, the contractor may be asked to assist with the Texas Cattle Fever Tick outbreak in south Texas and ongoing Brucellosis eradication work while TAHC is dedicating much of its time and resources to the recent incursion of Chronic Wasting Disease in the state.

The contract renewal has been awarded to Mr. Robert M. Meyer, 1600 Scarborough Drive, Fort Collins, CO 80526. The total value of the contract is \$25,000. The contract work period will be effective on September 1, 2016, and will continue through August 31, 2017.

TRD-201604198

Gene Snelson

General Counsel

Texas Animal Health Commission

Filed: August 16, 2016

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - July 2016

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period July 2016 is \$32.24 per barrel for the three-month period beginning on April 1, 2016, and ending June 30, 2016. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of July 2016 from a qualified low-producing oil lease is not eligible for a credit on the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period July 2016 is \$1.29 per mcf for the three-month period beginning on April 1, 2016, and ending June 30, 2016. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of July 2016 from a qualified low-producing well is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code,

§171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of July 2016 is \$44.80 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of July 2016 from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of July 2016 is \$2.76 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of July 2016 from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201604160

Lita Gonzalez

General Counsel

Comptroller of Public Accounts

Filed: August 15, 2016

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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/22/16 - 08/28/16 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 08/22/16 - 08/28/16 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.

TRD-201604193

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: August 16, 2016

Credit Union Department

Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following application:

Application to Expand Field of Membership - Denied

EECU, Fort Worth, Texas - See *Texas Register* issue dated April 29, 2016.

◆ ◆ ◆
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 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 September 26, 2016. 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 September 26, 2016. 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: 410 WATER SUPPLY CORPORATION; DOCKET NUMBER: 2016-0346-PWS-E; IDENTIFIER: RN101439347; LOCATION: Detroit, Red River County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids based on the locational running annual average; PENALTY: \$175; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Acme Brick Company; DOCKET NUMBER: 2016-0694-AIR-E; IDENTIFIER: RN100210046; LOCATION: Denton, Denton County; TYPE OF FACILITY: brick manufacturing plant; RULES VIOLATED: 30 TAC §101.211(a) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O1605, Special Terms and Conditions (STC) Number 2.G, by failing to notify the commission at least ten days prior to any scheduled maintenance, startup, or shutdown activity that is expected to cause an unauthorized emission that equals or exceeds the reportable quantity; and 30 TAC §116.115(b)(2)(F) and (c) and

§122.143(4), THSC, §382.085(b), FOP Number O1605, STC Number 9, New Source Review Permit Number 56094, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: \$8,438; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Biruwa Incorporated dba Everest Food Mart; DOCKET NUMBER: 2016-0653-PST-E; IDENTIFIER: RN101444859; LOCATION: Benbrook, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Bellmead; DOCKET NUMBER: 2016-0265-WQ-E; IDENTIFIER: RN105594980; LOCATION: Bellmead, McLennan County; TYPE OF FACILITY: small municipal separate storm sewer system (MS4); RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge stormwater associated with Texas Pollutant Discharge Elimination System General Permit for small MS4; PENALTY: \$25,000; Supplemental Environmental Project offset amount of \$20,000; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: City of Granite Shoals; DOCKET NUMBER: 2016-0491-PWS-E; IDENTIFIER: RN101262186; LOCATION: Granite Shoals, Burnet County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h), and (i)(1) and §290.122(c)(2)(A) and (f) and 40 Code of Federal Regulations (CFR) §141.86 and §141.90(a), by failing to collect lead and copper tap samples at the required 20 sample sites for two consecutive six-month monitoring periods (January 1, 2015 - June 30, 2015, and July 1, 2015 - December 31, 2015) following the January 1, 2012 - December 31, 2014, monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the executive director (ED); and by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the January 1, 2015 - June 30, 2015, monitoring period; 30 TAC §290.117(i)(5) and (k) and §290.122(b)(2)(A) and (f) and 40 CFR §141.85(a) and (b) and §141.90(f)(1), by failing to deliver the public education materials following the lead action level exceedance that occurred during the January 1, 2012 - December 31, 2014, monitoring period and failing to provide the ED with copies of the public education materials and certification that distribution of said materials is being conducted in a manner consistent with TCEQ requirements and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to deliver the public education materials; 30 TAC §290.117(e)(2), (h), and (i)(3) and §290.122(c)(2)(A) and (f) and 40 CFR §141.87 and §141.90(a), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites for two consecutive six-month periods (January 1, 2015 - June 30, 2015, and July 1, 2015 - December 31, 2015) following the January 1, 2012 - December 31, 2014, monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the ED and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to conduct all of the required water quality parameter sampling during the January 1, 2015 - June 30, 2015, monitoring period; 30 TAC §290.117(d)(2)(A), (h), and (i)(2)

and §290.122(c)(2)(A) and (f) and 40 CFR §141.88 and §141.90(b), by failing to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2012 - December 31, 2014, monitoring period during which the lead action level was exceeded, have the sample analyzed, and report the results to the ED and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2012 - December 31, 2014, monitoring period; 30 TAC §290.117(f)(3)(A) and §290.122(b)(2)(A) and (f) and 40 CFR §§141.81(e)(1), 141.82(a), and 141.90(c)(2), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2012 - December 31, 2014, monitoring period during which the lead action level was exceeded and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for optimal corrosion control treatment; and 30 TAC §290.117(g)(2)(A) and §290.122(b)(2)(A) and (f) and 40 CFR §141.83 and §141.90(d)(1), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2012 - December 31, 2014, monitoring period during which the lead action level was exceeded and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for source water treatment; PENALTY: \$1,170; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753 (512) 339-2929.

(6) COMPANY: City of La Grulla; DOCKET NUMBER: 2016-0940-MSW-E; IDENTIFIER: RN102213402; LOCATION: La Grulla, Starr County; TYPE OF FACILITY: municipal solid waste disposal site; RULES VIOLATED: 30 TAC §37.8001 and §330.125(b)(7), by failing to maintain a copy of any and all cost estimates and financial assurance documentation relating to financial assurance for closure and post-closure of the site; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: City of Springtown; DOCKET NUMBER: 2016-0686-PWS-E; IDENTIFIER: RN101392397; LOCATION: Springtown, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.06 milligrams per liter (mg/L) for haloacetic acids and 0.080 mg/L for total trihalomethanes, based on the locational running annual average; and 30 TAC §290.110(e)(2) and (6) and §290.111(h)(2)(B) and (9), by failing to submit Surface Water Monthly Operating Reports with the required turbidity and disinfectant residual data to the executive director by the tenth day of the month following the end of the reporting periods for January and February 2016; PENALTY: \$1,137; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: City of Throckmorton; DOCKET NUMBER: 2015-1740-MWD-E; IDENTIFIER: RN103138111; LOCATION: Throckmorton, Throckmorton 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 (TPDES) Permit Number WQ0010469002, Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and (9)(A), and TPDES Permit Number WQ0010469002, Monitoring and Reporting Requirements Number 7.c., by failing to report any

effluent violation which deviates from the permitted limitation by more than 40% in writing to the Abilene Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance; 30 TAC §305.125(1) and (17) and §319.7(d), and TPDES Permit Number WQ0010469002, Monitoring and Reporting Requirements Numbers 1 and 3.b., by failing to timely submit effluent monitoring results at the intervals specified in the permit and failing to retain at the facility, or make readily available for review by a TCEQ representative, monitoring and reporting records; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010469002, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2014; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010469002, Operational Requirements Number 1., by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010469002, Other Requirements, by failing to provide pond liner certifications; 30 TAC §305.125(1) and TPDES Permit Number WQ0010469002, Monitoring and Reporting Requirements Number 5, by failing to accurately calibrate all automatic flow measuring or recording devices; and 30 TAC §305.125(1) and TPDES Permit Number WQ0010469002, Other Requirements Number 4, by failing to submit the scheduled quarterly progress reports for October 1, 2014, and January 1, 2015, no later than 14 days following each scheduled date; PENALTY: \$18,975; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: City of Uvalde; DOCKET NUMBER: 2016-0206-MSW-E; IDENTIFIER: RN102803921; LOCATION: Uvalde, Uvalde County; TYPE OF FACILITY: Type 1 municipal solid waste (MSW) landfill; RULES VIOLATED: 30 TAC §328.54(c), by failing to obtain approval prior to storing more than 500 used or scrap tires (or weight equivalent tire pieces or any combination thereof) on the ground; 30 TAC §328.56(c), by failing to use manifests, work orders, invoices, or other records to document the removal and management of all scrap tires generated at the facility; 30 TAC §328.56(d)(4), by failing to monitor tires stored outside for vectors and to utilize appropriate vector control measures at least once every two weeks; 30 TAC §330.301, by failing to submit an application to modify the site development plan within 180 days to comply with the 2006 revisions to 30 TAC Chapter 330, Subchapter G; 30 TAC §330.159 and §330.371(g), by failing to monitor landfill gases in accordance with a landfill gas management plan (LGMP) in accordance with 30 TAC Chapter 330, Subchapter I; 30 TAC §330.371(b)(2), (i), and (j), and MSW Permit Number 1725, LGMP, BL-1. General and BL-5. Sampling Equipment, by failing to implement a routine methane monitoring program including, but not limited to: quarterly monitoring, monitoring of on-site structures where potential gas build up would be of concern, and sampling of all probes and on-site structures; 30 TAC §330.121(a) and MSW Permit Number 1725, LGMP, BL-3. Probe and Vent Placement, BL-4. Gas Monitoring Probe Design and Installation, BL-5. Sampling Equipment, and BL-5. Monitoring Procedures, by failing to operate in accordance with the facility's LGMP; 30 TAC §330.165(a) and MSW Permit Number 1725, Site Operating Plan (SOP), C-25, by failing to apply six inches of well-compacted earthen material not previously mixed with garbage, rubbish, or other solid waste at the end of each operating day; 30 TAC §330.165(h) and MSW Permit Number 1725, SOP, C-26, by failing to maintain a cover application record on site readily available for inspection upon request by agency personnel; 30 TAC §330.139 and MSW Permit Number 1725, SOP, C-19, by failing to maintain and operate the working face in a manner to control windblown solid waste; 30 TAC §330.151 and MSW Permit Number 1725, SOP, C-23, by failing to control on-site populations of disease vectors using proper compaction and daily cover procedures; 30 TAC §330.163 and MSW Per-

mit Number 1725, SOP, C-25, by failing to spread and compact solid waste by repeated passages of compaction equipment such that each layer of solid waste is thoroughly compacted; 30 TAC §330.167 and MSW Permit Number 1725, SOP, C-26, by failing to prevent ponding of water over waste on a landfill and failing to fill in and regrade any area in which ponding occurs within seven days of the occurrence; 30 TAC §330.121(a) and §330.129, and MSW Permit Number 1725, SOP, C-13, by failing to operate in accordance with the fire protection plan outlined in the facility's SOP; 30 TAC §330.125(e) and §335.586(d) and (e), and MSW Permit Number 1725, SOP, C-3, by failing to maintain training records; 30 TAC §330.143(a), (b)(1)(D), (E), and (6), and MSW Permit Number 1725, SOP, C-20, by failing to maintain the visibility of all required landfill markers and to maintain soil liner or geomembrane liner area markers; 30 TAC §330.121(a) and §330.133(a), and MSW Permit Number 1725, SOP, C-17, by failing to maintain the size of the working face in accordance with the facility's SOP; 30 TAC §330.15(e)(4), 330.127(5)(A) and (C), and 330.133(c), and MSW Permit Number 1725, SOP, C-17 and C-10, by failing to ensure prohibited wastes unloaded at the facility are returned immediately to the transporter or generator or otherwise properly managed by the landfill and failing to implement procedures for the detection and prevention of the disposal of prohibited waste; 30 TAC §330.143(b)(5), by failing to install a landfill grid system; and 30 TAC §324.1 and 40 Code of Federal Regulations §279.22(c)(1), by failing to label or clearly mark used oil storage containers with the words 'Used Oil'; PENALTY: \$72,875; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: Copano Field Services/South Texas LLC; DOCKET NUMBER: 2016-0423-AIR-E; IDENTIFIER: RN106561525; LOCATION: Runge, Karnes County; TYPE OF FACILITY: compressor station; RULES VIOLATED: 30 TAC §116.615(2) and §116.620(10), Standard Permit Registration Number 107180, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: GREENS MART INCORPORATED; DOCKET NUMBER: 2016-0938-PST-E; IDENTIFIER: RN102019874; LOCATION: Houston, Harris 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: \$2,974; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Hale Center Coop Supply; DOCKET NUMBER: 2016-0642-PST-E; IDENTIFIER: RN101854800; LOCATION: Hale Center, Hale County; TYPE OF FACILITY: retail convenience facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$2,813; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(13) COMPANY: Hamby Water Supply Corporation; DOCKET NUMBER: 2016-0741-PWS-E; IDENTIFIER: RN101179877; LOCATION: Abilene, Taylor County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for

total trihalomethanes, based on the locational running annual average; PENALTY: \$172; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(14) COMPANY: Jahangir Alam dba Super Food Mart; DOCKET NUMBER: 2016-0541-PST-E; IDENTIFIER: RN101533263; LOCATION: Denton, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank (UST) system; 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; PENALTY: \$3,382; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Kinder Morgan Petcoke, Limited Partnership; DOCKET NUMBER: 2016-0908-IWD-E; IDENTIFIER: RN101610376; 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 WQ0002659000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$2,750; ENFORCEMENT COORDINATOR: Melissa Castro, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: KOLKHORST PETROLEUM COMPANY; DOCKET NUMBER: 2014-0730-PST-E; IDENTIFIER: RN102010899; LOCATION: Navasota, Grimes County; TYPE OF FACILITY: retail fuel station; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; 30 TAC §334.72, by failing to report a suspected release to the agency within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; PENALTY: \$46,975; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: LUBBOCK INVESTMENTS, LLC, A Nevada Corporation dba Pecan Grove Mobile Home Park; DOCKET NUMBER: 2015-0894-MLM-E; IDENTIFIER: RN102692167; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: mobile home park with a public water supply; RULES VIOLATED: 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the facility's ground storage tank (GST); 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the facility's pressure tank; 30 TAC §290.41(c)(1)(C) and §330.15(c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of municipal solid waste; 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code (THSC), §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D or higher license; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement for all land within 150 feet of the well; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.43(c)(1), by

failing to provide the GST with a gooseneck vent or roof ventilator with an opening protected by a 16-mesh or finer corrosion resistant screen to prevent entry of animals, birds, insects, and heavy air contaminants; 30 TAC §290.43(c)(3), by failing to provide an overflow on the facility's GST that is designed in strict accordance with American Water Works Association standards; 30 TAC §290.43(c)(4), by failing to equip the GST with a proper water level indicator; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), by failing to operate the disinfection equipment to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.41(c)(3)(K), by failing to properly seal the wellhead with a gasket or sealing compound; and 30 TAC §290.42(i) and §305.42(a) and TWC, §26.121(a), by failing to obtain authorization from the commission prior to any discharge of wastewater; PENALTY: \$7,181; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(18) COMPANY: Lucite International, Incorporated; DOCKET NUMBER: 2016-0348-IWD-E; IDENTIFIER: RN102736089; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: petrochemical plant complex; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0000473000, Effluent Limitations and Monitoring Requirements Number 1 - Tier 4, Outfall Number 001; Effluent Limitations and Monitoring Requirements Number 2, Outfall Numbers 002 and 011; and Interim Effluent Limitations and Monitoring Requirements Number 1, Outfall Number 101, by failing to comply with permitted effluent limits; and 30 TAC §305.125(1) and (11)(A) and §§319.1, 319.4, and 319.5(b), and TPDES Permit Number WQ0000473000, Monitoring and Reporting Requirements Number 1 and Effluent Limitations and Monitoring Requirements Number 2, Outfall Number 021, by failing to collect and analyze effluent samples at the intervals specified in the permit; PENALTY: \$56,010; Supplemental Environmental Project offset amount of \$22,404; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: Mahajan Shah, LLC dba Deep Food Mart; DOCKET NUMBER: 2016-0657-PST-E; IDENTIFIER: RN102653128; LOCATION: Conroe, Montgomery 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 for releases at a frequency of at least once every month; PENALTY: \$6,900; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Maynard F. Ewton; DOCKET NUMBER: 2016-0601-WR-E; IDENTIFIER: RN106278336; LOCATION: Dallas, Palo Pinto County; TYPE OF FACILITY: a property; RULES VIOLATED: 30 TAC §297.82 and §297.83, by failing to inform the executive director (ED) of a transfer of a water right for Certificate of Adjudication Number 12-4001 and failed to submit a completed Change of Ownership Form to the ED; PENALTY: \$250; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: MP PATEL GROUP, INCORPORATED dba Mr. Watauga Quick Stop; DOCKET NUMBER: 2016-0560-PST-E; IDENTIFIER: RN101433480; LOCATION: Watauga, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gaso-

line; 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 §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip each tank with a valve or other device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches no higher than 95% capacity; and 30 TAC §334.10(b) and §334.12(c)(1), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Nat's Quick Stop Incorporated dba Quick Stop; DOCKET NUMBER: 2016-0987-PST-E; IDENTIFIER: RN102061546; LOCATION: Cumby, Hopkins 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; 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; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(23) COMPANY: Oxy Vinyls, LP; DOCKET NUMBER: 2016-0536-AIR-E; IDENTIFIER: RN100224674; LOCATION: La Porte, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent unauthorized emissions; PENALTY: \$6,550; Supplemental Environmental Project offset amount of \$2,620; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Pendleton Harbor Water Supply Corporation; DOCKET NUMBER: 2016-0364-PWS-E; IDENTIFIER: RN104097068; LOCATION: Milam, Sabine County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter (mg/L) for total trihalomethanes, based on the locational running annual average; 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 0.060 mg/L for haloacetic acids, based on the locational running annual average; and 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 10737 for calendar years 2013 - 2015; PENALTY: \$351; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(25) COMPANY: Quail Valley Utility District; DOCKET NUMBER: 2016-0781-PST-E; IDENTIFIER: RN102822640; LOCATION: Missouri City, Fort Bend County; TYPE OF FACILITY: motor vehicle fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(26) COMPANY: Rajvir Petroleum Incorporated dba One Star Exxon; DOCKET NUMBER: 2016-0731-PST-E; IDENTIFIER: RN103077590; LOCATION: Tom Bean, Grayson 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 for releases at a frequency of at least once every month; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Sherman/Grayson Hospital, LLC dba Wilson N Jones Regional Medical Center; DOCKET NUMBER: 2016-0857-PST-E; IDENTIFIER: RN100570753; LOCATION: Sherman, Grayson County; TYPE OF FACILITY: underground storage tank (UST) system with emergency generator; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2)(B) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every month and failing to provide release detection for the gravity flow piping associated with the UST system; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to the common carrier a valid, current TCEQ delivery certificate before accepting deliveries of a regulated substance into the USTs; and 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps including dispenser sumps, manways, overspill containers or catchment basins associated with the UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris; PENALTY: \$5,468; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Simpson Crushed Stone, L.L.C.; DOCKET NUMBER: 2016-0911-WQ-E; IDENTIFIER: RN107392532; LOCATION: Nemo, Johnson County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: Southwest Convenience Stores, LLC dba 7 Eleven 57819; DOCKET NUMBER: 2016-0802-PST-E; IDENTIFIER: RN102410065; LOCATION: Midland, Midland County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: \$9,481; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(30) COMPANY: Strip Property Land and Water, LLC; DOCKET NUMBER: 2016-0822-PWS-E; IDENTIFIER: RN102315165; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(e)(4)(A), by failing to operate the water system under the direct supervision of a water works operator who holds a Class D or higher license; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.109(c)(1)(A), by failing to collect routine

distribution coliform samples at active service connections which are representative of water quality throughout the distribution system; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; and 30 TAC §290.46(u), by failing to test every five years or as required by the executive director to prove that the well is in a non-deteriorated condition or plug the well with cement according to 16 TAC Chapter 76 (Water Well Drillers and Water Well Pump Installers); PENALTY: \$748; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(31) COMPANY: TICONA POLYMERS, INCORPORATED; DOCKET NUMBER: 2016-0725-WDW-E; IDENTIFIER: RN101625721; LOCATION: Bishop, Nueces County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §331.63(e), 40 Code of Federal Regulations §146.67(c), and Underground Injection Control Permit Number Waste Disposal Well (WDW) 211, Permit Provision VII.F, by failing to maintain a positive pressure of 100 pounds per square inch gauge over tubing injection pressure in the tubing-casing annulus in WDW 211 without dropping below this pressure differential for greater than 15 minutes; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(32) COMPANY: Union Water Supply Corporation; DOCKET NUMBER: 2015-1177-MWD-E; IDENTIFIER: RN102915501; LOCATION: Garciasville, Starr County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014313001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; 30 TAC §305.125(17) and TPDES Permit Number WQ0014313001, Monitoring and Reporting Requirements Number 1, by failing to submit a complete discharge monitoring report for the monitoring period ending February 28, 2015; PENALTY: \$3,850; Supplemental Environmental Project offset amount of \$1,540; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(33) COMPANY: UNITED RENTALS, INCORPORATED; DOCKET NUMBER: 2016-0637-PST-E; IDENTIFIER: RN106067440; LOCATION: Laredo, Webb County; TYPE OF FACILITY: equipment rental facility; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST for releases at a frequency of at least once every month and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, Class B, and Class C; PENALTY: \$9,855; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(34) COMPANY: Young Men's Christian Association of the Greater Houston Area; DOCKET NUMBER: 2015-1493-MWD-E; IDENTIFIER: RN101279412; LOCATION: Trinity, Trinity County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (11)(B) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0011644001, Monitoring and Reporting Requirements Number 3.b and Other Requirements Number 6, by failing to ensure all records pertaining to the permit are maintained and made readily available for review at the facility; 30 TAC §305.125(1) and TPDES Permit Number WQ0011644001, Sludge Provisions, by failing to submit a complete and accurate annual sludge report by September 30, 2014, for the monitoring period ending August 31, 2014; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0011644001, Operational Requirements Number 1, by failing to properly operate and maintain the facility and all of its systems of collection, treatment, and disposal; 30 TAC §305.125(1) and TPDES Permit Number WQ0011644001, Operational Requirements Number 3.b, by failing to submit a closure plan for review to the Municipal Permits Team, Wastewater Permitting Section of the Water Quality Division for any closure activity at least 90 days prior to conducting such activity; 30 TAC §30.350(n), §305.125(1) and (5), and TPDES Permit Number WQ0011644001, Operational Requirements Number 1, by failing to ensure that the facility and all its systems of collection, treatment, and disposal are properly operated and maintained; TWC, §26.121(a)(1), 30 TAC §305.125(1) and (4), and TPDES Permit Number WQ0011644001, Permit Conditions Number 2.d and Effluent Limitations and Monitoring Requirements Number 4, by failing to take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment; and 30 TAC §305.125(1) and §319.7(a)(1) and TPDES Permit Number WQ0011644001, Monitoring and Reporting Requirements Number 3.c.i, by failing to maintain complete and accurate records of monitoring activities; PENALTY: \$15,790; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-201604192

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 16, 2016



Enforcement Orders

An agreed order was adopted regarding C.R. Poldrack, Inc., Docket No. 2014-0162-WQ-E on August 16, 2016, assessing \$5,625 in administrative penalties with \$1,125 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding YGRIEGA ENVIRONMENTAL SERVICES, LLC, Docket No. 2014-1887-MSW-E on August 16, 2016, assessing \$6,833 in administrative penalties with \$1,366 deferred. Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MJR TRUCK LINES INC., Docket No. 2015-0501-MLM-E on August 16, 2016, assessing \$3,285 in administrative penalties with \$657 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras,

Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Groveton, Docket No. 2015-1153-MWD-E on August 16, 2016, assessing \$4,876 in administrative penalties with \$975 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Wilks Construction Company, LLC, Docket No. 2015-1572-WQ-E on August 16, 2016, assessing \$3,625 in administrative penalties with \$725 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Galo Equipment & Construction, LLC, Docket No. 2015-1841-MLM-E on August 16, 2016, assessing \$5,937 in administrative penalties with \$1,187 deferred. Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Bartlett, Docket No. 2016-0066-MWD-E on August 16, 2016, assessing \$6,332 in administrative penalties with \$1,266 deferred. Information concerning any aspect of this order may be obtained by contacting Farhad Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MARUTI INTERNATIONAL, L.L.C. dba TS Holiday Market, Docket No. 2016-0168-PST-E on August 16, 2016, assessing \$3,975 in administrative penalties with \$795 deferred. Information concerning any aspect of this order may be obtained by contacting Tiffany Maurer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WKND CORPORATION dba Mercado Sabadomingo, Docket No. 2016-0172-PWS-E on August 16, 2016, assessing \$662 in administrative penalties with \$132 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Tim A. Duncan dba Miller Mobile Home Park and Karen Duncan dba Miller Mobile Home Park, Docket No. 2016-0176-PWS-E on August 16, 2016, assessing \$429 in administrative penalties with \$85 deferred. Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Hal S. Zaltsberg dba Outskirtz Grill, Docket No. 2016-0214-PWS-E on August 16, 2016, assessing \$110 in administrative penalties with \$22 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MAPLE WATER SUPPLY CORPORATION, Docket No. 2016-0234-MLM-E on August 16, 2016, assessing \$169 in administrative penalties with \$33 deferred. Information concerning any aspect of this order may be obtained by

contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Rose City, Docket No. 2016-0255-PWS-E on August 16, 2016, assessing \$310 in administrative penalties with \$62 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KIDS MIRACLE VENTURE, INC. dba Brownies, Docket No. 2016-0383-PST-E on August 16, 2016, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SHIVAM ENTERPRISE LLC dba Velasco Shell, Docket No. 2016-0386-PST-E on August 16, 2016, assessing \$7,232 in administrative penalties with \$1,446 deferred. Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Hwy 300 LLC, Docket No. 2016-0403-MWD-E on August 16, 2016, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Cibolo, Docket No. 2016-0414-WQ-E on August 16, 2016, assessing \$2,625 in administrative penalties with \$525 deferred. Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Twin Lakes Club, Inc., Docket No. 2016-0452-PWS-E on August 16, 2016, assessing \$0 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Amancio Gutierrez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 7-ELEVEN, INC. dba 7-Eleven 36304, Docket No. 2016-0493-PST-E on August 16, 2016, assessing \$5,625 in administrative penalties with \$1,125 deferred. Information concerning any aspect of this order may be obtained by contacting Jessica Bland, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Woodville, Docket No. 2016-0563-PWS-E on August 16, 2016, assessing \$1,289 in administrative penalties with \$257 deferred. Information concerning any aspect of this order may be obtained by contacting Carol Mcgrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ONE WORLD A TO Z CONSULTANTS, LLC dba HANDY FOODS, Docket No. 2016-0611-PST-E on August 16, 2016, assessing \$2,567 in administrative penalties with \$513 deferred. Information concerning any aspect of this order may be obtained by contacting James Baldwin,

Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CBS Foods, LLC dba Center Food Mart, Docket No. 2016-0615-PST-E on August 16, 2016, assessing \$4,312 in administrative penalties with \$862 deferred. Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding AMAL SERVICES LLC, Docket No. 2016-0619-PST-E on August 16, 2016, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding W. Douglass Distributing, Ltd., Docket No. 2016-0677-PST-E on August 16, 2016, assessing \$1,106 in administrative penalties with \$221 deferred. Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DOUGLASS DISTRIBUTING COMPANY dba Happy Stop, Docket No. 2016-0710-PST-E on August 16, 2016, assessing \$7,125 in administrative penalties with \$1,425 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Billy W. Sensat, Sr., Docket No. 2016-0960-OSS-E on August 16, 2016, assessing \$175 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jill Hoglund, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Andrew B. Rocha, Docket No. 2016-0982-WOC-E on August 16, 2016, assessing \$175 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201604211
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 17, 2016



Notice of Hearing

BENEFICIAL LAND MANAGEMENT, L.L.C.

SOAH Docket No. 582-16-5474

TCEQ Docket No. 2016-0665-IWD

Permit No. WQ0004666000

APPLICATION.

Beneficial Land Management, L.L.C., P.O. Box 6870, San Antonio, Texas 78209, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal with changes of TCEQ Permit No.

WQ0004666000, which authorizes the land application of Class B sewage sludge from a domestic wastewater treatment plant for beneficial use on 726.1 acres. The draft permit does not include an authorization for land application of sewage sludge mixed with grease and grit trap wasted as requested by the applicant. This permit will not authorize a discharge of pollutants into water in the state. TCEQ received this application on December 5, 2011.

The sewage sludge land application site is located ten miles northwest of the City of Inez, on Farm-to-Market Road 444 and 2.5 miles northeast of the intersection of Karnes Road and Farm-to-Market Road 444, in Victoria County, Texas 77968. The sewage sludge land application site is located within the drainage basin of Lavaca Bay and Chocolate Bay in Segment No. 2453 of the Lavaca-Guadalupe Coastal Basin.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Victoria County Courthouse, Count Clerk's Office, 115 North Bridge, Victoria, Texas. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=28.9875&lng=-96.843055&zoom=13&type=r>. For the exact location, refer to the application.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - September 27, 2016

Victoria County Courthouse

Commissioner's Courtroom - 2nd Floor

115 North Bridge Street

Victoria, Texas 77901

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on July 13, 2016. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our web site at <http://www.tceq.texas.gov/>.

Further information may also be obtained from Beneficial Land Management, L.L.C. at the address stated above or by calling Mr. Carter Mayfield at (210) 422-4249.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: August 12, 2016

TRD-201604212

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 17, 2016



Notice of Hearing

Clean Harbors San Leon, Inc.

SOAH Docket No. 582-16-5475

TCEQ Docket No. 2016-0666-IWD

Permit No. WQ0004086000

APPLICATION.

Clean Harbors San Leon, Inc., 2700 Avenue S, San Leon, Texas 77539, which operates the Clean Harbors Recycling Facility, a recycling and storage facility that handles oily waste from the petroleum refining and petrochemical industries, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004086000 to authorize the discharge of treated process wastewater and treated contaminated stormwater at a daily average flow not to exceed 105,000 gallons per day via proposed internal Outfall 101. The draft permit authorizes the discharge of stormwater associated with industrial activity and previously monitored effluent (from internal Outfall 101) on an intermittent and flow-variable basis via Outfall 001. The TCEQ received this application on May 21, 2015.

The facility is located at 2700 Avenue S, near the intersection of 27th Street and Avenue S, approximately 3/4 mile east of State Highway 146 at Dickinson Bayou, in San Leon, Galveston County, Texas 77539. The effluent is discharged to a drainage ditch; thence to an unnamed tidal tributary of Dickinson Bayou Tidal; thence to Dickinson Bayou Tidal in Segment No. 1103 of the San Jacinto-Brazos Coastal Basin. The unclassified receiving waters have minimal aquatic life use for the unnamed ditch and high aquatic life use for the unnamed tidal tributary. The designated uses for Segment No. 1103 are high aquatic life use and primary contact recreation.

In accordance with Title 30 Texas Administrative Code (TAC) §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in the unnamed tidal tributary or Dickinson Bayou, which have been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

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.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Dickinson Public Library, 4411 Highway 3, Dickinson, Texas. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.469722&lng=-94.966666&zoom=13&type=r>. For the exact location, refer to the application.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - October 25, 2016

State Office of Administrative Hearings

The Preserve at North Loop

2020 North Loop West, Suite 111

Houston, Texas 77018

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on July 13, 2016. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our web site at <http://www.tceq.texas.gov/>.

Further information may also be obtained from Clean Harbors San Leon, Inc. at the address stated above or by calling Ms. Tia Gattas-Hamman, General Manager, at (281) 339-6406.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: August 16, 2016

TRD-201604213

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: August 17, 2016



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 **September 26, 2016**. 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 September 26, 2016**. 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: Fuel Centers Environmental Management, LLC d/b/a Fuel Center of Legacy; DOCKET NUMBER: 2015-1311-PST-E; TCEQ ID NUMBER: RN101564391; LOCATION: 301 Legacy Drive, Plano, Collin County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3) and §334.8(c)(4)(C) and (5)(A), by failing to obtain a UST delivery certificate by submitting a properly completed UST registration and self-certification form and by failing to notify the agency of any changes; TWC §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(c)(2) and 30 TAC §334.51(a)(6), by failing to assure that all spill and overflow prevention devices are maintained in good operating condition; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours; and 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, B, and C; PENALTY: \$10,758; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: SPEEDEXX ENTERPRISE INC. d/b/a Speedexx Food Store; DOCKET NUMBER: 2015-1222-PST-E; TCEQ ID NUMBER: RN101804599; LOCATION: 211 West Crosstimbers Street, Houston, Harris County; TYPE OF FACILITY: underground storage tank system and a convenience store with retail sales of

gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: \$24,106; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201604190
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 16, 2016



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 **September 26, 2016**. 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 September 26, 2016**. 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: Donald and Rebecca Rancher; DOCKET NUMBER: 2015-0996-SLG-E; TCEQ ID NUMBER: RN103162954; LOCATION: 1400 Beach Airport Road and 11000 Rose Road, Conroe, Montgomery County; TYPE OF FACILITY: unregistered sludge transporter business; RULES VIOLATED: 30 TAC §312.142(a) and (d), by failing to submit an application to renew an existing TCEQ Sludge Transporter Registration by June 15th of the year in which the registration expired; and 30 TAC §312.143, by failing to deposit wastes at an authorized facility; PENALTY: \$43,727; STAFF ATTOR-

NEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: R&K Fabricating Inc.; DOCKET NUMBER: 2015-0982-MLM-E; TCEQ ID NUMBER: RN104085956; LOCATION: 3183 Highway 146, Dayton, Liberty County; TYPE OF FACILITY: storage container fabricating plant; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b), 30 TAC §101.20(2) and §113.1505, and 40 Code of Federal Regulations (CFR) §63.11519(a)(1), by failing to submit an initial notification, as specified by 40 CFR Part 63, Subpart XXXXXX; THSC, §382.085(b), 30 TAC §101.20(2) and §113.1505, and 40 CFR §63.11519(a)(2), by failing to submit a notification of compliance status, as specified by 40 CFR Part 63, Subpart XXXXXX; THSC, §382.085(b) and 30 TAC §111.201, by causing, suffering, allowing, or permitting unauthorized outdoor burning within the State of Texas; and 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste; PENALTY: \$5,047; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: RASSO'S LYTLE CORPORATION d/b/a Lytle Exxon Food Mart; DOCKET NUMBER: 2015-1728-PST-E; TCEQ ID NUMBER: RN102278314; LOCATION: 15058 Main Street, Lytle, Atascosa County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube according to the UST registration and self-certification form; 30 TAC §334.42(i), by failing to inspect all sumps, including dispenser sumps, manways, overspill containers, or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight and free of any liquid or debris; and 30 TAC §§334.602(a), 334.603(b), and 334.605(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, B, and C, and failing to ensure that a certified Class A and B operator is re-trained within three years of their last training date; PENALTY: \$7,006; STAFF ATTORNEY: Amanda Patel, Litigation Division, MC 175, (512) 239-3990; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201604191
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 16, 2016



Notice of Opportunity to Comment on Shutdown/Default 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 Shutdown/Default Orders (S/DOs). Texas Water

Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be non-compliant 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, 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 **September 26, 2016**. 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/DOs are 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 September 26, 2016**. 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: Batesville One Stop Inc d/b/a Batesville Foodmart; DOCKET NUMBER: 2014-1237-PST-E; TCEQ ID NUMBER: RN102779774; LOCATION: 14404 Highway 57 East, Batesville, Zavala County; TYPE OF FACILITY: Underground storage tank system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,750; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(2) COMPANY: Myung Cha Cha d/b/a Youngs Mart 3; DOCKET NUMBER: 2015-0713-PST-E; TCEQ ID NUMBER: RN102048444; LOCATION: 400 North Johnson Street, Alice, Jim Wells County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum UST; TWC, §26.3475(d) and 30 TAC §334.49(c)(2)(C), by failing to inspect

the impressed current cathodic protection system at least once every 60 days to ensure the rectifier and other system components are operating properly; TWC, §26.3475(d) and 30 TAC §334.49(c)(4), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years by failing to conduct the triennial testing of the corrosion protection system; TWC, §26.3475(c)(1), and 30 TAC §334.48(c) and §334.50(d)(1)(B)(ii) and (iii)(I), by failing to conduct effective manual or automatic inventory control procedures for the USTs at the facility; 30 TAC §334.42(i), by failing to inspect all sumps, manways, overflow containers, or catchment basins associated with a UST system at least once every 60 days to assure their sides, bottoms, and any penetration points are maintained liquid tight; and 30 TAC §334.602(a) and §334.603(b)(2), by failing to identify and designate for each UST facility at least one named individual for each class of operator (Class A, B, and C); PENALTY: \$19,387; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: SARVODAY ENTERPRISES LLC d/b/a Times Market; DOCKET NUMBER: 2016-0165-PST-E; TCEQ ID NUMBER: RN101811081; LOCATION: 6104 Montgomery Drive, Windcrest, Bexar County; TYPE OF FACILITY: UST system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.602(a), by failing to designate at least one Class A, B, and C operator for the facility; 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; TWC, §26.3475(d) and 30 TAC §334.49(a)(4), by failing to provide corrosion protection for all underground and/or totally or partially submerged metal components of any existing or new UST system; 30 TAC §334.72, by failing to report a suspected release to TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; PENALTY: \$85,600; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201604189
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 16, 2016

General Land Office

Notice of Request for Proposal for Consulting Services

The Texas General Land Office (GLO), on behalf of the Veterans Land Board (VLB), is seeking a consultant to provide services related to marketing research to determine what percent of VLB's target market is aware of its products and services. The selected Contractor shall also recommend actions to increase overall brand aware and product adoption. The GLO intends to issue a single contract for the marketing research over the specified period. The co-sourced contractor will provide specialized skills, industry and subject matter knowledge in marketing research to assist the VLB.

Pursuant to §2254.029 and §2254.031 of the Texas Government Code, the GLO is seeking to contract for consulting services relating to the marketing research and recommendations to GLO's VLB beginning November 1, 2016, through August 31, 2017.

Persons interested in a copy of the Request for Proposal No. X0010188-SK should contact Shelia Kirk, Procurement Division, Texas General Land Office at (512) 463-5186 or shelia.kirk@glo.texas.gov to request a copy. The closing date for receipt of proposals is September 14, 2016. The date of award is anticipated to be on or before September 30, 2016.

Further information may be obtained by contacting Crystal Nelson, Texas General Land Office, 1700 N. Congress Avenue, Austin, Texas 78701-1495, telephone (512) 463-5053.

TRD-201604207

Anne L. Idsal

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: August 17, 2016

and the staff within this office will perform ombudsman services on behalf of DFPS consumers within the HHSC ombudsman structure. The HHS Executive Commissioner further certifies that there are no additional offices to exempt from abolition beyond the Office of Independent Ombudsman for State Supported Living Centers and the Office of State Long-term Care Ombudsman.

For additional information, please contact Jimmy Charney, HHSC Office of Ombudsman, at (512) 706-7221 or jimmy.charney@hhsc.state.tx.us.

TRD-201604092

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: August 12, 2016

Texas Health and Human Services Commission

Public Notice - Health and Human Services Office of Ombudsman Notification

Section 531.0171, Government Code, which was added by §2.06 of SB 200, 84th Legislature, Regular Session, 2015, established the Health and Human Services Commission's (HHSC) office of ombudsman with authority and responsibility over the health and human services (HHS) system in providing dispute resolution services for the HHS system; performing consumer protection and advocacy functions related to HHS, including assisting a consumer or other interested person with raising a matter within the HHS system that the person feels is being ignored and obtaining written information regarding a filed complaint; and collecting relevant inquiry and complaint data.

As part of the HHS system transformation, §2.06 of SB 200 creates a consolidated office of HHS ombudsman by abolishing, except as specifically exempted, each office of ombudsman as follows:

An existing office performing ombudsman duties for the Department of Assistive and Rehabilitative Services (DARS), the Department of Aging and Disability Services (DADS) or other entity is abolished on the same date the agency or entity is abolished in accordance with SB 200.

An existing office performing ombudsman duties for the Department of Family and Protective Services (DFPS) or the Department of State Health Services (DSHS) is abolished on the date specified in the HHS System Transition Plan.

SB 200 specifically exempts from abolishment the Office of Independent Ombudsman for State Supported Living Centers, the Office of State Long-term Care Ombudsman, and any other ombudsman office serving all or part of the HHS system that is required by federal law.

In 2015, an HHS interagency workgroup analyzed activities across the HHS system to identify ombudsman-related functions appropriate for consolidation into HHSC, administrative attachment to HHSC or abolishment as directed by SB 200. While certain functions have been identified as described in the update to the HHS Transition Plan posted on the HHSC website on July 22, 2016 and in the *Texas Register* on August 19, 2016, the only specific office identified at the other HHS agencies is the DFPS Office of Consumer Affairs (OCA). To preserve the OCA's critical role with DFPS programs on behalf of consumers, HHSC, under authority conferred by Section 531.0171(a), Government Code, will work with DFPS to implement the transfer of OCA personnel to HHSC by September 1, 2017.

The HHS Executive Commissioner therefore certifies that the DFPS Office of Consumer Affairs will be abolished on September 1, 2017

Public Notice - Notice of Hearing on Proposed Nursing Facility Payment Rates for State Veterans Homes - Correction

Hearing. The Health and Human Services Commission (HHSC) will conduct a public hearing on September 2, 2016, at 8 a.m., to receive public comment on proposed payment rates for the state-owned veterans nursing facilities. These nursing facilities are in the nursing facility program operated by Department of Aging and Disabilities. These payment rates are proposed to be effective March 1, 2016.

The hearing will be held in compliance with Texas Human Resources Code §32.0282 and Title 1 of the Texas Administrative Code (1 TAC), §355.7103(a)(2), which require that public hearings be held on proposed reimbursement rates before such rates are approved by HHSC.

The public hearing will be held in Room 5155 of the Brown Heatly Building, located at 4900 North Lamar Blvd., Austin, Texas 78751. Entry is through Security at the front of the building facing Lamar Blvd. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Rate Analysis by calling (512) 730-7401, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes the following interim per day payment rates for the state-owned veterans nursing facilities effective September 1, 2016: Amarillo, \$143.00; Big Spring, \$143.00; Bonham, \$143.00; Floresville, \$143.00; Temple, \$143.00; McAllen, \$143.00; El Paso, \$143.00; and Tyler, \$234.00. The proposed rates for each home are based upon the state veterans home semi-private basic daily rate in effect on the first day of the rate period in accordance with the rate setting methodologies listed below under Methodology and Justification. These rates will be reconciled retrospectively based on actual costs in accordance with 1 TAC §355.311(j).

Methodology and Justification. The proposed rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.311(d).

Briefing Package. A briefing package describing the proposed payment rates will be available at <http://www.hhsc.state.tx.us/rad/rate-packets.shtml> on August 19, 2016. Interested parties may obtain a copy of the briefing package before the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by email at RAD-LTSS@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services

Commission, Rate Analysis Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by email to LTSS@hhsc.state.tx.us. In addition, written comment may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Rate Analysis Department, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751-2316.

TRD-201604034

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: August 11, 2016



Public Notice - September 7, 2016 STAR Kids Client Information Session

The Texas Health and Human Services Commission (HHSC) will hold a client information session at the Brown-Heatly Building, Public Hearing Room, 4900 North Lamar Blvd., Austin, Texas 78751 on September 7, 2016, from 9 a.m. to 11 a.m. This information session is related to the transition of various Medicaid services to the STAR Kids managed care program. Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities 20 years of age and younger who receive Supplemental Security Income Medicaid or Supplemental Security Income and Medicare, receive services through the Medicaid Buy-in for Children, live in a community-based intermediate care facility for individuals with an intellectual disability or related condition (ICF/IID) or nursing facility, or are enrolled in home and community-based services waiver programs, including:

Medically Dependent Children Program

Home and Community-based Services

Community Living Assistance and Support Services

Deaf Blind with Multiple Disabilities

Texas Home Living

Youth Empowerment Services

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

Questions regarding content or meeting arrangements should be directed to Heather Kuhlman, Communications Specialist, Health and Human Services Commission, (512) 438-6356, Heather.Kuhlman@hhsc.state.tx.us.

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201604180

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: August 15, 2016



Public Notice - September 7, 2016 STAR Kids Client Information Session

The Texas Health and Human Services Commission (HHSC) will hold a client information session at the Brown-Heatly Building, Public Hearing Room, 4900 North Lamar Blvd., Austin, Texas 78751 on September 7, 2016, from 6 p.m. to 8 p.m. This information session is related to the transition of various Medicaid services to the STAR Kids managed care program. Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities 20 years of age and younger who receive Supplemental Security Income Medicaid or Supplemental Security Income and Medicare, receive services through the Medicaid Buy-in for Children, live in a community-based intermediate care facility for individuals with an intellectual disability or related condition (ICF/IID) or nursing facility, or are enrolled in home and community-based services waiver programs, including:

Medically Dependent Children Program

Home and Community-based Services

Community Living Assistance and Support Services

Deaf Blind with Multiple Disabilities

Texas Home Living

Youth Empowerment Services

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

Questions regarding content or meeting arrangements should be directed to Heather Kuhlman, Communications Specialist, Health and Human Services Commission, 512-438-6356, Heather.Kuhlman@hhsc.state.tx.us.

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201604181

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: August 15, 2016



Public Notice - September 7, 2016 STAR Kids Provider Information Session

The Texas Health and Human Services Commission (HHSC) will hold a provider information session at the Brown-Heatly Building, Pub-

lic Hearing Room, 4900 North Lamar Blvd., Austin, Texas 78751 on September 7, 2016, from 2 p.m. to 4 p.m. This information session is related to the transition of various Medicaid services to the STAR Kids managed care program. Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities 20 years of age and younger who receive Supplemental Security Income Medicaid or Supplemental Security Income and Medicare, receive services through the Medicaid Buy-in for Children, live in a community-based intermediate care facility for individuals with an intellectual disability or related condition (ICF/IID) or nursing facility, or are enrolled in home and community-based services waiver programs, including:

- Medically Dependent Children Program
- Home and Community-based Services
- Community Living Assistance and Support Services
- Deaf Blind with Multiple Disabilities
- Texas Home Living
- Youth Empowerment Services

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

Questions regarding content or meeting arrangements should be directed to Heather Kuhlman, Communications Specialist, Health and Human Services Commission, (512) 438-6356, Heather.Kuhlman@hhsc.state.tx.us.

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201604182
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: August 15, 2016



Public Notice - September 9, 2016 STAR Kids Client Information Session

The Texas Health and Human Services Commission (HHSC) will hold a client information session at The University of North Texas at Dallas, Founders Hall, Room 138, 7300 University Hills Blvd., Dallas, Texas 75241 on September 9, 2016, from 11 a.m. to 1 p.m. This information session is related to the transition of various Medicaid services to the STAR Kids managed care program. Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities 20 years of age and younger who receive Supplemental Security Income Medicaid or Supplemental Security Income and Medicare, receive services through the Medicaid Buy-in for Children, live in a community-based intermediate care facility for individuals with an intellectual disability or related condition (ICF/IID) or nursing facility, or are enrolled in home and community-based services waiver programs, including:

- Medically Dependent Children Program
- Home and Community-based Services
- Community Living Assistance and Support Services
- Deaf Blind with Multiple Disabilities
- Texas Home Living
- Youth Empowerment Services

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

Questions regarding content or meeting arrangements should be directed to Heather Kuhlman, Communications Specialist, Health and Human Services Commission, (512) 438-6356, Heather.Kuhlman@hhsc.state.tx.us.

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201604186
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: August 15, 2016



Public Notice - September 9, 2016 STAR Kids Provider Information Session

The Texas Health and Human Services Commission (HHSC) will hold a provider information session at The University of North Texas at Dallas, Founders Hall, Room 138, 7300 University Hills Blvd., Dallas, Texas 75241 on September 9, 2016, from 2 p.m. to 4 p.m. This information session is related to the transition of various Medicaid services to the STAR Kids managed care program. Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities 20 years of age and younger who receive Supplemental Security Income Medicaid or Supplemental Security Income and Medicare, receive services through the Medicaid Buy-in for Children, live in a community-based intermediate care facility for individuals with an intellectual disability or related condition (ICF/IID) or nursing facility, or are enrolled in home and community-based services waiver programs, including:

- Medically Dependent Children Program
- Home and Community-based Services
- Community Living Assistance and Support Services
- Deaf Blind with Multiple Disabilities
- Texas Home Living
- Youth Empowerment Services

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more.

Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

Questions regarding content or meeting arrangements should be directed to Heather Kuhlman, Communications Specialist, Health and Human Services Commission, (512) 438-6356, Heather.Kuhlman@hhsc.state.tx.us.

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201604185

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: August 15, 2016



Public Notice - September 10, 2016 STAR Kids Client Information Session

The Texas Health and Human Services Commission (HHSC) will hold a client information session at The University of North Dallas, Founders Hall, 7400 Building, Room 138, 7300 University Hills Boulevard, Dallas, Texas 75241 on September 10, 2016, from 1 p.m. to 3 p.m. This information session is related to the transition of various Medicaid services to the STAR Kids managed care program. Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities 20 years of age and younger who receive Supplemental Security Income Medicaid or Supplemental Security Income and Medicare, receive services through the Medicaid Buy-in for Children, live in a community-based intermediate care facility for individuals with an intellectual disability or related condition (ICF/IID) or nursing facility, or are enrolled in home and community-based services waiver programs, including:

Medically Dependent Children Program

Home and Community-based Services

Community Living Assistance and Support Services

Deaf Blind with Multiple Disabilities

Texas Home Living

Youth Empowerment Services

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

Questions regarding content or meeting arrangements should be directed to Heather Kuhlman, Communications Specialist, Health and Human Services Commission, (512) 438-6356, Heather.Kuhlman@hhsc.state.tx.us.

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201604183

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: August 15, 2016



Public Notice - September 10, 2016 STAR Kids Client Information Session

The Texas Health and Human Services Commission (HHSC) will hold a client information session at The University of North Dallas, Founders Hall, 7400 Building, Room 138, 7300 University Hills Boulevard, Dallas, Texas 75241 on September 10, 2016, from 9 a.m. to 11 a.m. This information session is related to the transition of various Medicaid services to the STAR Kids managed care program. Beginning November 1, 2016, the STAR Kids managed care program will provide Medicaid benefits to individuals with disabilities 20 years of age and younger who receive Supplemental Security Income Medicaid or Supplemental Security Income and Medicare, receive services through the Medicaid Buy-in for Children, live in a community-based intermediate care facility for individuals with an intellectual disability or related condition (ICF/IID) or nursing facility, or are enrolled in home and community-based services waiver programs, including:

Medically Dependent Children Program

Home and Community-based Services

Community Living Assistance and Support Services

Deaf Blind with Multiple Disabilities

Texas Home Living

Youth Empowerment Services

Because this new program may change the way providers and other services are accessed, HHSC invites those who may be impacted by this new program to join us for an information session to learn more. Information sessions will provide details on STAR Kids, as well as provide the opportunity for attendees to ask questions pertaining to this new managed care program. Separate sessions will be held for families and providers.

Questions regarding content or meeting arrangements should be directed to Heather Kuhlman, Communications Specialist, Health and Human Services Commission, (512) 438-6356, Heather.Kuhlman@hhsc.state.tx.us.

This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.

People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact Charles Bredwell, Program Specialist, at (512) 462-6337 at least 72 hours before the meeting so appropriate arrangements can be made.

TRD-201604184

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: August 15, 2016



Department of State Health Services

Notice of Public Hearing on Proposed Rules Concerning Emergency Medical Services (EMS)

The Department of State Health Services (DSHS) Office of EMS/Trauma Systems Coordination will hold a public hearing, regarding proposed EMS rules at:

DSHS Central Campus

Lecture Hall K-100

1100 West 49th Street

Austin, Texas 78756

Friday, September 9, 2016 at 10:00 a.m.

Purpose of the hearing is to accept public comment on proposed EMS rules concerning the amendments to 25 Texas Administrative Code Chapter 157, §§157.2, 157.5, 157.11 - 157.14, 157.16, 157.32 - 157.34, 157.36, 157.38, 157.43, and 157.44; the repeal of §157.3 and new §157.3.

The public hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the public hearing. Comment time for each individual will be determined by the total number of persons registered to speak.

DSHS is not extending the public comment period for these proposed rules, which were published in the *Texas Register* on August 12, 2016, however, DSHS will regard the comments received at the public hearing as part of the formal public comments received for the proposed rules.

For additional information, contact State EMS Director Joseph Schmider at (512) 834-6737 or Joseph.Schmider@dshs.state.tx.us or Robert Friedrich at Robert.Friedrich@dshs.state.tx.us or (512) 834-6752.

TRD-201604217

Lisa Hernandez

General Counsel

Department of State Health Services

Filed: August 17, 2016



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 12, 2016, to amend a state-issued certificate of franchise authority, pursuant to Public Utility Regulatory Act §§66.001 - 66.016.

Project Title and Number: Application of Time Warner Cable Texas, LLC for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 46283.

The requested amendment is to expand the service area footprint to include the incorporated areas, excluding any federal properties, in the cities of Hackberry, Rose City and Castroville, Texas.

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 46283.

TRD-201604161

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: August 15, 2016



Notice of Application to Amend Water Certificates of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend water certificates of convenience and necessity (CCN) in Brazos County, Texas.

Docket Style and Number: Joint Application of the City of College Station and Wellborn Special Utility District to Amend Certificates of Convenience and Necessity and for Approval of a Water Service Agreement in Denton County, Docket Number 46280.

The Application: The City of College Station and Wellborn Special Utility District filed an application, pursuant to Texas Water Code (TWC) §13.248, for approval of an agreement that would amend their water certificates of convenience and necessity (CCN). The City holds water CCN no. 10169 and Wellborn holds water CCN no. 11340 in Brazos County. The City and Wellborn have agreed to amend their respective water CCNs to transfer certain certificated service areas within the City's corporate limits currently served by Wellborn and that Wellborn will provide service to certain areas outside of the City's corporate limits currently served by the City. The application includes a legal description of the service areas, surveys of the property, proposed notice, a map depicting the existing certificated areas of applicants, and digital data for the area being transferred between the applicants' certificates of convenience and necessity.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46280.

TRD-201604194

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: August 16, 2016



Notice of Application to Decertify Area from Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application to amend a sewer certificate of convenience and necessity (CCN) and to decertify a portion of San Antonio Water System's CCN No. 20285 in Comal County.

Docket Style and Number: Application of South Central Water Company to amend a sewer CCN and to decertify a portion of San Antonio Water System's CCN No. 20285 in Comal County, Docket Number 46279.

The Application: South Central Water Company seeks to amend its sewer CCN and to decertify 394 acres from San Antonio Water System's CCN No. 20285 in Comal County.

Persons wishing to intervene or comment on the action sought should contact the Commission by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46279.

TRD-201604188
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 15, 2016

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Texas Veterans Commission

Request for Applications Concerning the Texas Veterans Commission Fund for Veterans' Assistance, General Assistance Grant Program

Filing Authority. The availability of grant funds is authorized by Texas Government Code, §434.017.

Eligible Applicants. The Texas Veterans Commission (TVC) is requesting applications from organizations eligible to apply for grant funding. Eligible Applicants are units of local government, IRS Code §501(c)(19) posts or organizations of past or present members of the Armed Forces, IRS Code §501(c)(3) private nonprofit corporations authorized to conduct business in Texas, Texas chapters of IRS Code §501(c)(4) veterans service organizations, and nonprofit organizations authorized to do business in Texas with experience providing services to veterans.

Description. The purpose of this Request for Applications (RFA) is to seek grant applications from Eligible Applicants for General Assistance reimbursement grants using funds from the Fund for Veterans' Assistance (FVA). The TVC is authorized to award grants to Eligible Applicants addressing the needs of Texas veterans and their families. These needs include, but are not limited to: emergency financial assistance; transportation services; legal services, excluding criminal defense; family, child, and supportive services; employment, training/job placement assistance; and development of professional services networks.

The Texas Veterans Commission has currently established the following priorities: widespread distribution of grants across the state; encourage a diversity of services within geographic regions; outstanding grant applications; and the service categories of financial assistance and supportive services. The priorities for this 2017-2018 General Assistance Grant will be outlined in the RFA.

Grant Funding Period. Grants awarded will begin on July 1, 2017, and end on June 30, 2018. All grants are reimbursement grants. Reimbursement will only be made for those expenses that occur within the term of this grant. No pre-award spending is allowed. TVC shall disburse 10% of the awarded grant amount upon execution of the Notice of Grant Award (NOGA).

Grant Amounts. For this solicitation, the minimum grant award will be \$5,000. The maximum grant award for regional projects will be \$300,000. The maximum grant award for statewide projects will be \$500,000.

Number of Grants to be Awarded and Total Available. The anticipated total amount of grant funding available for this award is \$9,000,000. The number of awards made will be contingent upon the amount of funding requested and awarded to Eligible Applicants. This total amount of grant funding is subject to change due to availability of funds.

Selection Criteria. TVC staff will use an eligibility checklist and evaluation rubric to review all applications. All eligible applications will be evaluated and forwarded to the FVA Advisory Committee for its review and consideration. The FVA Advisory Committee will prepare a funding recommendation to be presented to the Commission for action. The Commission makes the final funding decisions based upon the FVA Advisory Committee's funding recommendation. Applications must address all requirements of the RFA to be considered for funding.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this solicitation. There is no expectation of continued funding. This issuance does not obligate TVC to award a grant or pay any costs incurred in preparing a response.

Requesting the Materials Needed to Complete an Application. All information needed to respond to this solicitation will be posted to the TVC website at <http://tvc.texas.gov/Apply-For-A-Grant.aspx> on or about Monday, August 29, 2016. All applications must be submitted both electronically and in hard copy, as per the posted solicitation guidelines.

Further Information. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants; all questions must be submitted via email to grants@tvc.texas.gov. All questions and the written answers will be posted on the TVC website as per the RFA.

Deadline for Receipt of an Application. Applications must be received by TVC by 5:00 p.m. on Thursday, October 27, 2016, at the Stephen F. Austin Building, 1700 N. Congress Avenue, Suite 800, Austin, Texas 78701 to be considered for funding.

TRD-201604202
Charles Catoe
Director, Fund for Veterans' Assistance
Texas Veterans Commission
Filed: August 17, 2016

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Request for Applications Concerning the Texas Veterans Commission Fund for Veterans' Assistance, Housing 4 Texas Heroes Grant Program

Filing Authority. The availability of grant funds is authorized by Texas Government Code, §434.017.

Eligible Applicants. The Texas Veterans Commission (TVC) is requesting applications from organizations eligible to apply for grant funding. Eligible Applicants are units of local government, IRS Code §501(c)(19) posts or organizations of past or present members of the Armed Forces, IRS Code §501(c)(3) private nonprofit corporations authorized to conduct business in Texas, Texas chapters of IRS Code §501(c)(4) veterans service organizations, and nonprofit organizations authorized to do business in Texas with experience providing services to veterans.

Description. The purpose of this Request for Applications (RFA) is to seek grant applications from Eligible Applicants for Housing 4 Texas Heroes reimbursement grants using funds from the Fund for Veterans' Assistance (FVA). The TVC is authorized to award grants to Eligible

Applicants addressing the needs of Texas veterans and their families. These needs include, but are not limited to: homeless Veteran support, Veteran homelessness prevention, temporary assistance to families of Veterans undergoing treatment at Texas medical facilities, and home modification assistance.

The Texas Veterans Commission has currently established the following priorities: widespread distribution of grants across the state; encourage a diversity of services within geographic regions; outstanding grant applications; and the service category of Home Modification Assistance. The priorities for this 2017-2018 Housing 4 Texas Heroes Grant will be outlined in the RFA.

Grant Funding Period. Grants awarded will begin on July 1, 2017, and end on June 30, 2018. All grants are reimbursement grants. Reimbursement will only be made for those expenses that occur within the term of this grant. No pre-award spending is allowed. TVC shall disburse 10% of the awarded grant amount upon execution of the Notice of Grant Award (NOGA).

Grant Amounts. For this solicitation, the minimum grant award will be \$5,000. The maximum grant award will be \$500,000.

Number of Grants to be Awarded and Total Available. The anticipated total amount of grant funding available for this award is \$4,500,000. The number of awards made will be contingent upon the amount of funding requested and awarded to Eligible Applicants. This total amount of grant funding is subject to change due to availability of funds.

Selection Criteria. TVC staff will use an eligibility checklist and evaluation rubric to review all applications. All eligible applications will be evaluated and forwarded to the FVA Advisory Committee for its review and consideration. The FVA Advisory Committee will prepare a funding recommendation to be presented to the Commission for action. The Commission makes the final funding decisions based upon the FVA Advisory Committee's funding recommendation. Applications must address all requirements of the RFA to be considered for funding.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this solicitation. There is no expectation of continued funding. This issuance does not obligate TVC to award a grant or pay any costs incurred in preparing a response.

Requesting the Materials Needed to Complete an Application. All information needed to respond to this solicitation will be posted to the TVC website at <http://tvc.texas.gov/Apply-For-A-Grant.aspx> on or about Friday, August 29, 2016. All applications must be submitted both electronically and in hard-copy, as per the posted solicitation guidelines.

Further Information. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants; all questions must be submitted via email to grants@tvc.texas.gov. All questions and the written answers will be posted on the TVC website as per the RFA.

Deadline for Receipt of an Application. Applications must be received by TVC by 5:00 p.m. on Thursday, November 3, 2016, at the Stephen F. Austin Building, 1700 N. Congress Avenue, Suite 800, Austin, Texas 78701 to be considered for funding.

TRD-201604203

Charles Catoe

Director, Fund for Veterans' Assistance

Texas Veterans Commission

Filed: August 17, 2016

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Request for Applications Concerning the Texas Veterans
Commission Fund for Veterans' Assistance, Veterans Mental
Health Grant Program

Filing Authority. The availability of grant funds is authorized by Texas Government Code, §434.017.

Eligible Applicants. The Texas Veterans Commission (TVC) is requesting applications from organizations eligible to apply for grant funding. Eligible Applicants are units of local government, IRS Code §501(c)(19) posts or organizations of past or present members of the Armed Forces, IRS Code §501(c)(3) private nonprofit corporations authorized to conduct business in Texas, Texas chapters of IRS Code §501(c)(4) veterans service organizations, and nonprofit organizations authorized to do business in Texas with experience providing services to veterans.

Description. The purpose of this Request for Applications (RFA) is to seek grant applications from Eligible Applicants for Veterans Mental Health reimbursement grants using funds from the Fund for Veterans' Assistance (FVA). The TVC is authorized to award grants to Eligible Applicants addressing the needs of Texas veterans and their families. These needs include, but are not limited to: clinical counseling services, peer-delivered services, and non-clinical support services.

The Texas Veterans Commission has currently established the following priorities: widespread distribution of grants across the state; encourage a diversity of services within geographic regions; and outstanding grant applications. The priorities for this 2017-2018 Veterans Mental Health Grant will be outlined in the RFA.

Grant Funding Period. Grants awarded will begin on July 1, 2017, and end on June 30, 2018. All grants are reimbursement grants. Reimbursement will only be made for those expenses that occur within the term of this grant. No pre-award spending is allowed. TVC shall disburse 10% of the awarded grant amount upon execution of the Notice of Grant Award (NOGA).

Grant Amounts. For this solicitation, the minimum grant award will be \$5,000. The maximum grant award will be \$500,000.

Number of Grants to be Awarded and Total Available. The anticipated total amount of grant funding available for this award is \$2,000,000. The number of awards made will be contingent upon the amount of funding requested and awarded to Eligible Applicants. This total amount of grant funding is subject to change due to availability of funds.

Selection Criteria. TVC staff will use an eligibility checklist and evaluation rubric to review all applications. All eligible applications will be evaluated and forwarded to the FVA Advisory Committee for its review and consideration. The FVA Advisory Committee will prepare a funding recommendation to be presented to the Commission for action. The Commission makes the final funding decisions based upon the FVA Advisory Committee's funding recommendation. Applications must address all requirements of the RFA to be considered for funding.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this solicitation. There is no expectation of continued funding. This issuance does not obligate TVC to award a grant or pay any costs incurred in preparing a response.

Requesting the Materials Needed to Complete an Application. All information needed to respond to this solicitation will be posted to the TVC website at <http://tvc.texas.gov/Apply-For-A-Grant.aspx> on or about Friday, August 29, 2016. All applications must be submitted both

electronically and in hard-copy, as per the posted solicitation guidelines.

Further Information. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants; all questions must be submitted via email to grants@tvc.texas.gov. All questions and the written answers will be posted on the TVC website as per the RFA.

Deadline for Receipt of an Application. Applications must be received by TVC by 5:00 p.m. on Thursday, November 3, 2016 at the Stephen F. Austin Building, 1700 N. Congress Avenue, Suite 800, Austin, Texas 78701 to be considered for funding.

TRD-201604204

Charles Catoe

Director, Fund for Veterans' Assistance

Texas Veterans Commission

Filed: August 17, 2016



Request for Applications Concerning the Texas Veterans Commission Fund for Veterans' Assistance, Veterans Treatment Court Grant Program

Filing Authority. The availability of grant funds is authorized by Texas Government Code, Section 434.017.

Eligible Applicants. The Texas Veterans Commission (TVC) is requesting applications from units of local government to apply for grant funding. Only units of local government will be considered eligible applicants for this grant.

Description. The purpose of this Request for Applications (RFA) is to seek grant applications from Eligible Applicants for Veterans Treatment Court reimbursement grants using funds from the Fund for Veterans' Assistance (FVA). The TVC is authorized to award grants to Eligible Applicants addressing the needs of Texas veterans and their families.

The Texas Veterans Commission has currently established the following priorities: widespread distribution of grants across the state; encourage a diversity of services within geographic regions; and outstanding grant applications. The priorities for this 2017 - 2018 Veterans Treatment Court Grant will be outlined in the RFA.

Grant Funding Period. Grants awarded will begin on July 1, 2017, and end on June 30, 2018. All grants are reimbursement grants. Reimbursement will only be made for those expenses that occur within the term of this grant. No pre-award spending is allowed. TVC shall disburse 10% of the awarded grant amount upon execution of the Notice of Grant Award (NOGA).

Grant Amounts. For this solicitation, the minimum grant award will be \$5,000. The maximum grant award will be \$500,000.

Number of Grants to be Awarded and Total Available. The anticipated total amount of grant funding available for this award is \$1,500,000. The number of awards made will be contingent upon the amount of funding requested and awarded to Eligible Applicants. This total amount of grant funding is subject to change due to availability of funds.

Selection Criteria. TVC staff will use an eligibility checklist and evaluation rubric to review all applications. All eligible applications will be evaluated and forwarded to the FVA Advisory Committee for its review and consideration. The FVA Advisory Committee will prepare a funding recommendation to be presented to the Commission for action. The Commission makes the final funding decisions based upon

the FVA Advisory Committee's funding recommendation. Applications must address all requirements of the RFA to be considered for funding.

TVC is not obligated to approve an application, provide funds, or endorse any application submitted in response to this solicitation. There is no expectation of continued funding. This issuance does not obligate TVC to award a grant or pay any costs incurred in preparing a response.

Requesting the Materials Needed to Complete an Application. All information needed to respond to this solicitation will be posted to the TVC website at <http://tvc.texas.gov/Apply-For-A-Grant.aspx> on or about Monday, August 29, 2016. All applications must be submitted both electronically and in hard-copy, as per the posted solicitation guidelines.

Further Information. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, all questions must be submitted via email to grants@tvc.texas.gov. All questions and the written answers will be posted on the TVC website as per the RFA.

Deadline for Receipt of an Application. Applications must be received by TVC by 5:00 p.m. on Thursday, November 3, 2016, at the Stephen F. Austin Building, 1700 N. Congress Avenue, Suite 800, Austin, Texas 78701 to be considered for funding.

TRD-201604205

Charles Catoe

Director, Fund for Veterans' Assistance

Texas Veterans Commission

Filed: August 17, 2016



Texas Workforce Investment Council

Executive Committee Public Hearing

September 8, 2016

2:00 p.m.

Senate Finance Committee Room

Room Number E1.012

Texas State Capitol

100 Congress Avenue

Austin, Texas 78701

Wes Jurey, Chair

AGENDA

Pursuant to the responsibilities specified in Texas Government Code, §2308.101(3) and the procedures required by Texas Administrative Code, Title 40, Chapter 901.1, the Executive Committee of the Texas Workforce Investment Council will convene to receive public comment on the proposed redesignation of McMullen County from the Coastal Bend Workforce Development Area to the Alamo Workforce Development Area.

Note:

Testimony will be limited to three minutes. An individual providing oral comments must fill out a witness form prior to the start of the hearing and should therefore arrive early. The Council encourages individuals who provide oral comments to also provide written comments to supplement their testimony. An individual who wishes to register his or her opinion but does not want to provide oral testimony should fill

out a witness form, indicating for or against the proposed redesignation. Written testimony may also be submitted with a witness form.

Staff of the Texas Workforce Investment Council will be on hand to assist members of the public and to collect witness forms and written testimony.

TRD-201604225

Lee Rector

Director

Texas Workforce Investment Council

Filed: August 17, 2016



Workforce Solutions Deep East Texas

Request for Proposals - Independent Auditing Services

The Deep East Texas Local Workforce Development Board, Inc. dba Workforce Solutions Deep East Texas is seeking a qualified entity to provide financial audit services of Federal funds received in the 12-county Deep East Texas region. Anyone interested in submitting a proposal should obtain a copy of the Request for Proposal #16-344 at www.detwork.org or you can request a copy by contacting:

Terry Campbell

Finance Director

539 S. Chestnut, Suite 300

Lufkin, Texas 75901

(936) 639-8898

(936) 633-7491 Fax

Email: tcampbell@detwork.org

Web: www.detwork.org

Deadline for submission of proposal: September 2, 2016 no later than 4:00 p.m.

As a condition of an award under Title I of WIA, the Proposer assures that it will comply fully with the nondiscrimination and equal opportunity provisions as defined by 29 CFR 37.20.

TRD-201604133

Terry Campbell

Finance Director

Workforce Solutions Deep East Texas

Filed: August 12, 2016



TEXAS



Welcome
to
Texas. Ω

Leslie Gallegos
7th Grade

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 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 “40 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 40 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1.....950 (P)

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