

# 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 353. MEDICAID MANAGED CARE SUBCHAPTER G. STAR+PLUS

##### 1 TAC §353.609

The Texas Health and Human Services Commission (HHSC) proposes new 1 TAC §353.609, concerning the Quality Incentive Payment Program for Nursing Facilities.

##### BACKGROUND AND JUSTIFICATION

During the 83rd Session, the Texas Legislature outlined its goals for the Medicaid managed care carve-in of nursing facilities. In implementing the nursing facility carve-in, HHSC was directed to encourage transformative efforts in the delivery of nursing facility services, including "efforts to promote a resident-centered care culture through facility design and services provided" (Senate Bill 7, 83rd Legislature, Regular Session, 2013).

The goal of transformative efforts was reinforced during the 84th Legislative Session, General Appropriations Act, House Bill 1, Article II, Rider 97. To that end, HHSC is proposing the creation of the Quality Incentive Payment Program (QIPP). The goal of QIPP is to establish incentive payments to nursing facilities based on quality and innovative improvements. Such quality and innovation improvements must promote culture change, small house models, staffing enhancements, or improved quality of care and life for nursing facility residents. Nursing facilities have the option of proposing pre-designed projects or proposing their own projects that seek to innovate and improve quality. Eligible nursing facilities must negotiate with their contracted Medicaid managed care organizations to create a mutually agreeable QIPP project with associated metrics and values. Ultimately, the QIPP projects must be approved by HHSC.

All facilities interested in QIPP will have to meet specific eligibility criteria to participate. Additionally, the non-federal share of any QIPP payment must be comprised of local, public funds.

HHSC is currently working with the Centers for Medicare and Medicaid Services (CMS) for their approval of the QIPP program and its proposed policies. As such, the proposed rule may change to conform to any final agreement with CMS.

##### SECTION-BY-SECTION SUMMARY

Proposed new §353.609(a) describes the purpose and goals of QIPP.

Proposed new §353.609(b) defines key terms used in the section.

Proposed new §353.609(c) describes the eligibility criteria for QIPP.

Proposed new §353.609(d) describes the process for negotiating QIPP projects and the HHSC approval process.

Proposed new §353.609(e) describes the requirements for individual QIPP projects.

Proposed new §353.609(f) describes the calculation for QIPP payments.

Proposed new §353.609(g) describes the responsibilities for governmental entities to transfer the non-federal share of QIPP payments.

Proposed new §353.609(h) describes the reconciliation process for intergovernmental transfers made for QIPP payments.

Proposed new §353.609(i) describes situations in which MCOs may recoup QIPP funds from nursing facilities.

Proposed new §353.609(j) describes the audit requirements on entities participating in QIPP.

##### FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the proposed rule will be in effect, there will be no fiscal impact to state or local governments.

##### SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that the rule would have no adverse economic effect on small businesses or micro-businesses. Participation in QIPP is voluntary; therefore implementation of the rule does not create an adverse economic impact to any small business or micro-business.

##### PUBLIC BENEFITS AND COSTS

Charles Smith, Chief Deputy Executive Commissioner, has determined that, for each year of the first five years the rule will be in effect, the public benefit expected as a result of adopting the proposed rule is the incentivizing of improvements in care in participating nursing facilities.

Ms. Rymal anticipates that, for each year of the first five years the rule will be in effect, there will be no economic cost to persons required to comply with the rule. There is no anticipated impact to a local economy or local employment for the first five years the proposed rule will be in effect.

##### 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 Kate Layman, Health and Human Services Commission, Mail Code-H320, P.O. Box 13247, Austin, Texas, 78711; by fax to (512) 462-6202; or by e-mail to Katherine.Layman@hhsc.state.tx.us, within 30 days after publication of this proposal in the *Texas Register*.

#### PUBLIC HEARING

A public hearing is scheduled for January 15, 2016, from 4:00 p.m. to 5:00 p.m. (central time) in the Brown-Healy Public Hearing Room located at 4900 North Lamar Blvd, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Kristine Dahlmann at (512) 462-6299.

#### STATUTORY AUTHORITY

The new rule is proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §32.021 and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

The new rule implements Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§353.609. Quality Incentive Payment Program for Nursing Facilities.

##### (a) Introduction.

(1) HHSC is directed by the Texas Legislature to create the Quality Incentive Payment Program (QIPP) for nursing facilities that have a source of public funding for the non-federal share of any such payment.

(2) This section establishes and describes the QIPP for nursing facilities participating in the STAR+PLUS Program.

(3) The goals of QIPP include promoting:

(A) culture change;

(B) small house models;

(C) staffing enhancements; and

(D) improved quality of care and life for nursing facility

residents.

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

(1) DADS--The Texas Department of Aging and Disability Services or its successor agency.

(2) Governmental entity--A state agency or a political subdivision of the state, such as a city, county, hospital district, or hospital authority.

(3) Intergovernmental transfer (IGT)--A transfer of public funds from a governmental entity to HHSC.

(4) Letter of Agreement (LOA)--A written agreement by and between a STAR+PLUS managed care organization (MCO) and a nursing facility describing QIPP projects.

(5) MCO--A STAR+PLUS managed care organization.

(6) Non-state government-owned nursing facility--A nursing facility where a non-state governmental entity holds the license and is a party to the nursing facility's Medicaid provider enrollment agreement with the state.

(7) Per-member-per-month (PMPM)--Unit of measure for MCO capitation payments.

(8) Program period--Time period to which the PMPM that includes funding for the relevant QIPP project(s) applies. The program period is typically equal to the state fiscal year but can vary when mid-year PMPM adjustments are made.

(9) Public Funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(10) QIPP Rate Component--The portion of an MCO's PMPM associated with a specific QIPP project.

(11) Regional Healthcare Partnership (RHP)--A collaboration of interested participants that work collectively to develop and submit to the state a plan for regional health care delivery system reform. Regional Healthcare Partnerships support coordinated, efficient delivery of quality care and a plan for investments in system transformation that is driven by the needs of local hospitals, communities, and populations.

(12) Special focus facility--A nursing facility whose quality of care has consistently demonstrated failure to maintain compliance and a history of facility practices that have resulted in harm to residents, as measured by the most recent three State recertification surveys.

(c) Eligibility for QIPP. In order to be eligible for QIPP, a nursing facility must:

(1) be licensed as a nursing facility in Texas;

(2) be contracted with both HHSC and an MCO to provide Medicaid nursing facility services;

(3) have submitted, and be eligible to receive payment for, a Medicaid managed care nursing facility claim for payment during the program period;

(4) have a bona fide source of public, non-federal funds that is located within the same RHP as, or within 150 miles of, the nursing facility for which the funds are to be transferred. This geographic proximity criterion does not apply to:

(A) nursing facilities that were grandfathered into the former Minimum Payment Amounts Program (MPAP); or

(B) governmental entities that can establish a good cause for this exemption;

(5) have a signed certification of participation submitted by both the nursing facility and the source of public, non-federal funds (for privately-owned nursing facilities);

(6) have submitted a signed IGT Responsibility Agreement for either themselves or, if the nursing facility is not owned by a governmental entity, for the governmental entity that will be the source of the public, non-federal funds for the nursing facility prior to the deadline specified by HHSC;

(7) if the nursing facility's source of public, non-federal funds is to be a governmental entity that owns the nursing facility, the nursing facility must be a non-state government-owned nursing facility. A facility may only be eligible if DADS has assigned the facility's contract to a non-state government entity by the last day of the sixth month prior to the beginning of the program period, with a Medicaid contract effective date equal to the day after the assignment date, or earlier. For example, if the program period begins September 1, 2016, DADS must assign the contract by March 31, 2016, with an effective date of April 1, 2016, or earlier;

(8) submit an acceptable QIPP project proposal prior to the deadline specified by HHSC;

(9) meet one of the following:

(A) have a certified Medicaid bed occupancy rate (as defined in 40 TAC §19.2322(a)(9) (relating to Medicaid Bed Allocation Requirements)) greater than or equal to 50 percent;

(B) have a certified Medicaid bed occupancy rate that is no more than 15 percentage points lower than the average certified Medicaid bed occupancy rate for the county in which the nursing facility is located;

(C) can show evidence of a plan to build a smaller replacement facility that is culture change oriented; or

(D) can establish good cause for an exception to this criterion, which HHSC will evaluate on a case-by-case basis;

(10) not be a special focus facility as determined by CMS as of the project proposal submission date; and

(11) not have a proposed license revocation pending under §242.061(a-2) of the Texas Health and Safety Code (i.e., the 3-Strike Rule).

(d) QIPP Project Proposal Negotiation and Approval.

(1) A QIPP project proposal is negotiated between a nursing facility and an MCO. All LOAs are between one nursing facility and one MCO. A nursing facility can contract with one MCO for a project based on the benefit of the project to all Medicaid residents of the facility. If a nursing facility contracts with more than one MCO, it may negotiate separate LOAs with each MCO, but these LOAs must be for distinct projects.

(A) Each eligible nursing facility must submit an LOA between the facility and an MCO, containing the required details of the QIPP project proposal, to HHSC.

(B) The LOA must contain the following details:

(i) a project overview;

(ii) an itemized predicted cost for the project;

(iii) certification by the nursing facility that there is no duplication of federal funding;

(iv) a schedule of reporting of metrics to the MCO and payments to the nursing facility for achieving metrics;

(v) the relevant measureable goals, and performance metrics for determining success in meeting those goals;

(vi) the proposed valuation for the project; and

(vii) the process that will be used by the MCO to recoup payments in the event of:

(I) a disallowance by CMS;

(II) a payment made in error;

(III) payments used to pay a contingent, consulting, or legal fee; and

(IV) payments associated with fraudulent or inaccurate reporting of metric performance or fraudulent or misleading statements on a nursing facility change of ownership application or during the change of ownership process.

(C) While the proposed valuation is based on the benefit of the project to all residents of the facility, the facility's QIPP payments are tied to the percent of the facility's total residents that are Medicaid beneficiaries, including dually-certified residents where Medicaid is the primary payer.

(2) HHSC reviews and approves all QIPP project proposals. In making a determination as to the approvability of a QIPP project proposal, HHSC analyzes the project proposal for the following factors:

(A) relationship of the project to the goals of QIPP as described in subsection (a)(3) of this section;

(B) how the nursing facility proposes to measure progress towards and final achievement of the goal of its proposal, including the appropriateness of the measures selected;

(C) LOA with the MCO must not allow for payment prior to the achievement of a metric;

(D) reasonable forecasted costs to implement the project; and

(E) reasonable valuation, including the relationship of the proposed valuation of the project to the forecast costs and expected improvement.

(3) In determining forecasted costs of a QIPP project, HHSC considers:

(A) individual nursing facility size;

(B) complexity of project;

(C) size and scope of project;

(D) size of target population; and

(E) investment and resources needed to implement the project.

(4) If HHSC does not approve a project proposal, it notifies the nursing facility of the reason the proposal was not approved. The facility has the opportunity to revise the proposal to address any concerns raised by HHSC. Final approval of a QIPP project proposal lies solely with HHSC. There is no review or appeal of a QIPP project proposal denial.

(e) QIPP Project Requirements.

(1) An eligible nursing facility must:

(A) choose from a list of QIPP projects as determined by HHSC; or

(B) create a unique QIPP project. Such a project must meet the goals of the QIPP program, as described in subsection (a)(3) of this section, and must also be approved in accordance with subsection (d) of this section.

(2) All QIPP projects must terminate at the end of the program period for which that project is approved, although a QIPP project may also contribute to a multi-year outcome.

(f) QIPP Payments.

(1) HHSC calculates the addition to an MCO's PMPM payment from HHSC associated with the QIPP project, including a percentage of the project's valuation to cover the MCO's administrative costs associated with the project and an additional percentage of the valuation to cover premium taxes.

(2) An MCO is required to make a payment to a nursing facility approved to participate in QIPP once the nursing facility reaches the established metrics listed in the QIPP project proposal. QIPP payments may be made in lump sums.

(3) If a participating nursing facility fails to achieve a QIPP metric, it cannot receive a payment for that metric. HHSC recoups the PMPM capitation payment funds associated with the metric from the MCO. HHSC returns the non-federal share to the IGT-entity and the federal share to the federal government.

(4) HHSC may consider allowing unearned payments to accrue and be paid in future payment periods as associated metrics are met on a case-by-case basis.

(5) Funds may not be carried over from one program period to the next program period.

(g) Intergovernmental Transfer Responsibility.

(1) A nursing facility participating in QIPP must secure an allowable source of public funds to comprise the non-federal share of QIPP payments plus 10 percent. The funds that comprise the non-federal share of QIPP payments must meet all federal and state requirements in order for HHSC to consider those funds allowable. Those funds are transferred to HHSC through an IGT in a manner determined by HHSC.

(2) An IGT meant to fund a QIPP payment is due to HHSC on a monthly basis, with the first IGT due approximately one month prior to the first PMPM payment to the MCO for the program period. The exact date of the transfer is determined by HHSC.

(3) All IGT calculations are solely at the discretion of HHSC and are not open to desk review or appeal.

(h) Reconciliation of IGTs.

(1) A reconciliation occurs no later than 30 days after the end of the QIPP program period.

(A) For each Medicaid program and service area in which a nursing facility participates in QIPP, HHSC determines the amount expended for the program period by multiplying the QIPP Rate Component by the total member months included in the program period. Total member months include any adjustments to enrollment that occurred for the program period prior to the reconciliation.

(B) HHSC compares the amount transferred by the Governmental Entity to HHSC for the program period to the non-federal percentage of the QIPP Rate Component expended by HHSC for the program period.

(i) If the amount transferred by the Governmental Entity exceeds 102 percent of the non-federal percentage of the QIPP Rate Component expended by HHSC for all participating nursing facilities owned by, or affiliated with, the Governmental Entity, HHSC refunds the difference between the amount transferred and 102 percent of the amount expended by HHSC.

(ii) If the amount transferred by the Governmental Entity is less than 102 percent of the non-federal percentage of the QIPP Rate Component expended by HHSC for all participating nursing facilities owned by, or affiliated with, the Governmental Entity, HHSC notifies the Governmental Entity of the amount of the shortfall and of a deadline for the Governmental Entity to transfer the shortfall to HHSC.

(C) HHSC may complete additional interim reconciliations between the end of the program period and the final reconciliation described in paragraph (2) of this subsection as updated enrollment data for the program period becomes available.

(2) A second reconciliation occurs no later than 25 months after the end of the program period.

(A) For each Medicaid program and service area in which a nursing facility participates in QIPP, HHSC determines the amount expended for the program period by multiplying the QIPP Rate Component by the total member months included in the program period. Total member months include any adjustments to enrollment that occurred subsequent to a prior reconciliation.

(B) HHSC compares the amount transferred by the Governmental Entity to HHSC for the program year to the non-federal percentage of the QIPP Rate Component expended by HHSC for the program period.

(i) If the amount transferred by the Governmental Entity exceeds the non-federal percentage of the QIPP Rate Component expended by HHSC for all participating nursing facilities owned by, or affiliated with, the Governmental Entity, HHSC refunds the excess.

(ii) If the amount transferred by the Governmental Entity is less than the non-federal percentage of the QIPP Rate Component expended by HHSC for all participating nursing facilities owned by, or affiliated with, the Governmental Entity, HHSC notifies the Governmental Entity of the amount of the shortfall and of the 30-day deadline for the Governmental Entity to transfer the shortfall to HHSC.

(3) If at any time after the second reconciliation described in paragraph (2) of this subsection, HHSC determines that the amount previously transferred by the Governmental Entity is less than the non-federal percentage of the QIPP Rate Component expended by HHSC for all participating nursing facilities owned by, or affiliated with, the Governmental Entity, HHSC notifies the Governmental Entity of the amount of the shortfall and of the 30-day deadline for the Governmental Entity to transfer the shortfall to HHSC.

(4) If a Governmental Entity does not timely complete any transfer described in this subsection, HHSC requests that its MCO(s) withhold any or all future Medicaid payments from the nursing facilities owned by, or affiliated with, the Governmental Entity until the MCO(s) has recovered an amount equal to the amount of the shortfall. Nursing facilities owned by, or affiliated with, such a Governmental Entity are ineligible for future QIPP program periods.

(i) Recoupment.

(1) If payments under this section result in an overpayment to a nursing facility, or in the event of a disallowance by CMS of federal participation related to a nursing facility's receipt of or use of these payments, the MCO(s) must recoup an amount equivalent to the amount of the QIPP payment that was overpaid or disallowed. HHSC then re-

coups that amount from the MCO(s). Alternatively, HHSC may choose to recoup the funds directly from the nursing facility.

(2) QIPP payments under this section may be subject to any adjustments for payments made in error, including, without limitation, adjustments made under the Texas Administrative Code, the Code of Federal Regulations, and state and federal statutes. The MCO(s) must recoup an amount equivalent to any such adjustment from the nursing facility in question. HHSC then recoups that amount from the MCO(s). Alternatively, HHSC may choose to recoup the funds directly from the nursing facility.

(3) If HHSC determines that part of any payment made under QIPP was used to pay a contingent fee, consulting fee, or legal fee associated with the nursing facility's receipt of the QIPP payment, the MCO(s) must recoup an amount equal to the QIPP payment from the nursing facility in question. HHSC then recoups that amount from the MCO(s). Alternatively, HHSC may choose to recoup the funds directly from the nursing facility.

(4) If HHSC determines that an ownership change was based on fraudulent or misleading statements on a nursing facility change of ownership (CHOW) application or during the CHOW process, the MCO(s) must recoup an amount equal to the QIPP payment from the nursing facility in question for any program period affected by the fraudulent or misleading statement. HHSC then recoups that amount from the MCO(s). Alternatively, HHSC may choose to recoup the funds directly from the nursing facility.

(j) Audit.

(1) All QIPP projects and payments are subject to audit.

(2) A participating nursing facility must maintain all relevant documentation and have that documentation available for review by HHSC or CMS upon request.

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

Filed with the Office of the Secretary of State on December 17, 2015.

TRD-201505706

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: January 31, 2016

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



## TITLE 7. BANKING AND SECURITIES

### PART 1. FINANCE COMMISSION OF TEXAS

#### CHAPTER 5. ADMINISTRATION OF FINANCE AGENCIES

##### 7 TAC §5.101

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner (collectively, the finance agencies) proposes to

amend §5.101, concerning Employee Training and Education Assistance Programs.

Government Code §656.048 was amended effective September 1, 2015, by Section 3 of H.B. 3337 (Acts 2015, 84th Leg., R.S., Ch. 366, §3), to establish certain requirements for agency tuition reimbursement programs. This amendment is proposed to reflect the new statutory requirement that the agency head authorize tuition reimbursement payment for an employee who has successfully completed a course at an institution of higher education.

Charles G. Cooper, Commissioner, Texas Department of Banking, Caroline C. Jones, Commissioner, Department of Savings and Mortgage Lending, and Leslie L. Pettijohn, Consumer Credit Commissioner ("the commissioners"), have determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule as amended.

The commissioners have also determined that, for each year of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of amending the rule is that the agencies' policies for tuition reimbursement will demonstrate greater oversight and accountability.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on January 21, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to [legal@dob.texas.gov](mailto:legal@dob.texas.gov).

The amendment is proposed pursuant to Finance Code, §5.101, which provides for training and education assistance to employees of the finance agencies.

Finance Code, §5.101, is affected by the proposed amended section.

§5.101. *Employee Training and Education Assistance Programs.*

(a) - (f) (No change.)

(g) In order to receive tuition reimbursement for a course offered by an institution of higher education, the employee must successfully complete the course, and the executive head of the finance agency must personally authorize the tuition reimbursement payment.

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

Filed with the Office of the Secretary of State on December 18, 2015.

TRD-201505771

Catherine Reyer

General Counsel

Finance Commission of Texas

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For further information, please call: (512) 475-1301



## PART 2. TEXAS DEPARTMENT OF BANKING

### CHAPTER 33. MONEY SERVICES BUSINESSES

#### 7 TAC §33.13

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes amendments to §33.13, concerning how to obtain a new money services business license. The amended rule is proposed to clarify that the deadlines to respond to new license applications for money transmitter and currency exchange licenses also apply to a request for approval of a proposed change of control of a money services business.

In accordance with Texas Finance Code §151.605(b), a person may not directly or indirectly acquire control of a license holder or a person in control of a license holder without the prior written approval of the commissioner. The remaining subsections of §151.605 explain the requirements for obtaining such approval from the commissioner and the criteria used by him or her in making a final determination. However, it does not currently set timelines for the commissioner's and department's response to a proposed change of control.

The department proposes two amendments to §33.13 to provide internal deadlines for the commissioner and department and provide clarity to license holders seeking change of control approval. Currently, Section 33.13(a) explains that the section applies to applicants seeking a new money transmission or currency exchange license under Finance Code, Chapter 151. The first change establishes that the time tables and deadlines discussed in §33.13 also apply to a request for approval of a proposed change of control of a money services business licensed under Finance Code, Chapter 151. The department also proposes an amendment to the title of §33.13 to clarify that it pertains to proposed change of control deadlines. This change will enable license holders to easily locate the time tables imposed.

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Ms. Newberg also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is that both regulated entities and department analysts will have clarity on the time-frame for change of control approvals. This will produce greater efficiencies for regulated entities and the department.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on January 21, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to [legal@dob.texas.gov](mailto:legal@dob.texas.gov).

The amendment is proposed under Finance Code, §151.102(a)(1), which provides that the commission may adopt rules to administer and enforce Chapter 151, including rules necessary or appropriate to implement and clarify Chapter 151.

Finance Code, §151.605, is affected by the proposed amended section.

#### §33.13. How Do I Obtain a New License and What are the Deadlines Associated with Applications?

(a) Does this section apply to me? This section applies if you seek a new money transmission or currency exchange license under Finance Code, Chapter 151. The time tables and deadlines established in this section also apply to a request for approval of a proposed change of control of a money services business licensed under Finance Code, Chapter 151.

(b) - (j) (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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Catherine Reyer

General Counsel

Texas Department of Banking

Earliest possible date of adoption: January 31, 2016

For further information, please call: (512) 475-1301



## PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

### CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

#### SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES

The Finance Commission of Texas (commission) proposes new §83.3003 (repeal and replace); proposes amendments to §§83.3004, 83.5001, 83.6003, 83.6006, 83.6007, and 83.6008; and proposes the repeal of §83.3003 (repeal and replace), in 7 TAC Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

In general, the purpose of the proposal regarding these rules for credit access businesses is to implement changes resulting from the commission's review of Chapter 83, Subchapter B under Texas Government Code, §2001.039.

The proposed rule changes clarify three main areas: (1) consumer disclosures, (2) reporting requirements, and (3) license transfers.

This is the second of two anticipated rule actions for credit access businesses. In this issue of the *Texas Register*, the commission is concurrently adopting the first rule action, which includes rule changes relating to definitions, license applications, fees, examination authority, and recordkeeping requirements.

The notice of intention to review 7 TAC Chapter 83, Subchapter B was published in the September 11, 2015, issue of the *Texas*

*Register* (40 TexReg 6165). The commission received no comments in response to that notice.

The agency circulated an early draft of proposed changes to interested stakeholders. The agency then held a stakeholders meeting where attendees provided oral precomments. In addition, the agency received one informal written precomment. Certain concepts recommended by the precommenters have been incorporated into this proposal, and the agency appreciates the thoughtful input provided by stakeholders.

The individual purposes of the proposed amendments are outlined in the paragraphs to follow.

Section 83.3003 is proposed for repeal and replacement with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Currently, Section 83.3003 describes what constitutes a transfer of ownership requiring the filing of a transfer application. The proposed new rule largely maintains the requirements under the current rule, but it provides two different paths the transferee can take for a transfer of ownership: either an application to transfer the license, or a new license application on transfer of ownership. In response to an informal comment, the proposal refers to the new application as a "new license application on transfer of ownership." The amendments outline what the application has to include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the subsection. In particular, subsection (b)(3) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed location. In response to a precomment, this definition includes technical changes to the definition of "transfer of ownership" currently codified at §83.3003(a). These changes include placing the reference to acquisition by gift, devise, or descent in the general language at the beginning of the definition, and removing the current rule's statement that a transfer of ownership includes an acquisition where the Office of Consumer Credit Commissioner (OCCC) "has reason to believe that proper regulation of the licensee dictates that a transfer must be processed."

Subsection (c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §393.620. Subsection (d) provides a timing requirement, stating that a complete license transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the transfer of ownership, as well as a complete license application for transferees that do not hold an existing credit access business license. Subsection (e)(5) explains that the application may include a request for permission to operate.

Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final approval is pending for an application. The subsection's second sentence states: "A request for permission to operate may be denied even if the application contains all of the required information." This sentence is similar to a sentence in the current rule at §83.3003(d). One precommenter requested that this sentence be removed, stating that it is overly broad and recommending that the rule should specify the categories of reasons for denying the request for permission to operate. The

agency believes that listing the categories for denying a permission to operate, such as enforcement and management issues, is unnecessary. The permission to operate is a temporary authorization, and denial of the request is not a final denial of the license application. In addition, prudent parties can submit application materials well in advance of the transfer of ownership. By doing this, the parties can ensure that they have resolved outstanding issues without having to rely on the temporary permission to operate.

Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. One precommenter requested a "time frame where the agency either makes a decision before the deadline, or tacitly approves the request by not making the decision before the deadline." The agency believes that a time frame for the permission to operate is unnecessary. As discussed above, denial of the request is not a final denial of the license application. Although the agency has occasionally denied requests for permission to operate in certain situations in the past, the agency would generally deny the application if there were a significant issue preventing approval. Subsection (h) describes the situations where the transferor is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where the transferor and transferee share joint and several responsibility.

In §83.3004, concerning Change in Form or Proportionate Ownership, conforming changes are proposed corresponding to proposed new §83.3003. Throughout subsections (b) and (c), references have been added to the second path a transferee may take, i.e., a new license application on transfer of ownership.

In §83.5001, concerning Data Reporting Requirements, the proposed amendments would codify the administrative penalty structure currently used by the agency, where the penalties increase the more times a credit access business fails to send in a timely, accurate report within a reporting year. Subsection (e)(2) provides a \$100 administrative penalty per licensed location for the first violation, \$500 for the second violation, and \$1,000 for the third and subsequent violations. In addition, subsection (e)(3) provides for license suspension or revocation for the fourth or subsequent violation. These amendments are based on Texas Finance Code, §14.251(a-1), which authorizes the agency to assess an administrative penalty against a credit access business that knowingly and wilfully violates Chapter 393, and Texas Finance Code, §393.614(a), which authorizes the agency to suspend or revoke a credit access business license if the licensee knowingly violates Chapter 393.

In §83.6003, concerning Posting of Fee Schedule and Notices, the proposed amendments would update the in-store notice with the OCCC's contact information. Under Texas Finance Code, §393.222(a)(2), a credit access business must post a notice containing the OCCC's contact information in a conspicuous location. The proposed amendment to subsection (a)(2) includes the OCCC's updated website and the updated email address for consumer complaints. The proposed amendment also includes updated language regarding how to file a complaint. The proposed amendment to subsection (b)(2) contains a conforming change describing the notice as the "OCCC notice."

In §83.6006, concerning Format, a proposed amendment to subsection (c) specifies that the consumer cost disclosure must fit

on one page, printed on one side. This replaces the current language stating that the disclosure must be printed on two pages. The proposed amendment conforms to the proposed amended figures in §83.6007, which are shortened from two pages to one.

In §83.6007, concerning Consumer Disclosures, proposed amendments in subsections (a) through (d) make a technical correction to replace the word "or" with "and." The proposed amendments require the credit access business to provide the consumer cost disclosure "before a credit application is provided and before a financial evaluation occurs." One precommenter requested clarification that the disclosure must be provided only once. To clarify, the credit access business must provide the disclosure once, at a time that is both before a credit application is provided and before a financial evaluation occurs. This provision is based on Texas Finance Code, §393.222(a), which requires the credit access business to provide the disclosure "[b]efore providing services described by Section 393.221(1)," that is, before the credit access business assists the consumer in obtaining a payday or title loan.

The proposal also includes amendments to the figures accompanying §83.6007, which are the model forms for the consumer cost disclosure. The proposed amendments implement Texas Finance Code, §393.223(a), which authorizes the commission to adopt rules including the disclosure. There are two primary purposes to the proposed amendments to the disclosures. First, the proposed amendments streamline the disclosures to simplify layout and remove redundant information. Second, the proposed amendments include updated information regarding the cost of comparable forms of consumer credit, as well as updated information on patterns of repayment based on 2014 quarterly and annual reports provided by credit access businesses to the OCCC.

In addition, the proposed amendments to the consumer disclosures include information required by state and federal law. Texas Finance Code, §393.223(a), requires the consumer disclosure to include "(1) the interest, fees, and annual percentage rates, as applicable, to be charged on a deferred presentment transaction or on a motor vehicle title loan, as applicable, in comparison to interest, fees, and annual percentage rates to be charged on other alternative forms of consumer debt; (2) the amount of accumulated fees a consumer would incur by renewing or refinancing a deferred presentment transaction or motor vehicle title loan that remains outstanding for a period of two weeks, one month, two months, and three months; and (3) information regarding the typical pattern of repayment of deferred presentment transactions and motor vehicle title loans." The consumer disclosure must also include additional items to comply with the advertising provisions of the Truth in Lending Act, 15 U.S.C. §1664, and Regulation Z, 12 C.F.R. §1026.24. In particular, Regulation Z, 12 C.F.R. §1026.24(d)(2), requires disclosure of the annual percentage rate and terms of repayment. Also, 12 C.F.R. §1026.24(c) provides that if a simple rate of interest other than the annual percentage rate is disclosed, it must be "stated in conjunction with, but not more conspicuously than, the annual percentage rate."

The proposed amendments to the consumer disclosures include changes based on oral precomments made at the stakeholders meeting on the proposed rules. Two precommenters suggested that the annual percentage rate should be more prominent than the interest rate paid to the third-party lender, and that the interest rate should be disclosed below the dollar amount of interest. In response to this precomment, the interest rate has been

placed near the dollar amount of interest. One precommenter also suggested that for the multiple-payment disclosures, the disclosure should include the total amount of fees and interest the consumer would pay at the end of the term of the loan, in addition to the amounts for two weeks, one month, two months, and three months. In response to this precomment, the proposed multiple-payment disclosures include an additional row with this information. Credit access businesses may omit this extra row if the loan term is two weeks, one month, two months, or three months, and they may move the extra row if the loan term falls in between one of the other periods.

In §83.6008, concerning Permissible Changes, the proposed amendments include an updated citation to Regulation Z. In addition, proposed new subsection (a)(6) specifies that the disclosure may include a form number, and proposed new subsection (b) specifies that the credit access business may make changes to the consumer disclosure that the OCCC approves in writing.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rule changes are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the rule changes are in effect, the public benefit anticipated as a result of the changes will be increased protection of consumers, clear and consistent regulations for credit access businesses, and enhanced compliance with the law. Another public benefit of these rule amendments will be increased uniformity and consistency in credit contracts.

Additional economic costs may be incurred by a person required to comply with this proposal. The agency anticipates that any costs resulting from the proposal would involve complying with the proposed amendments to the consumer disclosure rules contained in §§83.6003, 83.6006, 83.6007, and 83.6008.

For those who will be required to comply with the proposed disclosure amendments, the anticipated costs would include the costs associated with producing new forms, and costs attributable to the loss of obsolete forms inventory.

The agency has attempted to lessen any potential costs by providing on the agency's website fillable PDF versions of the disclosure forms free of charge. Additionally, the agency is considering a delayed implementation date for use of the revised forms, which will help minimize potential costs and allow use of current forms inventory. In particular, the agency is considering possible compliance dates of either September 1, 2016, or January 1, 2017, and invites comments on this issue.

For licensees not using the fillable forms provided by the agency online, any additional economic costs are anticipated to be minimal, with an estimated programming time of less than five hours to produce the updated forms. Furthermore, these costs would be partially offset by reduction in paper costs, as all of the forms have been reduced from two pages to one page each.

Regarding the proposed license transfer rule changes contained in §83.3003 and §83.3004, there is no anticipated cost to persons who are required to comply with the changes to these two rules as proposed.

Regarding the proposed amendments concerning data reporting in §83.5001, any costs associated with these amendments would not be incurred by licensees that timely and accurately file their quarterly and annual reports. For those compliant licensees, any costs are avoidable in their entirety. For licensees

not in compliance with the current reporting requirements, the proposed amendments to §83.5001 do not impose any increased costs, as the amendments simply memorialize the agency's current penalty practice. As a result, there is no anticipated additional cost to persons who are required to comply with the amendments to §83.5001 as proposed.

Overall, the agency anticipates that any costs involved to comply with the proposal will be minimal for most licensees. Aside from the previously outlined costs to produce updated disclosure forms, there will be no other effects on individuals required to comply with the rule changes as proposed.

The agency is not aware of any adverse economic effect on small or micro-businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to [laurie.hobbs@occc.texas.gov](mailto:laurie.hobbs@occc.texas.gov). To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

### DIVISION 3. APPLICATION PROCEDURES

#### 7 TAC §83.3003

This repeal is proposed under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, Chapter 393.

#### *§83.3003. Transfer of License.*

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

Filed with the Office of the Secretary of State on December 18, 2015.

TRD-201505829

Leslie L. Pettijohn  
Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: January 31, 2016

For further information, please call: (512) 936-7621



#### 7 TAC §83.3003, §83.3004

These rule changes are proposed under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter

393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. In addition, the amendments to §83.5001 are proposed under Texas Finance Code, §393.622(a)(2), which authorizes the commission to adopt rules relating to reporting. The amendments to §83.6005 are proposed under Texas Finance Code, §393.222(b), which authorizes the commission to adopt rules to implement the requirement to provide a notice containing the OCCC's contact information. The amendments to §83.6006, §83.6007, and §83.6008 are proposed under Texas Finance Code, §393.223(c), which authorizes the commission to adopt rules to implement the requirement to provide the consumer cost disclosure.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

#### *§83.3003. Transfer of License; New License Application on Transfer of Ownership.*

(a) Purpose. This section describes the license application requirements when a licensed entity transfers its license or ownership of the entity. If a transfer of ownership occurs, the transferee must submit either a license transfer application or a new license application on transfer of ownership under this section.

(b) Definitions. The following words and terms, when used in this section, will have the following meanings:

(1) License transfer--A sale, assignment, or transfer of a credit access business license.

(2) Permission to operate--A temporary authorization from the OCCC, allowing a transferee to operate under a transferor's license while final approval is pending for a license transfer application or a new license application on transfer of ownership.

(3) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership as defined in §83.3004 of this title (relating to Change in Form or Proportionate Ownership). Transfer of ownership includes the following:

(A) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(B) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's entire interest or a new general partner obtains an ownership interest;

(C) any change in ownership of a licensed limited partnership interest in which:

(i) a limited partner owning 10% or more relinquishes that owner's entire interest;

(ii) a new limited partner obtains an ownership interest of 10% or more;

(iii) a general partner relinquishes that owner's entire interest; or

(iv) a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(D) any change in ownership of a licensed corporation in which:

(i) a new stockholder obtains 10% or more of the outstanding voting stock in a privately held corporation;

(ii) an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately held corporation;

(iii) any purchase or acquisition of control of 51% or more of a company that is the parent or controlling stockholder of a licensed privately held corporation occurs; or

(iv) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held corporation occur;

(E) any change in the membership interest of a licensed limited liability company:

(i) in which a new member obtains an ownership interest of 10% or more;

(ii) in which an existing member owning 10% or more relinquishes that member's entire interest; or

(iii) in which a purchase or acquisition of control of 51% or more of any company that is the parent or controlling member of a licensed limited liability company occurs;

(F) any transfer of a substantial portion of the assets of a licensed entity under which a new entity controls business at a licensed location; and

(G) any other purchase or acquisition of control of a licensed entity, or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs.

(4) Transferee--The entity that controls business at a licensed location after a transfer of ownership.

(5) Transferor--The licensed entity that controls business at a licensed location before a transfer of ownership.

(c) License transfer approval. No credit access business license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §393.620. A license transfer is approved when the OCCC issues its final written approval of a license transfer application.

(d) Timing. No later than 30 days after the event of a transfer of ownership, the transferee must file a complete license transfer application or new license application on transfer of ownership in accordance with subsection (e). A transferee may file an application before this date.

(e) Application requirements.

(1) Generally. This subsection describes the application requirements for a license transfer application or a new license application on transfer of ownership. A transferee must submit the application in a format prescribed by the OCCC. The OCCC may accept prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The transferee must pay appropriate fees in connection with the application.

(2) Documentation of transfer of ownership. The application must include documentation evidencing the transfer of ownership. The documentation should include one or more of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a credit access business license at the time of the application, then the application must include the information required for new license applications under §83.3002 of this title (relating to Filing of New Application). The instructions in §83.3002 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a credit access business license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including disclosure questions, owners and principal parties, and a new financial statement, as provided in §83.3002 of this title. The instructions in §83.3002 of this title apply to these filings. The responsible person at the new location must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by §83.3002 of this title need not be filed if the information on file with the OCCC is current and valid.

(5) Request for permission to operate. The application may include a request for permission to operate. The request must be in writing and signed by the transferor and transferee. The request must include all of the following:

(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

(B) an acknowledgement that the transferor and transferee each accept joint and several responsibility to any consumer and to the OCCC for any acts performed under the license while the permission to operate is in effect; and

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately surrender or inactivate its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e) includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license. Two companies may not simultaneously operate under a single license. A permission to operate terminates if the OCCC denies an application described by subsection (e).

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e), by the deadline described by subsection (d), then the transferee may engage in business as a credit access business. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application.

(h) Responsibility.

(1) Responsibility of transferor. Before the OCCC's final approval of an application described by subsection (e), the transferor is responsible to any consumer and to the OCCC for all credit access business activity performed under the license.

(2) Responsibility of transferee. After a transferee begins performing credit access business activity under a license, the transferee is responsible to any consumer and to the OCCC for all credit access business activity performed under the license. In addition, a transferee is responsible for any transactions that it purchases from the transferor.

(3) Joint and several responsibility. If a transferee begins performing credit access business activity under a license before the OCCC's final approval of an application described by subsection (e) (including activity performed under a permission to operate), then the transferor and transferee are jointly and severally responsible to any consumer and to the OCCC. This responsibility applies to any acts performed under the license after the transferee begins performing credit access business activity and before the OCCC's final approval of the license transfer.

§83.3004. *Change in Form or Proportionate Ownership.*

(a) (No change.)

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a license transfer application or a new license application on transfer of ownership pursuant to §83.3003 of this title (relating to Transfer of License; New License Application on Transfer of Ownership). If the merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the commissioner of the change in writing within 10 calendar days after the change, by filing a license amendment and paying the required fees as provided in §83.3010 of this title. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 10 calendar days.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a license transfer application or a new license application on transfer of ownership, but does require notification when the cumulative ownership change to a single entity or individual amounts to 10% or greater. No later than 10 calendar days following the actual change, the licensee is required to notify the commissioner in writing of the change in proportionate ownership by filing a license amendment and paying the required fees as provided in §83.3010 of this title. This section does not apply to a publicly held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held parent corporation, although a transfer application may be required under §83.3003 of this title.

(2) A proportionate change in which an owner that previously held under 10% obtains an ownership interest of 10% or more, requires a license transfer application or a new license application on transfer of ownership under §83.3003 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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Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7621

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DIVISION 5. OPERATIONAL REQUIREMENTS

7 TAC §83.5001

These rule changes are proposed under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. In addition, the amendments to §83.5001 are proposed under Texas Finance Code, §393.622(a)(2), which authorizes the commission to adopt rules relating to reporting.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

§83.5001. *Data Reporting Requirements.*

(a) Generally. Each licensee must file the required reports described by this section for the prior period's credit access business activity in a form prescribed by the commissioner and must comply with all instructions relating to submitting the reports. During each calendar year, licensees are required to submit four quarterly reports as provided by Texas Finance Code, §393.627. Additionally, certain quarterly data will be collected by the OCCC on an annual basis under Texas Finance Code, §393.622(a)(1). For purposes of this section, the term "annual report" refers to the quarterly data submitted on an annual basis. All information provided on each quarterly or annual report must be accurate.

(b) - (d) (No change.)

(e) Enforcement actions. The OCCC may take enforcement actions described by this subsection if a licensee violates this section by failing to file a complete and accurate quarterly or annual report by the applicable deadline.

(1) Injunction. As provided by Texas Finance Code, §14.208(a), if the OCCC has reasonable cause to believe that a licensee has violated this section, it may issue an injunction ordering the licensee to file a complete, accurate quarterly or annual report.

(2) Administrative penalty. As provided by Texas Finance Code, §14.251, the OCCC may assess an administrative penalty against a licensee that knowingly or wilfully violates this section.

(A) First violation. If the licensee violates this section and has not violated this section during any of the four quarters preceding the violation, then the administrative penalty is \$100 for each licensed location.

(B) Second violation. If the licensee violates this section during any of the four quarters following a first violation described by subparagraph (A), then the administrative penalty is \$500 for each licensed location.

(C) Third and subsequent violations. If the licensee violates this section during any of the four quarters following a second violation described by subparagraph (B), then the administrative penalty is \$1,000 for each licensed location. The \$1,000 administrative penalty applies to subsequent violations that occur during any of the four quar-

ters following a third or subsequent violation described by this subparagraph.

(3) Suspension or revocation for fourth or subsequent violation. If the licensee violates this section during any of the four quarters following a third or subsequent violation described by subsection (e)(2)(C), then the OCCC may suspend or revoke the licensee's license, as provided by Texas Finance Code, §393.614.

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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Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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## DIVISION 6. CONSUMER DISCLOSURES AND NOTICES

### 7 TAC §§83.6003, 83.6006 - 83.6008

These rule changes are proposed under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. The amendments to §83.6005 are proposed under Texas Finance Code, §393.222(b), which authorizes the commission to adopt rules to implement the requirement to provide a notice containing the OCCC's contact information. The amendments to §83.6006, §83.6007, and §83.6008 are proposed under Texas Finance Code, §393.223(c), which authorizes the commission to adopt rules to implement the requirement to provide the consumer cost disclosure.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

#### §83.6003. *Posting of Fee Schedule and Notices.*

(a) In-person sales. A credit access business must prominently display the following in the licensee's office in a conspicuous location visible to the general public:

(1) a schedule of all fees to be charged for services performed by the credit access business in connection with deferred presentment transactions and motor vehicle title loans, as applicable;

(2) the following OCCC [econsumer eredit] notice: "This business is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the business, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N. Lamar Blvd., Austin, Texas 78705. Phone: (800) 538-1579. Fax: (512) 936-7610. Website: [occc.texas.gov](http://occc.texas.gov). Email: [consumer.complaints@occc.texas.gov](mailto:consumer.complaints@occc.texas.gov)." [~~"This business is licensed and examined by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems. Office of Consumer Credit Commissioner, 2601 North~~

Lamar Boulevard, Austin, Texas 78705-4207, (800) 538-1579, [consumer.complaints@occc.state.tx.us](mailto:consumer.complaints@occc.state.tx.us), [www.occc.state.tx.us](http://www.occc.state.tx.us)"]; and

(3) the notice required by Texas Finance Code, §393.222(a)(3).

(b) Internet sales. For business conducted through the Internet, a credit access business must prominently display the information provided in subsection (a) of this section in a conspicuous location on the business's website and on any website where the business advertises to the public.

(1) Direct link for fee schedule. The posting required by subsection (a)(1) of this section may be accessible via a direct link with the subject matter listed substantially similar to the following: "Fee Schedule" or "Schedule of All Fees."

(2) Direct link for OCCC [econsumer eredit] notice. The posting required by subsection (a)(2) of this section may be accessible via a direct link with the subject matter listed substantially similar to the following: "OCCC Notice" or "Consumer Credit Notice." [~~"Consumer Credit Notice," "OCCC Notice," or "Complaints and Inquiries Notice."~~]

#### §83.6006. *Format.*

(a) - (b) (No change.)

(c) The consumer disclosure for each product offered under Texas Finance Code, Chapter 393 must be provided to consumers as a separate document. Each product disclosure must fit on one standard-size sheet of paper (8 1/2 by 11 inches), printed on one side [~~both sides, or on two standard sheets of paper printed only on the front sides of each page~~].

#### §83.6007. *Consumer Disclosures.*

(a) Consumer disclosure for single payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and [e] before a financial evaluation occurs in conjunction with a single payment payday loan is presented in the following figure. Figure: 7 TAC §83.6007(a)

(b) Consumer disclosure for multiple payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and [e] before a financial evaluation occurs in conjunction with a multiple payment payday loan is presented in the following figure. Figure: 7 TAC §83.6007(b)

(c) Consumer disclosure for single payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and [e] before a financial evaluation occurs in conjunction with a single payment auto title loan is presented in the following figure. Figure: 7 TAC §83.6007(c)

(d) Consumer disclosure for multiple payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and [e] before a financial evaluation occurs in conjunction with a multiple payment auto title loan is presented in the following figure. Figure: 7 TAC §83.6007(d)

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

#### §83.6008. *Permissible Changes.*

(a) A credit access business must use the required disclosures under Texas Finance Code, §393.223 as prescribed by Figures: 7 TAC §83.6007(a) - (d) of this title (relating to Consumer Disclosures), but

may consider making only limited technical changes, as provided by the following exclusive list:

(1) Filling in any dollar amounts, interest rates, or other terms specific to the three to five most common loans for each of the products offered by the credit access business;

(2) Substituting the pronouns used to denote the consumer by substituting words such as "you" and "your" for "I" and "my," along with appropriate grammatical changes;

(3) Adding an optional, dated signature block at the very bottom of the disclosure form, which must include the following statement directly above the signature line of the consumer: "ACKNOWLEDGMENT OF RECEIPT: By signing below, I acknowledge only that I have received a copy of this disclosure prior to signing any contract for a payday or auto title loan, this \_\_\_ day of \_\_\_\_, 20\_\_."

(4) Combining the Texas Finance Code, §393.223 disclosure with the federal disclosure regarding military borrowers under 10 U.S.C. §987 and 32 C.F.R. Part 232;

(5) Combining the Texas Finance Code, §393.223 disclosure with the federal disclosure requirements for advertising under the Truth in Lending Act, 15 U.S.C. §1632(a), and Regulation Z, 12 C.F.R. §1026.24; [its implementing regulations, 12 C.F.R. §226.24.]

(6) a form number indicating the version of the form, the date the form was produced, or both.

(b) A credit access business may make changes other than those specified in subsection (a) only if the OCCC has approved the changes in writing.

(c) [(b)] The permissible changes allowed by this section must not result in decreasing a font size by more than one point or a chart size by more than 10% from the required disclosure. Permissible changes cannot otherwise interfere with the presentation or layout of the disclosed information.

(d) [(e)]The comparison information regarding alternative forms of debt required by Texas Finance Code, §393.223(a)(1) and the information regarding the typical pattern of repayment required by Texas Finance Code, §393.223(a)(3) will be periodically updated by the OCCC. Updated consumer disclosures required by §83.6007 of this title will be posted on the OCCC website.

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

Filed with the Office of the Secretary of State on December 18, 2015.

TRD-201505827

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: January 31, 2016

For further information, please call: (512) 936-7621



## CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS SUBCHAPTER B. RULES FOR CRAFTED PRECIOUS METAL DEALERS

The Finance Commission of Texas (commission) proposes amendments to §§85.1001, 85.1009, and 85.2001 in Subchapter B of 7 TAC Chapter 85, concerning the registration and reporting of crafted precious metal dealers.

In general, the purpose of the amendments is to implement changes resulting from the commission's review of Chapter 85, Subchapter B under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Chapter 85, Subchapter B was published in the *Texas Register* on November 13, 2015 (40 TexReg 8035). The agency did not receive any comments on the notice of intention to review.

The proposed amendments are technical in nature, providing clarification and conforming changes in accordance with a revised rule, recent legislation, and updated agency contact information. The individual purposes of the amendments to each section are provided in the following paragraphs.

In §85.1001, concerning Definitions, a technical correction is proposed to clarify the definition of "Local law enforcement." In §85.1001(4)(B)(ii)(II), the word "not" will be inserted before the phrase "in a municipality that maintains a police department." The agency believes that the inclusion of "not" clarifies the original intent of this provision, and that this word had been inadvertently omitted at the time the rule was initially adopted. Section 85.1001(4)(B)(ii)(II) defines local law enforcement to be the local county sheriff of the dealer's permanent registered location, for mail order or Internet sales where a non-resident seller enters a transaction with a dealer located in a municipality without a police department. The amendment's language is based on Texas Occupations Code, §1956.063(b), which provides that required reports must be sent to the chief of police if the transaction occurs in a municipality that maintain a police department, and to the sheriff of the county if the transaction occurs in another location.

In §85.1009, concerning Revocation, an amendment is proposed in subsection (b) to update an internal rule reference to 7 TAC §9.1(a), relating to contested case procedure.

Concurrent with these proposed rule amendments, the commission is adopting amendments to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions; former title: Definitions and Interpretation; Severability) to clarify which rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and a which rules apply to a hearing conducted by the State Office of Administrative Hearings. Amended subsection (a) in §9.1 as adopted will read: "This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code."

Section 85.1009(b) identifies the rules of procedure applicable to a contested case hearing regarding a notice to revoke a crafted precious metal dealer's registration for alleged violations of Texas Occupations Code, Chapter 1956. The proposed amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section §85.2001, concerning Transaction Report Form and Records, contains two proposed amendments regarding recently revised information. The first amendment in subsection

(a)(8) corresponds to 2015 legislation, and the second in sub-section (a)(13) provides updated agency contact information.

First, crafted precious metal dealers must accept a Texas handgun license as a valid form of identification for purchases of crafted precious metal as of September 1, 2015. During the most recent legislative session, the Texas Legislature passed HB 2739. This new law added Section 506.001(a) to the Texas Business and Commerce Code stating: "A person may not deny the holder of a concealed handgun license issued under Subchapter H, Chapter 411, Government Code, access to goods, services, or facilities...because the holder has or presents a concealed handgun license rather than a driver's license or other acceptable form of personal identification." This means that dealers must now accept handgun licenses as a valid form of identification, in addition to the other forms of identification listed in Section 1956.062(c) of the Texas Occupations Code. The amendment uses the phrase "handgun license" in accordance with HB 910, the open-carry law passed by the Texas Legislature during the most recent session. HB 910 replaces the phrase "concealed handgun license" with "handgun license" throughout the statutes governing handgun licenses, and it goes into effect on January 1, 2016.

As a result, the proposed amendments to §85.2001(a)(8) add the phrase "or handgun license number" to the list of identification numbers to be recorded on the transaction report form by crafted precious metal dealers.

Second, in accordance with instructions from the Texas Department of Information Resources, the Office of Consumer Credit Commissioner (OCCC) has updated its website and e-mail address with the "texas.gov" extension: [occc.texas.gov](http://occc.texas.gov) and [consumer.complaints@occc.texas.gov](mailto:consumer.complaints@occc.texas.gov). In order to provide consumers with the best contact information for the agency, this proposal amends §85.2001(a)(13) with the OCCC's updated contact information.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be that the commission's rules will comply with state and federal law and will be more easily understood and enforced. Another public benefit of these rule amendments will be increased uniformity and consistency in transaction forms.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to [laurie.hobbs@occc.texas.gov](mailto:laurie.hobbs@occc.texas.gov). To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

## DIVISION 1. REGISTRATION PROCEDURES

### 7 TAC §85.1001, §85.1009

The amendments are proposed under Texas Occupations Code, §1956.0611, which authorizes the Finance Commission to adopt rules necessary to implement and enforce Texas Occupations Code, Chapter 1956, Subchapter B, regarding Sale of Crafted Precious Metal to Dealers. Additionally, §1956.063(c) states that for each regulated transaction, dealers must submit a report on a form prescribed by the commissioner.

The statutory provisions affected by the proposed amendments are contained in Texas Occupations Code, Chapter 1956, Subchapter B, concerning Sale of Crafted Precious Metal to Dealers.

#### §85.1001. Definitions.

The following terms, when used in this subchapter, have the following meanings:

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

(4) Local law enforcement.

(A) (No change.)

(B) For mail order or Internet sales, local law enforcement is:

(i) (No change.)

(ii) if the seller does not reside in Texas and the dealer's permanent registered location is in Texas:

(I) (No change.)

(II) the sheriff of the county of the dealer's permanent registered location, if the dealer's permanent registered location is not in a municipality that maintains a police department.

(5) - (10) (No change.)

#### §85.1009. Revocation.

(a) (No change.)

(b) Upon receiving notice of revocation under this section, an affected person may request a hearing before the OCCC. The hearing will be conducted under the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions). [; as provided in Texas Government Code, Chapter 2001, and Part 1, Chapter 9, Subchapter B of this title (relating to Contested Case Hearings).]

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

Filed with the Office of the Secretary of State on December 18, 2015.

TRD-201505830

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: January 31, 2016

For further information, please call: (512) 936-7621



## DIVISION 2. OPERATIONAL REQUIREMENTS

## 7 TAC §85.2001

The amendments are proposed under Texas Occupations Code, §1956.0611, which authorizes the Finance Commission to adopt rules necessary to implement and enforce Texas Occupations Code, Chapter 1956, Subchapter B, regarding Sale of Crafted Precious Metal to Dealers. Additionally, §1956.063(c) states that for each regulated transaction, dealers must submit a report on a form prescribed by the commissioner.

The statutory provisions affected by the proposed amendments are contained in Texas Occupations Code, Chapter 1956, Subchapter B, concerning Sale of Crafted Precious Metal to Dealers.

*§85.2001. Transaction Report Form and Records.*

(a) Required elements. For each transaction in which a dealer purchases crafted precious metal, the dealer must prepare a transaction report form. The report form must be preprinted and prenumbered and must contain the following required elements:

(1) - (7) (No change.)

(8) the seller's driver's license number, [or] personal identification certificate number, or handgun license number;

(9) - (12) (No change.)

(13) the following notice: "This business is registered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against this business may contact the Office of Consumer Credit Commissioner through one of the means indicated below: In Person or U.S. Mail: 2601 North Lamar Boulevard, Austin, Texas 78705-4207. Telephone No.: (800) 538-1579. Fax No.: (512) 936-7610. E-mail: [consumer.complaints@occc.texas.gov](mailto:consumer.complaints@occc.texas.gov). [[consumer.complaints@occc.state.tx.us](mailto:consumer.complaints@occc.state.tx.us)] Website: [occc.texas.gov](http://occc.texas.gov). [[www.occc.state.tx.us](http://www.occc.state.tx.us)]"

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

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2015.

TRD-201505831

Leslie L. Pettijohn  
Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: January 31, 2016

For further information, please call: (512) 936-7621



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 1. ADMINISTRATION

#### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

### 10 TAC §1.23

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 1, §1.23, concerning the State of Texas Low Income Housing Plan and Annual Report ("SLIHP"). The purpose of the proposed amendment is to adopt by reference the 2016 SLIHP.

**PURPOSE.** The purpose of the SLIHP is to serve as a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The document reviews the Department's programs, current and future policies, and resource allocation plan to meet state housing needs, and reports on State Fiscal Year 2015 performance. The Department is required to submit the SLIHP annually to its Board of Directors in accordance with Texas Government Code §2306.072.

**FISCAL NOTE.** Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amended section is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local government.

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of the amendment will be improved communication with the public regarding the Department's programs and activities. There will not be any economic cost to any individuals required to comply with the amendment. The amendment will not impact local employment.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES:** The Department has determined that there will be no economic effect on small or micro-businesses.

**REQUEST FOR PUBLIC COMMENT:** The public comment period will be held Friday, January 1, 2016, through Thursday, January 21, 2016, to receive input on the amendment. Written comments may be submitted to Texas Department of Housing and Community Affairs, Elizabeth Yevich, P.O. Box 13941, Austin, Texas 78711-3941, by email to [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us), or by fax to (512) 475-0070. ALL COMMENTS MUST BE RECEIVED BY 6:00 P.M. AUSTIN LOCAL TIME ON JANUARY 21, 2016.

The full text of the draft 2016 SLIHP may be viewed at the Department's website: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us). The public may also receive a copy of the draft 2016 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

**STATUTORY AUTHORITY:** The amendment is proposed pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules. Additionally, the amendment is proposed pursuant to §2306.0723 which specifically authorizes the Department to consider the SLIHP as a rule.

The proposed amendment affects no other code, article or statute.

*§1.23. State of Texas Low Income Housing Plan and Annual Report (SLIHP).*

The Texas Department of Housing and Community Affairs (the "Department") adopts by reference the 2016 [2015] State of Texas Low Income Housing Plan and Annual Report (SLIHP). The full text of the 2016 [2015] SLIHP may be viewed at the Department's website: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us). The public may also receive a copy of the 2016 [2015] SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

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

Filed with the Office of the Secretary of State on December 17, 2015.

TRD-201505702

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: January 31, 2016

For further information, please call: (512) 936-7803



## CHAPTER 10. UNIFORM MULTIFAMILY RULES

### SUBCHAPTER F. COMPLIANCE MONITORING

#### 10 TAC §10.610, §10.614

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 10, Subchapter F, §10.610, concerning Tenant Selection Criteria, and §10.614, concerning Utility Allowances. This repeal is being proposed concurrently with the proposal of new §10.610, concerning Written Policies and Procedures, and §10.614, concerning Utility Allowances, which will improve compliance with new requirements related to the HOME program concerning utility allowances and federal Fair Housing requirements.

**FISCAL NOTE.** Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeals are in effect, enforcing or administering the repeals does not have any foreseeable implications related to costs or revenues of the state or local governments.

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the repeals are in effect, there will be no change in the public benefit anticipated as a result of the repeals. There will be no economic impact to any individuals required to comply with the repeals.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES.** The Department has determined that there will be no economic effect on small or micro-businesses.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held January 1, 2016, through February 1, 2016, to receive input on the proposed amendment. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Stephanie Naquin, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-3359. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. FEBRUARY 1, 2016.**

**STATUTORY AUTHORITY.** The repeals are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeals affect no other code, article, or statute.

*§10.610. Tenant Selection Criteria.*

*§10.614. Utility Allowances.*

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

Filed with the Office of the Secretary of State on December 18, 2015.

TRD-201505822

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: January 31, 2016

For further information, please call: (512) 475-2330



#### 10 TAC §10.610, §10.614

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Subchapter F, §10.610, concerning Written Policies and Procedures; and §10.614, concerning Utility Allowances.

10 TAC §10.610, concerning Written Policies and Procedures. The Board approved a new §10.610 concerning Tenant Selection Criteria at the meeting of December 2014. The purpose of the new section was to clarify and improve compliance requirements with federal Fair Housing laws. Now that the rule has been in effect for a year, the Department has received feedback that the way that the rule is currently structured could be improved. Through monitoring, the Department has noted difficulty in complying with the rule and, to better explain the expectations, the rule has been restructured. The rule is also being renamed to more accurately describe the requirements.

10 TAC §10.614, concerning Utility Allowance. The HOME Final Rule, 24 CFR Part 92, was updated in August of 2013. The rule introduced a new requirement for the Department, as the Participating Jurisdiction, to determine a development's utility allowance using the HUD Utility Model Schedule. The Utility Allowance rule is being updated to codify this requirement and describe the process by which the Department will calculate the utility allowance annually. Further, the Department has identified a need for more detail in the rule to provide better guidance on how to properly calculate a utility allowance for all Department administered multifamily programs.

**FISCAL NOTE.** Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments.

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be improved compliance with affordable housing program administered by the Department. There will not be any increased economic cost to any individuals required to comply with the new sections.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES.** The Department has determined that there will be no economic effect on small or micro-businesses.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held January 1, 2016, through February 1, 2016, to receive input on the proposed new sections. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Stephanie Naquin, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-3359.

ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. FEBRUARY 1, 2016.

STATUTORY AUTHORITY. The new sections are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new sections affect no other code, article, or statute.

§10.610. Written Policies and Procedures.

(a) The purpose of this section is to outline policies and/or procedures that are required to have written documentation.

(1) Owners must inform applicants/tenants in writing, at the time of application or other action described in this section, that such policies/procedures are available, and that the Owner will provide copies upon request to applicants/tenants or their representatives.

(2) The Owner must have all policies and related documentation required by this section available in the leasing office or wherever applications are taken.

(3) All policies must have an effective date. Any changes require a new effective date.

(4) In general, policies cannot be applied retroactively. Tenants who already reside in the development or applicants on the waitlist at the time new or revised tenant selection criteria are applied and who are otherwise in good standing under the lease or waitlist, must not receive notices of termination or non-renewal based solely on their failure to meet the new or revised tenant selection criteria or be passed over on the waitlist. However, criteria related to program eligibility may be applied retroactively when a market development receives a new award of tax credits, federal or state funds and a household is not eligible under the new program requirements, or when prior criteria violate federal or state law.

(b) Tenant Selection Criteria. Owners must maintain written Tenant Selection Criteria. The criteria under which an applicant was screened must be included in the household's file.

(1) The criteria must include:

(A) Requirements that determine an applicant's basic eligibility for the property, including any preferences, restrictions, and any other tenancy requirements. The tenant selection criteria must specifically list:

(i) The income and rent limits;

(ii) When applicable, restrictions on student occupancy and any exceptions to those restrictions; and,

(iii) Fees and/or deposits required as part of the application process.

(B) Applicant screening criteria, including what is screened and what scores or findings would result in ineligibility.

(i) The screening criteria must avoid the use of vague terms such as "elderly," "bad credit," "negative rental history," "poor housekeeping," or "criminal history" unless terms are clearly defined within the criteria made available to applicants.

(ii) Applicants must be provided the names of any third party screening companies upon request.

(C) Occupancy Standards. If fewer than 2 persons (over the age of 6) per bedroom for each rental unit are required for reasons other than those directed by local building code or safety regulations, a written justification must be provided.

(D) The following statements:

(i) The Development will comply with state and federal fair housing and antidiscrimination laws; including, but not limited to, consideration of reasonable accommodations requested to complete the application process. Chapter 1, Subchapter B of this title provides more detail about reasonable accommodations.

(ii) Screening criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, the Federal Fair Credit Reporting Act, program guidelines, and the Department's rules.

(iii) Specific animal, breed, number, weight restrictions, pet rules, and pet deposits will not apply to households having a qualified service/assistance animal(s).

(E) Notice to applicants and current residents about Violence Against Women Reauthorization Act of 2013 ("VAWA") protections.

(F) Specific age requirements if the Development is operating as Housing for Older Persons under the Housing for Older Persons Act of 1995 as amended (HOPA), or as required by federal funds to have an Elderly Preference, and in accordance with a LURA.

(2) The criteria must not:

(A) Include preferences for admission, unless such preference is:

(i) Allowed for under program rules; or,

(ii) The property receives Federal assistance and has received written approval from HUD, USDA, or VA for such preference.

(B) Exclude an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program. The minimum income standard for households participating in a voucher program is limited to a monthly income of 2.5 times the household's share of the total monthly rent amount. However, if a household's share of the rent is \$50 or less, Owners may require a minimum annual income of \$2,500; or,

(C) In accordance with VAWA, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(c) Reasonable Accommodations policy. Owners must maintain a written Reasonable Accommodations policy. The policy must be maintained at the Development. Owners are responsible for ensuring that their employees and contracted third party management companies are aware of and comply with the reasonable accommodation policy.

(1) The policy must provide:

(A) Information on how an applicant or current resident with a disability may request a reasonable accommodation; and,

(B) A timeframe in which the Owner will respond to a request.

(2) The policy must not:

(A) Require a household to make a reasonable accommodation request in writing;

(B) Require a household to provide specific medical or disability information other than the disability verification that may be

requested to verify eligibility for reasonable accommodation or special needs set aside program;

(C) Exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available; or,

(D) Require a household to rent a unit that has already been made accessible.

(d) Waitlist policy. Owners must maintain a written waitlist policy, regardless of current unit availability. The policy must be maintained at the Development.

(1) The policy must include procedures the Development uses in:

(A) Opening, closing, and selecting applicants from the waitlist;

(B) How preferences are applied; and,

(C) Procedures for prioritizing applicants needing accessible units in accordance with 24 CFR 8.27 and Chapter 1, Subchapter B of this title.

(2) Developments with additional rent and occupancy restrictions must maintain a waiting list for their lower rent restricted units. Unless otherwise approved at application, underwriting and cost certification, all unit sizes must be available at the lower rent limits. The waitlist policy for Developments with lower rent restricted units must address how the waiting list for their lower rent restricted units will be managed. The policy must not give a preference to prospective applicants over existing households. However, a Development may, but is not required to, prioritize existing households over prospective applicants.

(e) Denied Application policies. Owners must maintain a written policy regarding procedures for denying applications.

(1) The policy must address the manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any.

(2) Within seven (7) days after the determination is made to deny an application, the owner must provide any rejected or ineligible applicant that completed the application process a written notification of the grounds for rejection. The written notification must include:

(A) The specific reason for the denial and reference the specific leasing criteria upon which the denial is based; and,

(B) Contact information for any third parties that provided the information on which the rejection was based and information on the appeals process, if one is used by the property.

(3) The Development must keep a log of all denied applicants that completed the application process to include:

(A) Basic household demographic and rental assistance information, if requested during any part of the application process;

(B) The specific reason for which an applicant was denied, the date the decision was made; and,

(C) The date the denial notice was mailed or hand-delivered to the applicant.

(4) A file of all rejected applications must be maintained the length of time specified in the applicable program's recordkeeping requirements and include:

(A) A copy of the written notice of denial; and,

(B) The Tenant Selection Criteria policy under which an applicant was screened.

(f) Non-renewal and/or Termination Notices. Owners must maintain a written policy regarding procedures for providing households non-renewal and termination notices.

(1) The owner must provide in any non-renewal or termination notice, a specific reason for the termination or non-renewal.

(2) The notification must:

(A) Be delivered as required under applicable program rules;

(B) Include information on rights under VAWA;

(C) State how a person with a disability may request a reasonable accommodation in relation to such notice; and,

(D) Include information on the appeals process if one is used by the property.

(g) Unit transfer policies. Owners must maintain a written policy regarding procedures for households to request a unit transfer. The policy must address the following:

(1) How security deposits will be handled for both the current unit and the new unit;

(2) How transfers related to a reasonable accommodation will be addressed; and,

(3) For HTC Developments, how transfers will be handled with regard to the multiple building project election on IRS Form(s) 8609 line 8(b) and accompanying statements in accordance with §10.616 of this subchapter, concerning Household Unit Transfer Requirements for All Programs.

§10.614. Utility Allowances.

(a) Purpose. The purpose of this section is to provide the guidelines for calculating a utility allowance under the Department's multifamily programs. The Department will cite noncompliance and/or not approve a utility allowance if it is not calculated in accordance with this section. Owners are expected to comply with the provisions of this section, as well as, any existing federal or state program guidance.

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

(1) Building Type. The HUD Office of Public and Indian Housing ("PIH") characterizes building and unit configurations for HUD programs. The Department will defer to the guidance provided by HUD found at: [http://portal.hud.gov/hudportal/documents/hud-doc?id=DOC\\_11608.pdf](http://portal.hud.gov/hudportal/documents/hud-doc?id=DOC_11608.pdf) (or successor Uniform Resource Locator ("URL")) when making determinations regarding the appropriate building type(s) at a Development.

(2) Power to Choose. The Public Utility Commission of Texas database of retail electric providers in the areas of the state where the sale of electricity is open to retail competition <http://www.power-tochoose.org/> (or successor URL). In areas of the state where electric service is deregulated, the Department will verify the availability of residential service. If the utility company is not listed as a provider of residential service in the Development's ZIP code for an area that is deregulated, the request will not be approved.

(3) Component Charges. The actual cost associated with the billing of a residential utility. Each Utility Provider may publish

specific utility service information in varying formats depending on the service area. Such costs include, but are not limited to:

(A) Rate(s). The cost for the actual unit of measure for the utility (e.g. cost per kilowatt hour for electricity);

(B) Fees. The cost associated with a residential utility that is incurred regardless of the amount of the utility the household consumes (e.g. Customer Charge); and,

(C) Taxes. Taxes for electricity and gas are regulated by the Texas Comptroller of Public Accountants and can be found <http://comptroller.texas.gov/> (or successor URL). Local Utility Providers have control of the tax structure related to water, sewer and trash. To identify if taxes are imposed for these utilities, obtain records directly from the Utility Provider.

(5) Utility Allowance. An estimate of the expected monthly cost of any utility for which a resident is financially responsible, other than telephone, cable television, or internet:

(A) For HTC, TCAP (including TCAP RF), and Exchange buildings, include:

(i) Utilities paid by the resident directly to the Utility Provider; and,

(ii) Utilities paid by the resident directly to the Owner of the building or to a third party billing company if the bill is based on their actual consumption of the utility and not an allocation method or Ratio Utility Billing System ("RUBS").

(B) For HOME, Bond, HTF, and NSP Developments, unless otherwise prescribed in the program's Regulatory Agreement, include all utilities regardless of how they are paid.

(6) Utility Provider. The company that provides residential utility service (e.g. electric, gas, water, waste water, and/or trash) to the buildings.

(c) Methods. The following options are available to establish a utility allowance for all programs except Developments funded with HOME and NSP funds.

(1) Rural Housing Services (RHS) buildings or buildings with RHS assisted tenants. The applicable utility allowance for the Development will be determined under the method prescribed by the RHS (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted tenants.

(2) HUD-Regulated buildings layered with any Department program. If neither the building nor any tenant in the building receives RHS rental assistance payments, and the rents and the utility allowances of the building are reviewed by HUD (HUD-regulated building), the applicable utility allowance for all rent restricted Units in the building is the applicable HUD utility allowance. No other utility method described in this section can be used by HUD-regulated buildings. Unless further guidance is received from the U.S. Department of Treasury or the Internal Revenue Service ("IRS"), the Department considers Developments awarded HOME funds by the Department to be HUD-Regulated buildings.

(3) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in subparagraphs (A) - (E) of this paragraph:

(A) Public Housing Authority ("PHA"). The utility allowance established by the applicable PHA for the Section 8 Existing Housing Program. The Department will utilize Texas Local Govern-

ment Code, Chapter 392 to determine which PHA is the most applicable to the Development.

(i) If the PHA publishes different schedules based on Building Type, the Owner is responsible for implementing the correct schedule based on the Development's Building Type(s). Example: 614(1): The applicable PHA publishes a separate utility allowance schedule for Apartments (5+ units), one for Duplex/Townhomes and another for Single Family Homes. The Development consist of twenty buildings, ten of which are Apartments (5+ units) and the other ten buildings are Duplexes. The Owner must use the correct schedule for each Building Type.

(ii) In the event the PHA publishes a utility allowance schedule specifically for energy efficient units, and the Owner desires to use such a schedule, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency once every five (5) years.

(iii) If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the utility allowance if the resident is responsible for that utility.

(iv) If the individual components of a utility allowance are not in whole number format, the correct way to calculate the total allowance is to add each amount and then round the total up to the next whole dollar. Example: 614(2): Electric cooking is \$8.63, Electric Heating is \$5.27, Other Electric is \$24.39, Water and Sewer is \$15. The utility allowance in this example is \$54.00.

(v) If an Owner chooses to implement a methodology as described in subparagraph (B), (C), (D), or (E) of this paragraph, for Units occupied by Section 8 voucher holders, the utility allowance remains the applicable PHA utility allowance established by the PHA from which the household's voucher is received.

(vi) In general, if the Development is located in an area that does not have a municipal, county, or regional housing authority that publishes a utility allowance schedule for the Section 8 Existing Housing Program, Owners must select an alternative methodology. In the event the Development is located in an area without a clear municipal or county housing authority the Department may permit the use of another housing authority's utility allowance schedule on a case by case basis, unless other conflicting guidance is received from the IRS or HUD. It is the sole responsibility of the Owner to provide the Department with specific rationale to support the request. Prior approval from the Department is required and the owner must obtain approval on an annual basis.

(B) Written Local Estimate. The estimate must come from the local Utility Provider, be signed by the Utility Provider representative, and specifically include all Component Charges for providing the utility service.

(C) HUD Utility Schedule Model. The HUD Utility Schedule Model and related resources can be found at <http://www.huduser.gov/portal/resources/utillallowance.html> (or successor URL). Each item on the schedule must be displayed out two decimal places. The total allowance must be rounded up to the next whole dollar amount. The Component Charges used can be no older than those in effect sixty (60) days prior to the beginning of the ninety (90) day period described in subsection (e) of this section.

(i) The allowance must be calculated using the MS Excel version available at <http://www.huduser.org/portal/resources/utillmodel.html> (or successor URL), as updated from time to time, with no changes or adjustments made other than entry of the required information needed to complete the model.

(ii) In the event that the PHA code for the local PHA to the Development is not listed in "Location" tab of the workbook, the Department will use the PHA code for the PHA that is closest in distance to the Development using online mapping tools (e.g. MapQuest).

(iii) Green Discount. If the Owner elects any of the Green Discount options for a Development, documentation to evidence that the units and the buildings meet the Green Discount standard as prescribed in the model is required for the initial approval and every subsequent annual review. In the event the allowance is being calculated for an application of Department funding (e.g. 9% Housing Tax Credits), upon request, the Department will provide both the Green Discount and the non-Green Discount results for application purposes; however, to utilize the Green Discount allowance for leasing activities, the Owner must evidence that the units and buildings have met the Green Discount elected when the request is submitted as required in subsection (k) of this section.

(iv) Do not take into consideration any costs (e.g. penalty) or credits that a consumer would incur because of their actual usage. Example: 614(3) The Electric Fact Label for ABC Electric Utility Provider provides a Credit Line of \$40 per billing cycle that is applied to the bill when the usage is greater than 999 kWh and less than 2000 kWh. Example: 614(4) A monthly minimum usage fee of \$9.95 is applied when the usage is less than 1000 kWh in the billing cycle. When calculating the allowance, disregard these types costs or credits.

(D) Energy Consumption Model. The model must be calculated by a properly licensed mechanical engineer or an individual holding a valid Residential Energy Service Network (RESNET) or Certified Energy Manager (CEM) certification. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building type and orientation, design and materials, mechanical systems, appliances, and characteristics of building location. Use of the Energy Consumption Model is limited to the building's consumption data for the twelve (12) month period ending no earlier than sixty (60) days prior to the beginning of the ninety (90) day period and Component Charges used must be no older than in effect sixty (60) days prior to the beginning of the ninety (90) day period described in subsection (e) of this section. In the case of a newly constructed or renovated building with less than twelve (12) months of consumption data, the qualified professional may use consumption data for the twelve (12) month period from units of similar size and construction in the geographic area in which the building containing the units is located; and,

(E) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and Component Charges, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method." For a Development Owner to use the Actual Use Method they must:

(i) Provide a minimum sample size of usage data for at least 5 Continuously Occupied Units of each Unit Type or 20 percent of each Unit Type whichever is greater. Example: 614(5): A Development has 20 three bedroom/one bath Units, and 80 three bedroom/two bath Units. Each bedroom/bathroom equivalent Unit is within 120 square feet of the same floor area. Data must be supplied for at least five of the three bedroom/one bath Units, and sixteen of the three bedroom/two bath Units. If there are less than five Units of any Unit Type, data for 100 percent of the Unit Type must be provided;

(ii) Upload the information in subclauses (I) - (IV) of this clause to the Development's CMTS account no later than the be-

ginning of the ninety (90) day period after which the Owner intends to implement the allowance, reflecting data no older than sixty (60) days prior to the ninety (90) day implementation period described in subsection (e) of this section. Example: 614(6): The Utility Provider releases the information regarding electric usage at Westover Townhomes on February 5, 2015. The data provided is from February 1, 2015, through January 31, 2015. The Owner must submit the information to the Department no later than March 31, 2015, for the information to be valid;

(I) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the utility usage (e.g. actual kilowatt usage for electricity) for each month of the twelve (12) month period for each Unit for which data was obtained, and the Component Charges in place at the time of the submission;

(II) All documentation obtained from the Utility Provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider;

(III) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider; and

(IV) Documentation of the current utility allowance used by the Development.

(iii) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the utility allowance for each bedroom size using the guidelines described in subclauses (I) - (V) of this clause;

(I) If data is obtained for more than the sample requirement for the Unit Type, all data will be used to calculate the allowance;

(II) If more than twelve (12) months of data is provided for any Unit, only the data for the most current twelve (12) months will be averaged;

(III) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e., kilowatts over the last twelve (12) months by the current rate) for all Unit Types within that bedroom size. For example, if sufficient data is supplied for 18 two bedroom/one bath Units, and 12 two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units;

(IV) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance; and

(V) If the data submitted indicates zero usage for any month, the data for that Unit will not be used to calculate the Utility Allowance.

(iv) The Department will complete its evaluation and calculation within forty-five (45) days of receipt of all the information requested in clause (ii) of this subparagraph.

(d) Acceptable Documentation. For the Methods where utility specific information is required to calculate the allowance (e.g. base charges, cost per unit of measure, taxes, etc.) Owners should obtain documentation directly from the Utility Provider and/or Regulating

State Agency. Any Component Charges related to the utility that are published by the Utility Provider and/or Regulating State Agency must be included. In the case where a utility is billed to the Owner of the building(s) and the Owner is disbursing the bill to the tenant through a third party billing company, the Component Charges published by the Utility Provider and not the third party billing company will be used.

(e) Changes in the Utility Allowance. An Owner may not change utility allowance methods, start or stop charging residents for a utility without prior written approval from the Department. Example: 614(7): A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period. In year 8, the Owner decides to require residents to pay for water and sewer. Prior written approval from the Department is required. Any such request must include the Utility Allowance Questionnaire found on the Department's website and supporting documentation.

(1) The Department will review all request, with the exception of the methodology prescribed in subsection (c)(3)(E) (concerning the Actual Use Method), within 90 days of the receipt of the request. For a review involving a utility allowance for an application from funding from the Department, the request will not be reviewed until the program area notifies the compliance division that the application is being considered for funding.

(2) If the Owner fails to post the notice to the residents and simultaneously submit the request to the Department by the beginning of the 90 day period, the Department's approval or denial will be delayed for up to 90 days after Department notification. Example: 614(8): The Owner has chosen to calculate the electric portion of the utility allowance using the written local estimate. The annual letter is dated July 5, 2014, and the notice to the residents was posted in the leasing office on July 5, 2014. However, the Owner failed to submit the request to the Department for review until September 15, 2014. Although the Notice to the Residents was dated the date of the letter from the utility provider, the Department was not provided the full 90 days for review. As a result, the allowance cannot be implemented by the owner until approved by the Department.

(3) Effective dates. If the Owner uses the methodologies as described in subsection (c)(1), (2) or (3)(A) of this section, any changes to the allowance can be implemented immediately, but must be implemented for rent due at least ninety (90) days after the change. For methodologies as described in subsection (c)(3)(B) - (E) of this section, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the ninety (90) day period in which the Owner intends to implement the utility allowance. Nothing in this section prohibits an Owner from reducing a resident's rent prior to the end of the 90 day period when the proposed allowance would result in a gross rent issue.

Figure: 10 TAC §10.614(e)(3)

(f) Requirements for Annual Review.

(1) RHS and HUD-Regulated Buildings. Owners must demonstrate that the utility allowance has been reviewed in accordance with the RHS or HUD regulations.

(2) Buildings using the PHA Allowance. Owners are responsible for periodically determining if the applicable PHA released an updated schedule to ensure timely implementation. When the allowance changes or a new allowance is made available by the PHA, it can be implemented immediately, but must be implemented for rent due ninety (90) days after the change.

(3) Written Local Estimate, HUD Utility Model Schedule and Energy Consumption Model. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than October 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. At the same time the request is submitted to the Department, the Owner must post, at the Development, the utility allowance estimate in a common area of the leasing office where such notice is unobstructed and visible in plain sight. The Department will review the request for compliance with all applicable requirements and reasonableness. If, in comparison to other approved utility allowances for properties of similar size, construction and population in the same geographic area, the allowance does not appear reasonable or appears understated, the Department may require additional support and/or deny the request.

(4) Actual Use Method. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than August 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review.

(g) Unless conflicting guidance is received from HUD, in accordance with 24 CFR §92.252, for HOME and NSP funds for which the Department is the participating jurisdiction, the utility allowance will be established in the following manner:

(1) By April 30th, the Department will calculate the utility allowance for each HOME and NSP Development using HUD Utility Schedule Model. For property specific data, the Department will use:

(A) The information submitted in the Annual Owner's Compliance Report;

(B) Entrance Interview Questionnaires submitted with prior onsite reviews; or,

(C) The owner may be contacted and asked to complete the Utility Allowance Questionnaire. In such case, a five (5) day period will be provided to return the completed questionnaire.

(2) Utilities will be evaluated in the following manner:

(A) For regulated utilities, the Department will contact the Utility Provider directly and apply the Component Charges in effect no later than 60 days before the allowance will be effective.

(B) For deregulated utilities:

(i) The Department will use the Power to Choose website and search available Utility Providers by zip code;

(ii) The plan chosen will be the median cost per kWh based on average price per kWh for the average monthly use of 1000 kWh of all available plans; and,

(iii) The actual Component Charges from the plan chosen in effect no later than 60 days before the allowance will be effective will be inputted into the Model.

(3) The Department will notify the Owner contact in CMTS of the new allowance and provide the backup for how the allowance was calculated. The owner will be provided a five (5) day period to review the Department's calculation and note any errors. Only errors related to the physical characteristics of the building(s) and utilities paid by the tenants will be reconsidered; the utility plan and Utility Provider selected by the Department and Component Charges used in calculating the allowance will not be changed. During this five (5) day period, the owner also has the opportunity to submit documentation and request use of any of the available Green Discounts.

(4) Once approved, the allowance must be implemented for rent due in all program units thirty (30) days after written approval from the Department is received.

(5) Unless further guidance is received from Treasury or the IRS, HTC Buildings in which there are HOME or NSP units must use the HUD Model Schedule for all rent restricted units (with the exception of unit occupied by households that received rental assistance in which case the allowance is established by the program from where the household receives the assistance).

(h) For owners participating in the Department's Section 811 Project Rental Assistance ("PRA") Program, the utility allowance is the allowance established in accordance with this section related to the other multifamily program(s) at the Development. Example: 614(9) ABC Apartments is an existing HTC Development now participating in the PRA Program. The residents pay for electricity and the Owner is using the PHA method to calculate the utility allowance for the HTC Program. The appropriate utility allowance for the PRA Program is the PHA method.

(i) Combining Methods. With the exception of HUD regulated buildings and RHS buildings, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (electric, gas, etc.). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance.

(j) The Owner shall maintain and make available for inspection by the tenant all documentation, including, but not limited to, the data, underlying assumptions and methodology that was used to calculate the allowance. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the tenant at the convenience of both the Owner and tenant.

(k) If Owners want to utilize the HUD Utility Schedule Model, the Written Local Estimate or the Energy Consumption Model to establish the initial utility allowance for the Development, the Owner must submit utility allowance documentation for Department approval, at minimum, 90 days prior to the commencement of leasing activities. This subsection does not preclude an Owner from changing to one of these methods after commencement of leasing.

(l) The Department reserves the right to outsource to a third party the review and approval of all or any utility allowance requests to use the Energy Consumption Model or when review requires the use of expertise outside the resources of the Department. In accordance with Treasury Regulation §1.42-10(c) any costs associated with the review and approval shall be paid by the Owner.

(m) All requests described in this subsection must be complete and uploaded directly to the Development's CMTS account using the "Utility Allowance Documents" in the type field. The Department will not be able to approve requests that are incomplete and/or are not submitted correctly.

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

Filed with the Office of the Secretary of State on December 18, 2015.

TRD-201505825

Timothy K. Irvine  
Executive Director  
Texas Department of Housing and Community Affairs  
Earliest possible date of adoption: January 31, 2016  
For further information, please call: (512) 475-2330



### **10 TAC §10.620**

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 10, Subchapter F, §10.620, concerning Monitoring for Non-Profit Participation or HUB Participation. The HOME Final Rule, 24 CFR Part 92, now requires the Department, as the Participating Jurisdiction, to monitor throughout the federal affordability period, to ensure that HOME Developments awarded funds from the Community Housing and Development Organization set aside on or after August 23, 2013, meet specific requirements. The rule is being amended to reflect that requirement.

**FISCAL NOTE.** Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the amended section is in effect, enforcing or administering the amended section does not have any foreseeable implications related to costs or revenues of the state or local governments.

**PUBLIC BENEFIT/COST NOTE.** Mr. Irvine also has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the amended section will be improved compliance with federal and state requirements. There will not be any additional new economic cost to individuals required to comply.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES.** The Department has determined that there will not be any additional economic effect on small or micro-businesses based on these amendments.

**REQUEST FOR PUBLIC COMMENT.** The public comment period will be held January 1, 2016, through February 1, 2016, to receive input on the proposed amendment. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Stephanie Naquin, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. FEBRUARY 1, 2016.

**STATUTORY AUTHORITY.** The amendments are proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed amendments affect no other code, article, or statute.

*§10.620. Monitoring for Non-Profit Participation, [✗] HUB, or CHDO Participation.*

(a) If a Development's LURA requires the material participation of a non-profit or Historically Underutilized Business (HUB), the Department will confirm whether this requirement is being met throughout the development phase and ongoing operations of the Development. Owners are required to maintain sufficient documentation to evidence that a non-profit or HUB so participating is in good standing with the Texas Comptroller of Public Accounts, Texas Secretary of State and/or IRS as applicable and that it is actually materially participating in a manner that meets the requirements of the IRS. Documentation may be reviewed during onsite visits or must be submitted to the Department upon request.

(b) If the HOME funds were awarded from the Community Housing and Development Organization ("CHDO") set aside on or after August 23, 2013, the Department will monitor that the Development remains controlled by a CHDO throughout the federal affordability period.

(c) [(b)] If an Owner wishes to change the participating non-profit, [or] HUB, or CHDO prior written approval from the Department is necessary. In addition, the IRS will be notified if the non-profit is not materially participating on a HTC Development during the Compliance Period.

(d) [(e)] The Department does not enforce partnership agreements or other agreements between third parties or determine fund distributions of partnerships. These disputes are matters for a court of competent jurisdiction or other agreed resolution among the parties.

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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Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-2330



## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 115. MIDWIVES

**16 TAC §§115.1 - 115.7, 115.13 - 115.16, 115.20, 115.21, 115.23, 115.25, 115.70, 115.75, 115.80, 115.90, 115.100, 115.111 - 115.123, 115.125**

The Texas Department of Licensing and Regulation (Department) proposes new rules at 16 Texas Administrative Code (TAC) Chapter 115, §§115.1, 115.2, 115.3, 115.4, 115.5, 115.6, 115.7, 115.13, 115.14, 115.15, 115.16, 115.20, 115.21, 115.23, 115.25, 115.70, 115.75, 115.80, 115.90, 115.100, 115.111, 115.112, 115.113, 115.114, 115.115, 115.116, 115.117, 115.118, 115.119, 115.120, 115.121, 115.122, 115.123 and 115.125, regarding the Midwives program.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Texas Commission of Licensing and Regulation (Commission) and the Department. Under Phase 1, the following seven programs are being transferred from DSHS to the Commission and the Department: (1) Midwives, Texas Occupations Code, Chapter 203; (2) Speech-Language Pathologists and Audiologists, Chapter 401; (3) Hearing Instrument Fitters and Dispensers, Chapter 402; (4) Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists, Chapter 403; (5) Athletic Trainers, Chapter 451; (6) Orthotists and Prosthetists, Chapter 605; and (7) Dietitians, Chapter 701. The statutory amendments transferring regulation of these

seven Phase 1 programs from DSHS to the Commission and the Department took effect on September 1, 2015.

The Texas Legislature also enacted Senate Bill 219 (S.B. 219), 84th Legislature, Regular Session (2015), which, in part, amended the enabling acts of the health-related programs regulated by DSHS before those programs were transferred by S.B. 202. S.B. 219 was effective April 2, 2015.

The new rules are proposed to enable the Commission and the Department to regulate the seven Phase 1 programs listed above. The proposed new rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate these transferred programs. At the time of adoption, the Commission will designate the effective date of the new rules. The effective date will coincide with the completion of the transfer of the programs to the Commission and Department. The Commission will provide sufficient notice to the regulated community in order for it to comply with the new rules.

The proposed new rules under 16 TAC Chapter 115 are necessary to implement S.B. 202 and to regulate the Midwives program under the authority of the Commission and the Department. The rules also incorporate the changes made by S.B. 219 as applicable. These proposed new rules are separate from and are not to be confused with the DSHS rules located at 22 TAC Chapter 831, regarding the Midwifery program, which are still in effect.

The Midwives Advisory Board was scheduled to meet on November 13, 2015, to consider a draft of these rules. Although the board lacked a quorum, the members present discussed a draft of these proposed rules with the Department before they were published in the *Texas Register* for public comment.

The non-quorum of Midwives Advisory Board members which reviewed the draft rules on November 13, 2015 recommended that §115.114(b) on prenatal care not include mandatory referral on initial or subsequent assessment for: "(9) prior cesarean section (except for prior classical or vertical incision, which will require transfer in accordance with subsection (c)(8) of this section)", "(10) multiple gestation", and "(11) history of prior antepartum or neonatal death". Their recommendations are considered and these numbered provisions are considered for deletion after publication. For purposes of review, these provisions have been included in the published draft to solicit input from the public.

Proposed new §115.1 creates the definitions to be used in this chapter.

Proposed new §115.2 determines when a midwives license is required.

Proposed new §115.3 creates the duties of the Midwives Advisory Board.

Proposed new §115.4. establishes the composition of the Midwives Advisory Board.

Proposed new §115.5 establishes the terms and vacancies for Midwives Advisory Board members.

Proposed new §115.6 creates a presiding officer and their role on the Midwives Advisory Board.

Proposed new §115.7 provides guidelines on when advisory board meetings are held.

Proposed new §115.13 details the initial application requirements for those seeking licensure.

Proposed new §115.14 establishes license renewal requirements.

Proposed new §115.15 explains the late renewal of a license process.

Proposed new §115.16 creates the terms for retired midwives who are performing charity work seeking to renew their license.

Proposed new §115.20 details basic midwifery education.

Proposed new §115.21 provides for education course approval.

Proposed new §115.23 establishes the jurisprudence examination.

Proposed new §115.25 specifies continuing education requirements for licensees.

Proposed new §115.70 creates the standards of conduct for midwives.

Proposed new §115.75 determines when a license must be surrendered.

Proposed new §115.80 establishes fees to be used in the midwives program.

Proposed new §115.90 develops a state roster of licensed midwives to be maintained by the Department.

Proposed new §115.100 creates standards for practicing midwifery in Texas.

Proposed new §115.111 details inter-professional care of women within the midwifery model of care.

Proposed new §115.112 explains when a midwife-client relationship may be terminated and the process.

Proposed new §115.113 creates standards for transfer of care in emergency situations.

Proposed new §115.114 details prenatal care.

Proposed new §115.115 establishes the midwives duties in the labor and delivery process.

Proposed new §115.116 provides guidelines for postpartum care.

Proposed new §115.117 details the requirements of newborn care during the first six weeks after birth.

Proposed new §115.118 establishes the process when administration of oxygen may be needed.

Proposed new §115.119 explains eye prophylaxis.

Proposed new §115.120 creates the screening of newborns procedure.

Proposed new §115.121 requires the informed choice and disclosure statement.

Proposed new §115.122 allows the Department to obtain complaint information without the consent of the midwife's client in order to conduct an investigation.

Proposed new §115.123 allows for administrative penalties and sanctions.

Proposed new §115.125 provides the enforcement authority.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed new rules are in effect there will be no direct cost to state or local government as a re-

sult of enforcing or administering the proposed new rules. There is no estimated increase or decrease in revenue to the state as a result of enforcing or administering the proposed new rules. Historically, the funds used to administer the midwives program was appropriated to DSHS; now those same funds will be appropriated to the Department.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed new rules are in effect, the public benefit will include that the rules implement the statutory requirements under the authority of the Commission and the Department and provide details that are not found in the enabling acts. The rules also have been formatted and organized to assist the public, the regulated community, and the Department in easily finding specific rules. In addition, the new rules are streamlined so as not to duplicate provisions that are already located in the statutes and rules of the Commission and Department in the Texas Occupations Code and in 16 TAC Chapter 60, which apply to all programs regulated by the Commission and the Department.

There will be no anticipated economic effect on small and micro-businesses or to persons who are required to comply with the rules as proposed.

Since the agency has determined that the proposed new rules will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032; or electronically to [erule.comments@tdlr.texas.gov](mailto:erule.comments@tdlr.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

The new rules are proposed under Texas Occupations Code, Chapters 51 and 203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 203. No other statutes, articles, or codes are affected by the proposal.

#### §115.1. Definitions.

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

(1) Act--The Texas Midwifery Act, Texas Occupations Code, Chapter 203.

(2) Appropriate health care facility--The Department of State Health Services, a local health department, a public health district, a local health unit or a physician's office where specified tests can be administered and read, and where other medical/clinical procedures normally take place.

(3) Approved midwifery education courses--The basic midwifery education courses approved by the department.

(4) Code--Texas Health and Safety Code.

(5) Health authority--A physician who administers state and local laws regulating public health under the Health and Safety Code, Chapter 121, Subchapter B.

(6) Local health unit--A division of a municipality or county government that provides limited public health services as provided by the Health and Safety Code, §121.004.

(7) Advisory Board--The Midwifery Advisory Board appointed by the presiding officer of the Commission with the approval of the Commission.

(8) Newborn care--The care of a child for the first six weeks of the child's life.

(9) Normal childbirth--The labor and vaginal delivery at or close to term (37 up to 42 weeks) of a pregnant woman whose assessment reveals no abnormality or signs or symptoms of complications.

(10) Physician--A physician licensed to practice medicine in Texas by the Texas Medical Board.

(11) Postpartum care--The care of a woman for the first six weeks after the woman has given birth.

(12) Program--The department's midwifery program.

(13) Public health district--A district created under the Health and Safety Code, Chapter 121, Subchapter E.

(14) Standing delegation orders--Written instructions, orders, rules, regulations or procedures prepared by a physician and designated for a patient population, and delineating under what set of conditions and circumstances actions should be instituted, as described in the rules of the Texas Medical Board in Chapter 193 (relating to Standing Delegation Orders) and §115.111 of this title (relating to Inter-professional Care).

(15) Retired midwife--A midwife licensed in Texas who is over the age of 55 and not currently employed in a health care field.

(16) Voluntary charity care--Midwifery care provided without compensation and with no expectation of compensation.

(17) Commission--The Texas Commission of Licensing and Regulation.

(18) Department--The Texas Department of Licensing and Regulation.

(19) Executive director--The executive director of the department.

#### §115.2. License Required.

(a) In order for an individual to legally practice midwifery in Texas, she/he must be currently licensed by the department.

(b) A midwife's initial license shall be valid from the date issued until March 1 of the following renewal period.

#### §115.3. Midwifery Advisory Board Duties.

The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of this chapter, including scope of practice and health related standards of care.

#### §115.4. Advisory Board Membership.

The Midwifery Advisory Board consists of nine members appointed by the presiding officer of the commission, with the approval of the commission as follows:

(1) five members each of whom has at least three years' experience in the practice of midwifery;

(2) two members who represent the public and who are not practicing or trained in a health care profession, one of whom is a parent with at least one child born with the assistance of a midwife;

(3) one physician member who is certified by a national professional organization of physicians that certifies obstetricians and gynecologists; and

(4) one physician member who is certified by a national professional organization of physicians that certifies family practitioners or pediatricians.

#### §115.5. Terms; Vacancies.

(a) Members of the advisory board serve staggered six-year terms. The terms of three members expiring on January 31st of each odd-numbered year.

(b) If a vacancy occurs on the board, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

(c) A member of the advisory board may be removed from the advisory board pursuant to Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member.

#### §115.6. Officers.

(a) The presiding officer of the commission shall designate a member of the advisory board as the presiding officer of the advisory board to serve for a term of one year.

(b) The presiding officer of the advisory board shall preside at all board meetings at which he or she is in attendance. The presiding officer of the advisory board may vote on any matter before the advisory board.

#### §115.7. Meetings.

(a) The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

(b) Meetings shall be announced and conducted under the provisions of the Open Meetings Act, Texas Government Code, Chapter 551.

(c) A quorum of the advisory board is necessary to conduct official business.

(d) Advisory board action shall require a majority vote of those members present and voting.

#### §115.13. Initial Application for Licensure.

(a) Initial licensure. Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official department-approved forms. An individual may apply for licensure as a midwife at any time during the year by submitting the following to the department:

(1) a completed application on a department-approved form which shall contain:

(A) specific information regarding personal data, social security number, birth date, other licenses held, and misdemeanor or felony convictions;

(B) the date of the application;

(C) a statement that the applicant has read the Act and these rules and agrees to abide by them;

(D) a statement that the information in the application is truthful and that the applicant understands that providing false and misleading information on items which are material in determining the applicant's qualifications may result in the voiding of the application, or denial or the revocation of any license issued; and

(E) any other information required by the department.

(2) proof of satisfactory completion of a continuing education course covering the current Texas Midwifery Basic Information and Instructors Manual, and:

(A) satisfactory completion of a mandatory basic midwifery education course approved by the department and the North American Registry of Midwives (NARM) exam or any other comprehensive exam approved by the department;

(B) Certified Professional Midwife (CPM) certification by NARM; or

(C) satisfactory completion of a basic midwifery education course accredited by the Midwifery Education Accreditation Council (MEAC), and the North American Registry of Midwives (NARM) exam, or any other comprehensive exam approved by the department.

(3) proof of current cardiopulmonary resuscitation (CPR) certification for health care providers by the American Heart Association; equivalent certification for the professional rescuer from the Red Cross; equivalent certification for healthcare and professional rescuer from the National Safety Council; or equivalent certification issued by any provider of CPR certification for health care providers currently accepted by the Department of State Health Service's Office of EMS/Trauma Systems Coordination;

(4) proof of current certification for neonatal resuscitation, §§1 - 4, from the American Academy of Pediatrics;

(5) proof of satisfactory completion of training in the collection of newborn screening specimens or an established relationship with another qualified and appropriately credentialed health care provider who has agreed to collect newborn screening specimens on behalf of the applicant;

(6) a nonrefundable fee required under §115.80; and

(7) proof of passing the jurisprudence examination approved by the department. The jurisprudence examination must have been taken no more than one year prior to the date of application.

(b) Initial licensure after interim of more than four years. A midwife seeking initial licensure who has not become licensed within four years of completing a basic midwifery education course approved by the department or accredited by MEAC shall in addition provide proof of having completed at least 40 contact hours of approved midwifery continuing education within the year preceding the application, which shall be based upon a review of:

(1) the current Texas Midwifery Basic Information and Instructors Manual; and

(2) the current Midwives Alliance of North America (MANA) Core Competencies and Standards of Practice.

(c) The applicant must successfully pass a criminal history background check.

(d) Pursuant to Texas Occupations Code, Chapters 51 and 203, the commission or the executive director may deny the application for violation of the Act.

(e) If after review the department determines that the application should not be approved, the department shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a hearing under Texas Government Code, Chapter 2001.

§115.14. License Renewal.

In order to renew every two years, a midwife's application for license renewal must include the following:

(1) a completed license renewal application form which shall require the provision of the preferred mailing address and telephone number, and a statement of all misdemeanor and felony offenses for which the licensee has been convicted, along with any other information required by the department;

(2) proof of completion of at least 20 contact hours of approved midwifery education since March 1 of the previous two-year renewal period;

(3) proof of a current CPR certification for health care providers from one of the following:

(A) the American Heart Association;

(B) equivalent certification for the professional rescuer from the Red Cross;

(C) equivalent certification for healthcare and professional rescuer from the National Safety Council; or

(D) equivalent certification issued by any provider of CPR certification for health care providers currently accepted by the Department of State Health Services' Office of EMS/Trauma Systems Coordination;

(4) proof of current certification for neonatal resuscitation, §§1 - 4, from the American Academy of Pediatrics;

(5) a nonrefundable renewal fee; and

(6) proof of passing the jurisprudence examination approved by the department in the four years preceding renewal.

§115.15. Late Renewal.

Late license renewal. A midwife who fails to apply for license renewal by March 1 of the end of a renewal period in which the midwife is currently licensed, may apply for late license renewal on or before March 1 of the following year. Applications for late license renewal must include the following:

(1) each of the items required for timely renewal; and

(2) a nonrefundable late renewal fee.

§115.16. Renewal for Retired Midwives Performing Charity Work.

(a) A retired midwife who is only providing voluntary charity care:

(1) may apply to renew his or her midwifery license by submitting all the items required for renewal and the retired midwife renewal fee.

(2) may renew his or her midwifery license by submitting all the items required for renewal, the retired midwife renewal fee, and only five hours of approved midwifery continuing education.

(3) may renew his or her midwifery license late by submitting all the items required for late renewal, the retired midwife renewal fee, and only five hours of approved midwifery continuing education.

(b) A retired midwife who has previously renewed under this subsection, and then subsequently seeks to return to employment in the active practice of midwifery in Texas, must either:

(1) be currently licensed under this subsection but not due for renewal, and submit the following items to the department:

(A) ten hours of continuing education, taken in the 12 months preceding the application;

(B) the retired midwife reinstatement fee; and

(C) a written request to return his or her license to active status; or

(2) be currently licensed under this subsection and when billed for renewal, submit all the items required for renewal with a written request to return his or her license to active status; and

(3) receive approval from the department prior to returning to active practice.

§115.20. Basic Midwifery Education.

(a) The department shall consider for approval only courses which have a course supervisor/administrator and site in Texas.

(b) Mandatory basic midwifery education shall:

(1) be offered to ensure that only trained individuals practice midwifery in Texas;

(2) be offered by any individual or organization meeting the requirements for course approval established by this subsection;

(3) include a didactic component which shall:

(A) be based upon and completely cover the most current Core Competencies and Standards of Practice of the Midwives Alliance of North America (MANA) and the current Texas Midwifery Basic Information Manual;

(B) prepare the student to apply for certification by North American Registry of Midwives (NARM); and

(C) include a minimum of 250 hours course work.

(4) be supervised and conducted by a course supervisor/administrator who shall:

(A) be responsible for all aspects of the course; and

(B) have two years of experience in the independent practice of midwifery, nurse-midwifery or obstetrics; and

(C) have been primary care giver for at least 75 births including provision of prenatal, intrapartum, and postpartum care; and

(D) have met initial licensure requirements; or

(E) be a Certified Professional Midwife (CPM); or

(F) be American College of Nurse Midwives (ACNM) certified; or

(G) be a licensed physician in Texas actively engaged in the practice of obstetrics.

(5) include didactic curriculum instructors who:

(A) have training and credentials for the course material they will teach; and

(B) are approved by the course supervisor/administrator.

(6) provide clinical experience/preceptorship of at least one year but no more than five years and equivalent to 1,350 clinical contact hours which prepares the student to become certified by NARM, including successful completion of at least the following activities:

(A) serving as an active participant in attending 20 births;

(B) serving as the primary midwife, under supervision, in attending 20 additional births, at least 10 of which shall be out-of-hospital births. A minimum of 3 of the 20 births attended as primary midwife under supervision must be with women for whom the student has provided primary care during at least 4 prenatal visits, birth, newborn exam and one postpartum exam;

(C) serving as the primary midwife, under supervision, in performing:

(i) 75 prenatal exams, including at least 20 initial history and physical exams;

(ii) 20 newborn exams; and

(iii) 40 postpartum exams.

(7) include preceptors who are approved by the course supervisor/administrator and shall be:

(A) licensed midwives;

(B) certified professional midwives;

(C) certified nurse midwives; or

(D) physicians licensed in the United States and actively engaged in the practice of obstetrics.

(c) Individuals enrolled as students in an approved midwifery course must possess:

(1) a high school diploma or the equivalent; and

(2) a current Cardiopulmonary Resuscitation (CPR) certificate for health care providers from the American Heart Association; an equivalent CPR certificate for the professional rescuer from the Red Cross; equivalent certification for healthcare and professional rescuer from the National Safety Council; or equivalent certification issued by any provider of CPR certification for health care providers currently accepted by the Department of State Health Services' Office of EMS/Trauma Systems Coordination.

§115.21. Education Course Approval.

(a) Course approval.

(1) The course supervisor/administrator shall submit an application form and a non-refundable initial midwifery course application fee to the department with the following supporting documentation:

(A) course outline;

(B) course curriculum with specific content references

to:

(i) MANA Core Competencies;

(ii) NARM Written Test Specifications;

(iii) NARM Skills Assessment Test Specifications;

(iv) Texas Midwifery Basic Information and Instructor Manual; and

(v) protocol writing, adaptation and revision.

(C) identification of didactic and preceptorship teaching sites;

(D) a financial statement or balance sheet (within the last year) for the course supervisor/administrator or course owner and disclosure of any bankruptcy within the last five years; and

(E) written policies to include:

(i) tuition schedule, other charges, and cancellation and refund policy, including the right of any prospective student to cancel his/her enrollment agreement within 72 hours after signing the agreement and receive a full refund of any money paid;

(ii) student attendance, progress, and grievance policies;

nel;

(iii) rules of operation and conduct of school person-

(iv) requirements for state licensure;

(v) disclosure of approval status of course;

(vi) maintenance of student files; and

(vii) reasonable access for non-English speakers and compliance with federal and state laws on accessibility.

(2) Student files shall be maintained for a minimum of five years and shall include:

(A) evidence that the entrance requirements have been met;

(B) documentation demonstrating completion of didactic and clinical course work; and

(C) copies of any financial agreements between the student and the school.

(3) The department staff shall review each course application submitted for approval. If an application for initial approval meets all of the requirements specified in this paragraph, a one-year provisional approval will be granted. An on-site evaluation of the course shall be scheduled. The evaluation shall be conducted by a member of the department staff and a licensed midwife within the provisional year. The site visit will include the following:

(A) an inspection of the course's facilities;

(B) a review of its teaching plan, protocols, and teaching materials;

(C) a review of didactic and preceptorship instruction;

(D) interviews with staff and students; and

(E) a review of student, staff and preceptor files, to include coursework, protocols, and financial records.

(4) A nonrefundable site visit fee shall be assessed for each site visit.

(5) The site visit written report shall recommend to the department approval or denial of the course.

(6) The department shall evaluate the application and all other pertinent information, including any complaints received and the site visit report.

(b) Course reciprocity. A basic midwifery education course which is currently accredited by the Midwifery Education Accreditation Council (MEAC) shall be deemed approved under this subsection upon submission of evidence of such accreditation.

(c) Duration of course approval.

(1) The department shall approve courses for a three year period.

(2) Course supervisors/administrators shall reapply for approval six months prior to expiration.

(d) Course changes. Any substantive change(s) in the course or its content shall be submitted to the department within ten working days after change(s).

§115.23. Jurisprudence Examination.

(a) The department shall develop a jurisprudence examination.

(b) The subject matter covered by the examination shall include the Act, this chapter, and other Texas laws and rules which affect

midwifery practice, as described in the current Texas Midwifery Basic Information and Instructor Manual.

(c) The department shall review and update the examination as needed.

§115.25. Continuing Education.

All continuing education taken by midwives for the purpose of obtaining or renewing a midwifery license must be in accordance with this section.

(1) Courses may be offered by any individual or organization that meets the requirements for course approval established by this section.

(2) Course curriculum must provide an educational experience which:

(A) covers new developments in the fields of midwifery or related disciplines; or

(B) reviews established knowledge in the fields of midwifery or related disciplines; and

(C) shall be presented in standard contact hour increments for continuing health education; and

(D) shall provide reasonable access for non-English speakers and comply with federal and state laws on accessibility.

(3) Course coordinators and instructors.

(A) Course coordinators shall obtain course approval, register and certify participant attendance, and provide attendance certificates to participants following the course.

(B) Course instructors shall have training and/or credentials appropriate for the course material they will teach.

(4) Course approval. Continuing education courses attended to fulfill licensure or license renewal requirements shall be accepted when the courses:

(A) satisfy the requirements of paragraph (2)(A) - (C); and

(B) are accredited by one of the following accrediting bodies:

(i) a professional midwifery association, nursing, social work, or medicine;

(ii) a college, a university, or an approved basic midwifery education course;

(iii) a nursing, medical, or health care organization;

(iv) a state board of nursing or medicine;

(v) a department of health; or

(vi) a hospital.

§115.70. Standards of Conduct.

The following are grounds for denial of application for licensure or license renewal and for disciplinary action.

(1) The commission or executive director may deny an application for initial licensure or license renewal and may take disciplinary action against any person based upon proof of the following:

(A) violation of the Act or rules adopted under the Act;

(B) submission of false or misleading information to the department;

(C) conviction of a felony or a misdemeanor involving moral turpitude;

(D) intemperate use of alcohol or drugs while engaged in the practice of midwifery;

(E) unprofessional or dishonorable conduct that may reasonably be determined to deceive or defraud the public;

(F) inability to practice midwifery with reasonable skill and safety because of illness, disability, or psychological impairment;

(G) judgment by a court of competent jurisdiction that the individual is mentally impaired;

(H) disciplinary action taken by another jurisdiction affecting the applicant's legal authority to practice midwifery;

(I) submission of a birth or death certificate known by the individual to be false or fraudulent, or other noncompliance with Health and Safety Code, Chapter 191, or 25 Texas Administrative Code (TAC), Chapter 181 (relating to Vital Statistics);

(J) noncompliance with Health and Safety Code, Chapter 244, or 25 TAC, Chapter 137 (relating to Birthing Centers);

(K) failure to practice midwifery in a manner consistent with the public health and safety;

(L) failure to submit midwifery records in connection with the investigation of a complaint; or

(M) demonstrated lack of personal or professional character in the practice of midwifery.

(2) The department may refuse to renew the license of a person who fails to pay an administrative penalty imposed under the Act, unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

(3) The commission or executive director may revoke course approval if:

(A) the course no longer meets one or more of the established standards;

(B) the course supervisor, instructor(s), or preceptor(s) do not have the required qualifications;

(C) course approval was obtained by fraud or deceit;

(D) the course supervisor falsified course registration, attendance, completion and/or other records; or

(E) continued approval of the course is not in the public interest.

§115.75. License Surrender.

(a) A license issued by the department is the property of the department and shall be surrendered on demand.

(b) A licensee may also voluntarily surrender his or her license to the department.

§115.80. Fees.

All fees must be made payable to the department and are nonrefundable.

(1) Application fee--\$275

(2) Renewal fee--\$550 for each two-year renewal period

(3) Duplicate license fee--\$20

(4) Retired midwife renewal fee--\$275

(5) Retired midwife reinstatement fee--\$275

(6) Jurisprudence examination fee--\$35

(7) Education course initial application fee--\$150

(8) Education course site visit fee--\$500

(9) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(10) Dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Check Fee).

(11) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

§115.90. State Roster of Licensed Midwives.

The department shall maintain a roster of all individuals currently licensed to practice midwifery in the state. A copy of the roster shall be provided to each county clerk and local registrar of births on request. The department shall also provide information on new and/or late licensees to individual county clerks and local registrars of births during the course of a year as needed.

§115.100. Standards for the Practice of Midwifery in Texas.

(a) Midwifery care supports individual rights and self-determination within the boundaries of safety. Using reasonable skill and knowledge, the midwife shall:

(1) provide clients with a description of the scope of midwifery services and information regarding the client's rights and responsibilities in accordance with the Act;

(2) assess the client on an ongoing basis for any factors which might preclude a client from admission into or continuing in midwifery care;

(3) provide clients with information about other providers and services when requested or when the care required is not within the scope of practice of midwifery; and

(4) practice in accordance with the knowledge, clinical skills, and judgments described in the Midwives Alliance of North America (MANA) Core Competencies for Basic Midwifery Practice, adopted August 4, 2011, within the bounds of the midwifery scope of practice as defined by the Act and Rules;

(b) The midwife shall provide care in a safe and clean environment. The midwife shall:

(1) carry and use when needed, resuscitation equipment; and

(2) use universal precautions for infection control.

(c) Midwifery care is documented in legible, complete health records. The midwife shall:

(1) maintain records that completely and accurately document the client's history, physical exam, laboratory test results, antepartum visits, consultation reports, referrals, labor, delivery, postpartum visits, and neonatal evaluations at the time midwifery services are delivered and when reports are received;

(2) grant clients access to their records within 30 days of the date the request is received;

(3) provide a mechanism for sending a copy of the health record upon referral or transfer to other levels of care;

(4) maintain the confidentiality of client records; and

(5) maintain records;

(A) for the mother, for a minimum of five years; and

(B) for the infant, until the age of majority.

(d) Midwifery care includes documentation of a periodic process of evaluation and quality assurance of midwifery practice. The midwife shall:

(1) collect client care data systematically and be involved in analysis of that data for the evaluation of the process and outcome of care;

(2) review problems identified by the midwife or by other professionals or consumers in the community; and

(3) act to resolve problems that are identified.

§115.111. Inter-professional Care.

The following definitions regarding inter-professional care of women within a midwifery model of care apply to this chapter.

(1) Consultation is the process by which a midwife, who maintains primary management responsibility for the woman's care, seeks the advice of another health care professional or member of the health care team.

(2) Collaboration is the process in which a midwife and a health care practitioner of a different profession jointly manage the care of a woman or newborn who needs joint care, such as one who has become medically complicated. The scope of collaboration may encompass the physical care of the client, including delivery, by the midwife, according to a mutually agreed-upon plan of care. If a physician must assume a dominant role in the care of the client due to increased risk status, the midwife may continue to participate in physical care, counseling, guidance, teaching, and support. Effective communication between the midwife and the health care professional is essential to ongoing collaborative management.

(3) Referral is the process by which a midwife directs the client to a health care professional who has current obstetric or pediatric knowledge and is either a physician licensed in the United States; or working in association with a licensed physician. The client and the physician (or associate) shall determine whether subsequent care shall be provided by the physician or associate, the midwife, or through collaboration between the physician or associate and midwife. The client may elect not to accept a referral or a physician or associate's advice, and if such is documented in writing, the midwife may continue to care for the client.

(4) Transfer is the process by which a midwife relinquishes care of the client for pregnancy, labor, delivery, or postpartum care or care of the newborn to another health care professional who has current obstetric or pediatric knowledge and is either a physician licensed in the United States; or working in association with a licensed physician. If a client elects not to accept a transfer, the midwife shall terminate the midwife-client relationship. If the transfer recommendation occurs during labor, delivery, or the immediate postpartum period, and the client refuses transfer; the midwife shall call 911 and provide further care as indicated by the situation. If the midwife is unable to transfer to a health care professional, the client will be transferred to the nearest appropriate health care facility. The midwife shall attempt to contact the facility and continue to provide care as indicated by the situation.

(5) Standing orders from a physician licensed in Texas must be obtained if a midwife provides any prescription medication to a client or her newborn other than oxygen and eye prophylaxis. The orders must be current (renewed annually) and must comply with the rules of the Texas Medical Board. Midwives have the responsibility not to comply with an outdated order.

§115.112. Termination of the Midwife-Client Relationship.

A midwife shall terminate care of a client only in accordance with this section unless a transfer of care results from an emergency situation.

(1) Once the midwife has accepted a client, the relationship is ongoing and the midwife cannot refuse to continue to provide midwifery care to the client unless:

(A) the client has no need of further care;

(B) the client terminates the relationship; or

(C) the midwife formally terminates the relationship.

(2) The midwife may terminate care for any reason by:

(A) providing a minimum of 30 days written notice, during which the midwife shall continue to provide midwifery care, to enable the client to select another health care provider;

(B) making an attempt to tell the client in person and in the presence of a witness of the midwife's wish to terminate care;

(C) providing referrals; and

(D) documenting the termination of care in midwifery records.

(3) Termination of Care during Labor. If the midwife deems that midwifery care is no longer within her scope and the client is non-compliant, the midwife may:

(A) recommend transport;

(B) call 911 and allow client to refuse EMS care; and

(C) have a sign and dated written document that describes the reason for the termination and the signatures of both the midwife and the client.

§115.113. Transfer of Care in an Emergency Situation.

In an emergency situation, the midwife shall initiate emergency care as indicated by the situation and immediate transfer of care by making a reasonable effort to contact the health care professional or institution to whom the client will be transferred and to follow the health care professional's instructions; and continue emergency care as needed while:

(1) transporting the client by private vehicle; or

(2) calling 911 and reporting the need for immediate transfer.

§115.114. Prenatal Care.

(a) Using reasonable skill and knowledge, the midwife shall collect, assess, and document maternal care data through a detailed obstetric, gynecologic, medical, social, and family history and a complete prenatal physical exam and appropriate laboratory testing; develop and implement a plan of care; thereafter evaluate the client's condition on an ongoing basis; and modify the plan of care as necessary. Health education/counseling shall be provided by the midwife as appropriate.

(b) If on initial or subsequent assessment, one of the following conditions exists, the midwife shall recommend referral and document that recommendation in the midwifery record:

(1) infection requiring antimicrobial therapy;

(2) Hepatitis;

(3) non-insulin dependent diabetes;

(4) thyroid disease;

(5) current drug or alcohol abuse;

- (6) asthma;
- (7) abnormal pap smear (consistent with malignancy or pre-malignancy) during the current pregnancy;
- (8) seizure disorder;
- (9) prior cesarean section (except for prior classical or vertical incision, which will require transfer in accordance with subsection (c)(8));
- (10) multiple gestation;
- (11) history of prior antepartum or neonatal death;
- (12) history of prior infant with a genetic disorder;
- (13) significant vaginal bleeding;
- (14) maternal age less than 15 at EDC;
- (15) cancer or history of cancer;
- (16) psychiatric illness; or
- (17) any other condition or symptom which could adversely affect the mother or fetus, as assessed by a midwife exercising reasonable skill and knowledge.

(c) If on initial or subsequent assessment, one of the following conditions exists, the midwife shall recommend transfer in accordance and document that recommendation in the midwifery record:

- (1) placenta previa in the third trimester;
- (2) Human Immunodeficiency Virus (HIV) positive or Acquired Immunodeficiency Syndrome (AIDS);
- (3) cardio vascular disease, including hypertension, with the exception of varicosities;
- (4) severe psychiatric illness;
- (5) history of cervical incompetence with surgical therapy;
- (6) pre-term labor (less than 37 weeks);
- (7) Rh or other blood group isoimmunization;
- (8) any previous cesarean section with a vertical or classical incision, or any previous uterine surgery which required an incision in the uterine fundus;
- (9) preeclampsia/eclampsia;
- (10) documented oligo-hydramnios or poly-hydramnios;
- (11) any known fetal malformation;
- (12) Preterm Premature Rupture Of Membranes (PPROM);
- (13) intrauterine growth restriction;
- (14) insulin dependent diabetes; or
- (15) any other condition or symptom which could threaten the life of the mother or fetus, as assessed by a midwife exercising reasonable skill and knowledge.

(d) In lieu of referral or transfer, the midwife may manage the client in collaboration with an appropriate health care professional of this title.

§115.115. Labor and Delivery.

(a) Using reasonable skill and knowledge, the midwife shall evaluate the client when the midwife arrives for labor and delivery, by obtaining a history, performing a physical exam, and collecting laboratory specimens.

(b) The midwife shall monitor the client's progress in labor by monitoring vital signs, contractions, fetal heart tones, cervical dilation, effacement, station, presentation, membrane status, input/output and subjective status as indicated.

(c) The midwife shall assist in normal, spontaneous vaginal deliveries.

(d) The midwife shall not engage in the following:

(1) application of fundal pressure on abdomen or uterus during first or second stage of labor;

(2) administration of oxytocin, ergot, or prostaglandins prior to or during first or second stage of labor; or

(3) any other prohibited practice as delineated by the Act, §203.401 (relating to Prohibited Practices).

(e) If on initial or subsequent assessment during labor or delivery, one of the following conditions exists, the midwife shall initiate immediate emergency transfer and document that action in the midwifery record:

(1) prolapsed cord;

(2) chorio-amnionitis;

(3) uncontrolled hemorrhage;

(4) gestational hypertension/preeclampsia/eclampsia;

(5) severe abdominal pain inconsistent with normal labor;

(6) a non-reassuring fetal heart rate pattern;

(7) seizure;

(8) thick meconium unless the birth is imminent;

(9) visible genital lesions suspicious of herpes virus infection;

(10) evidence of maternal shock;

(11) preterm labor (less than 37 weeks);

(12) presentation(s) not compatible with spontaneous vaginal delivery;

(13) laceration(s) requiring repair beyond the scope of practice of the midwife;

(14) failure to progress in labor;

(15) retained placenta; or

(16) any other condition or symptom which could threaten the life of the mother or fetus, as assessed by a midwife exercising reasonable skill and knowledge.

§115.116. Postpartum Care.

(a) Using reasonable skill and knowledge, the midwife shall assess the mother during the immediate postpartum period by monitoring vital signs, uterine fundus, bleeding and subjective status for a minimum of two hours after mother's condition is stable as indicated.

(b) Using reasonable skill and knowledge, the midwife shall:

(1) collect, assess and document maternal care data throughout the postpartum period including history, physical exam, laboratory testing;

(2) develop and implement a plan of care;

(3) evaluate the client's condition on an ongoing basis and modify the plan of care as necessary; and

(4) provide health education/counseling.

(c) If on any postpartum assessment one of the following conditions exists, the midwife shall recommend referral to an appropriate health care professional and document that recommendation in the midwifery record:

- (1) infection requiring antimicrobial therapy;
- (2) bladder dysfunction;
- (3) major depression; or

(4) any other condition or symptom which could threaten the health of the mother, as assessed by a midwife exercising reasonable skill and knowledge.

(d) If on any postpartum assessment one of the following conditions exists, the midwife shall initiate immediate emergency transfer, initiate emergency care as indicated by the situation, continue care as needed, and document that action in the midwifery record:

- (1) uncontrolled hemorrhage;
- (2) maternal shock;
- (3) any hypertensive disorder, including preeclampsia/eclampsia;
- (4) signs of thrombophlebitis or pulmonary embolism; or
- (5) any other condition or symptom which could threaten the life of the mother, as assessed by a midwife exercising reasonable skill and knowledge.

§115.117. Newborn Care During the First Six Weeks After Birth.

(a) Prior to delivery, the midwife shall establish a plan with the client for continuing care of the newborn. This plan shall:

- (1) include referral or transfer to a health care professional who has current pediatric knowledge;
- (2) include a recommendation that the client pre-arrange the timing of the first newborn visit with the health care professional; and
- (3) be documented in the midwifery record.

(b) Using reasonable skill and knowledge, the midwife shall:

- (1) collect, assess and document newborn care data by monitoring the vital signs, performing a physical exam, and obtaining the laboratory tests necessary for the infant during the postpartum period;
- (2) provide appropriate education and counseling to the mother; and
- (3) observe the newborn for a minimum of two hours after he or she is stable with no signs of distress.

(c) If on any newborn assessment in the immediate postpartum period (first six hours of life), one of the following conditions exists, the midwife shall recommend referral and document that recommendation in the midwifery record:

- (1) birth injury;
- (2) gestational age assessment less than 36 weeks;
- (3) small for gestational age;
- (4) large for gestational age; or
- (5) any other abnormal newborn behavior or appearance which could adversely affect the newborn, as assessed by a midwife exercising reasonable skill and knowledge.

(d) If on any newborn assessment in the immediate postpartum period (first six hours of life), one of the following conditions exists, the midwife shall initiate immediate transfer to an appropriate health care professional, initiate emergency care as indicated by the situation, continue care as needed, and document that action in the midwifery record:

- (1) non-transient respiratory distress;
- (2) non-transient pallor or central cyanosis;
- (3) jaundice;
- (4) apgar at 5 minutes less than or equal to 6;
- (5) prolonged apnea;
- (6) hemorrhage;
- (7) signs of infection;
- (8) seizure;
- (9) major congenital anomaly not diagnosed prenatally;
- (10) unstable vital signs;
- (11) prolonged:
  - (A) lethargy;
  - (B) flaccidity; or
  - (C) irritability;
- (12) inability to suck;
- (13) persistent jitteriness;
- (14) hyperthermia;
- (15) hypothermia; or

(16) other abnormal newborn behavior or appearance which could threaten the life of the newborn, as assessed by a midwife exercising reasonable skill and knowledge.

(e) If on any newborn assessment after the immediate postpartum period, one of the following conditions exists, the midwife shall recommend referral to an appropriate health care professional and document that recommendation in the midwifery record:

- (1) abnormal laboratory test results;
- (2) minor congenital anomaly;
- (3) failure to thrive; or

(4) any other abnormal newborn behavior or appearance which could adversely affect the infant, as assessed by a midwife exercising reasonable skill and knowledge.

(f) If on any newborn assessment after the immediate postpartum period, one of the following conditions exists, the midwife shall initiate immediate transfer to an appropriate health care professional and document that action in the midwifery record:

- (1) respiratory distress;
- (2) pallor or central cyanosis;
- (3) pathological jaundice;
- (4) hemorrhage;
- (5) seizure;
- (6) inability to urinate or pass meconium within 24 hours of birth;

- (7) unstable vital signs;
- (8) lethargy;
- (9) flaccidity;
- (10) irritability;
- (11) inability to feed;
- (12) persistent jitteriness; or

(13) any other abnormal newborn behavior or appearance which could threaten the life of the newborn, as assessed by a midwife exercising reasonable skill and knowledge.

§115.118. Administration of Oxygen.

(a) Purpose. This section outlines procedures for administration of oxygen by midwives. Whether or not a midwife chooses to administer oxygen to the mother and/or newborn, the midwife remains responsible for assessing the client and/or newborn; recommending referral; and/or recommending transfer or transport of the mother and newborn.

(b) Under this section a midwife is not required to use oxygen.

(c) Provisions. This section establishes that:

(1) intrapartum oxygen may be administered to the mother for the following:

(A) fetal heart rate irregularities while assessing for consultation and/or possible transfer;

(B) cord prolapse prior to transport;

(C) signs or symptoms of maternal shock or hemorrhage prior to transport; or

(D) as indicated by American Heart Association Cardiopulmonary Resuscitation guidelines;

(2) postpartum oxygen may be administered while monitoring according to the Midwifery Practice Standards and Principles:

(A) to the newborn during the initial neonatal period at a rate concurrent with American Academy of Pediatrics Neonatal Resuscitation guidelines; or

(B) to the mother and/or newborn in other situations not listed above and deemed necessary according to generally accepted standards of midwifery practice to protect the health and well-being of the mother and/or newborn;

(3) indications for administration of oxygen shall be clearly documented in the client's chart.

(d) Midwives are authorized to purchase equipment and supplies listed in the American Heart Association Cardiopulmonary Resuscitation Guidelines and the American Academy of Pediatrics Neonatal Resuscitation Guidelines for the administration of oxygen.

§115.119. Eye Prophylaxis.

(a) Each midwife is responsible for administering or causing to be administered to every infant which she or he delivers the necessary eye prophylaxis to prevent ophthalmia neonatorum in accordance with the medications specified in Health and Safety Code, §81.091.

(b) A midwife must obtain a written exemption from treatment in accordance with Health and Safety Code, §81.009 from any parent who refuses to allow a midwife to administer or cause to be administered eye prophylaxis in accordance with Health and Safety Code, §81.091

(c) The administration and possession of prophylaxis by a midwife is not a violation of the provisions of the Health and Safety Code, Chapter 483, concerning dangerous drugs

§115.120. Newborn Screening.

(a) Each midwife who assists at the birth of a child is responsible for performing the newborn screening tests according to the Health and Safety Code, Chapters 33 and 34, and 25 TAC §§37.51 - 37.65, or making a referral in accordance with this subsection. If the midwife performs the tests, then she or he must have been appropriately trained. Each midwife must have one of the following documents on file with the department in order to be licensed.

(1) Midwife Training Certification Form for Newborn Screening Specimen Collection. Should the midwife choose to do the newborn screening she or he will obtain training to perform this test from an appropriate health care facility. Instruction will be based upon the procedure for newborn screening developed by the Department of State Health Service's Newborn Screening Program under authority of the Health and Safety Code, Chapter 33. At the completion of the instruction for newborn screening blood collection, the midwife will request that the form Midwife Training Certification Form for Newborn Screening Specimen Collection be signed by the designated representative of the health care facility, attesting to the fact that the midwife has complied with this requirement. This training, as part of the licensure requirements, is only necessary once unless there is a change in screening procedures.

(2) Newborn Screening Agreement for Newborn Babies of Midwife Clients. The midwife could also choose to refer the family to have the infant's screening done at an appropriate health care facility. In this case, the midwife must use the form Newborn Screening Agreement for Newborn Babies of Midwife Clients to attest to her responsibility for seeing that the screening is done and to designate a facility for such screening. The form must include a section where the facility representative signs, agreeing that the facility will do the screening.

(b) As long as the midwife has been approved to perform the newborn screening test, the act of collecting this specimen will not constitute "practicing medicine" as defined by the Medical Practice Act.

(c) As long as one is available, a physician or an appropriately trained professional acting under standing delegation order from a physician at an appropriate health care facility shall instruct midwives in the proper procedure (newborn screening collection procedure of the Department of State Health Services' Newborn Screening Program) for newborn screening blood specimen collection and submission. The physician, registered nurse, or any other person who instructs a midwife in the approved techniques for newborn screening on the orders of a physician is immune from liability arising out of the failure or refusal of a midwife to:

(1) collect and submit the blood specimen in an approved manner; or

(2) send the samples to the laboratories designated by the Department of State Health Services in a timely manner.

(d) Newborn Screening Test Objection Form. A midwife must obtain a completed and signed Newborn Screening Test Objection form from any parent who refuses to allow a midwife to perform the newborn screening tests.

§115.121. Informed Choice and Disclosure Statement.

The written informed choice and disclosure statement which has been approved by the department shall include:

(1) an informed choice statement containing:

(A) statistics of the midwife's experience as a midwife;

(B) the date of expiration of the midwife's license;

(C) the date of expiration of the midwife's adult and infant cardiopulmonary resuscitation and neonatal resuscitation certification;

(D) the midwife's compliance with continuing education requirements; and

(E) medical backup arrangements; and

(2) a disclosure statement, which includes the legal requirements of the midwife and prohibited acts as stated in the Act. The disclosure statement may not exceed 500 words and must be in Spanish and English; and must contain;

(3) information on where to file a complaint against a licensed midwife, including the name, mailing address and telephone number for the department.

§115.122. Obtain Complaint Information without Consent of Client.

The department shall obtain all relevant midwifery records and medical records necessary to conduct an investigation of a complaint without the necessity of consent of the midwife's client.

§115.123. Administrative Penalties and Sanctions.

If a person or entity violates any provision of Texas Occupations Code, Chapters 51 or 203, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 51 and 203 and any associated rules.

§115.125. Enforcement Authority.

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 203 and any associated rules may be used to enforce Texas Occupations Code, Chapters 51, 203 and this chapter.

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

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TRD-201505745

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: January 31, 2016

For further information, please call: (512) 463-8179



## CHAPTER 116. DIETITIANS

The Texas Department of Licensing and Regulation (Department) proposes new rules at 16 Texas Administrative Code (TAC) Chapter 116, Subchapter A, §§116.1 and §116.2; Subchapter B, §§116.10, 116.11, 116.12, 116.13, and 116.14; Subchapter C, §§116.20 and §116.21; Subchapter D, §116.30; Subchapter E, §§116.40, 116.41, 116.42, 116.43 and 116.44; Subchapter F, §§116.50, 116.51, 116.52 and 116.53; Subchapter G, §§116.60, 116.61, 116.62, 116.63, 116.64 and 116.65; Subchapter H, §116.70; Subchapter I, §§116.80, 116.81, 116.82 and 116.83; Subchapter J, §116.90 and §116.91; Subchapter K, §§116.100, 116.101, 116.103, 116.104 and 116.105; Subchapter L, §116.110; Subchapter M, §116.120; Subchapter N, §§116.130, 116.131 and 116.132; and Subchapter O,

§§116.140, 116.141 and 116.142, regarding the Dietitians program.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which, in part, transferred 13 occupational licensing programs in two phases from the Department of State Health Services (DSHS) to the Texas Commission of Licensing and Regulation (Commission) and the Department. Under Phase 1, the following seven programs are being transferred from DSHS to the Commission and the Department: (1) Midwives, Texas Occupations Code, Chapter 203; (2) Speech-Language Pathologists and Audiologists, Chapter 401; (3) Hearing Instrument Fitters and Dispensers, Chapter 402; (4) Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists, Chapter 403; (5) Athletic Trainers, Chapter 451; (6) Orthotists and Prosthetists, Chapter 605; and (7) Dietitians, Chapter 701. The statutory amendments transferring regulation of these seven Phase 1 programs from DSHS to the Commission and the Department took effect on September 1, 2015.

The Texas Legislature also enacted Senate Bill 219 (S.B. 219), 84th Legislature, Regular Session (2015), which, in part, amended the enabling acts of the health-related programs regulated by DSHS before those programs were transferred by S.B. 202. S.B. 219 was effective April 2, 2015.

The new rules are proposed to enable the Commission and the Department to regulate the seven Phase 1 programs listed above. The proposed new rules provide for the Department to perform the various functions, including licensing, compliance, and enforcement, necessary to regulate these transferred programs. At the time of adoption, the Commission will designate the effective date of the new rules. The effective date will coincide with the completion of the transfer of the programs to the Commission and Department. The Commission will provide sufficient notice to the regulated community in order for it to comply with the new rules.

The proposed new rules under 16 TAC Chapter 116 are necessary to implement S.B. 202 and to regulate the Dietitians program under the authority of the Commission and the Department. The rules also incorporate the changes made by S.B. 219 as applicable. These proposed new rules are separate from and are not to be confused with the DSHS rules located at 22 TAC Chapter 711, regarding the Dietitians program, which are still in effect.

The Department's Dietitians Advisory Board was scheduled to meet on November 12, 2015. Although the board lacked a quorum, the members present discussed a draft of these proposed rules with the Department before they were published in the *Texas Register* for public comment.

Proposed new Subchapter A provides the General Provisions for the proposed new rules.

Proposed new §116.1 provides the statutory authority for the Commission and Department to regulate dietitians.

Proposed new §116.2 creates the definitions to be used in the dietitians program.

Proposed new Subchapter B creates the Dietitians Advisory Board.

Proposed new §116.10 provides the composition and membership requirements of the advisory board.

Proposed new §116.11 details the duties of the advisory board.

Proposed new §116.12 sets the terms and vacancies process for advisory board members.

Proposed new §116.13 provides for a presiding officer of the advisory board.

Proposed new §116.14 provides details regarding advisory board meetings.

Proposed new Subchapter C establishes the education requirements for the dietitians profession.

Proposed new §116.20 details the degrees and coursework needed to apply for licensure.

Proposed new §116.21 details the transcripts the department will accept from those seeking licensure.

Proposed new Subchapter D establishes the experience requirements needed for the dietitians profession.

Proposed new §116.30 explains the requirements for preplanned professional experience programs and internships.

Proposed new Subchapter E establishes the examination requirements.

Proposed new §116.40 provides general provisions regarding license examinations.

Proposed new §116.41 creates license examination qualifications for those seeking licensure.

Proposed new §116.42 details the license examination process.

Proposed new §116.43 explains the process for examination failures.

Proposed new §116.44 details the requirements for the Texas Jurisprudence Examination.

Proposed new Subchapter F establishes the licensing and renewal requirements for licensed dietitians.

Proposed new §116.50 details the application and eligibility requirements for licensed dietitians.

Proposed new §116.51 provides the fitness requirements for licensed dietitian applicants.

Proposed new §116.52 explains the process of issuing licenses and identification cards for licensed dietitians.

Proposed new §116.53 details the license terms and the renewal requirements for licensed dietitians.

Proposed new Subchapter G establishes the licensing and renewal requirements for provisional licensed dietitians.

Proposed new §116.60 details the application and eligibility requirements for provisional licensed dietitians.

Proposed new §116.61 provides the fitness requirements for provisional licensed dietitian applicants.

Proposed new §116.62 explains the process of issuing licenses and identification cards for provisional licensed dietitians.

Proposed new §116.63 details the license terms and the renewal requirements for provisional licensed dietitians.

Proposed new §116.64 explains the process for a provisional licensed dietitian to upgrade to a licensed dietitian.

Proposed new §116.65 establishes supervision requirements for provisional licensed dietitians.

Proposed new Subchapter H establishes the licensing requirements for temporary licensed dietitians.

Proposed new §116.70 details the application and eligibility requirements for temporary licensed dietitians and explains the license term.

Proposed new Subchapter I establishes the continuing education requirements for the dietitians profession.

Proposed new §116.80 establishes the general requirements and hours of continuing education needed for license holders.

Proposed new §116.81 outlines the criteria for continuing education approved courses and credits.

Proposed new §116.82 explains the continuing education auditing process and the records that must be kept.

Proposed new §116.83 explains what happens when a license holder fails to complete the required continuing education.

Proposed new Subchapter J establishes the responsibilities of the Commission and Department.

Proposed new §116.90 provides that the Department will publish and maintain a registry of license holders.

Proposed new §116.91 requires the Commission to adopt rules necessary to implement the Dietitians program, including rules governing changes to the standards of practice rules.

Proposed new Subchapter K establishes the responsibilities of the licensee and the code of ethics.

Proposed new §116.100 requires all licensees to display the license certificate in a public manner.

Proposed new §116.101 requires all licensees to notify the Department of a name or address change.

Proposed new §116.103 details the information that all licensees must provide to clients and the public.

Proposed new §116.104 prohibits licensees from using unlawful, false, misleading or deceptive advertising and provides a list of such advertising.

Proposed new §116.105 creates a code of ethics for licensees.

Proposed new Subchapter L establishes fees for the Dietitians program.

Proposed new §116.110 details all fees associated with the Dietitians program as regulated by the Commission and the Department.

Proposed new Subchapter M establishes a subchapter to address complaints.

Proposed new §116.120 provides that the Commission will adopt rules regarding complaints involving standard of care.

Proposed new Subchapter N establishes enforcement provisions.

Proposed new §116.130 allows for administrative penalties and sanctions.

Proposed new §116.131 provides the authority to enforce Texas Occupations Code, Chapter 701 and this chapter.

Proposed new §116.132 requires a licensee to surrender his or her license to the Department on demand.

Proposed new Subchapter O includes specific information regarding the dietetic profession.

Proposed new §116.140 establishes the areas of expertise for the dietetic profession.

Proposed new §116.141 explains the scope of practice of a licensed dietitian to provide nutrition services in a licensed health facility and in a private practice setting.

Proposed new §116.142 explains the scope of practice and establishes continuing education requirements for a licensed dietitian who provides diabetes self-management training to clients.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed new rules are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed new rules. There is no estimated increase or decrease in revenue to the state as a result of enforcing or administering the proposed new rules. Historically, the funds used to administer the Dietitians program were appropriated to DSHS; now those same funds will be appropriated to the Department.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed new rules are in effect, the public benefit will include that the rules implement the statutory requirements under the authority of the Commission and the Department and provide details that are not found in the enabling acts. The rules also have been formatted and organized to assist the public, the regulated community, and the Department in easily finding specific rules. In addition, the new rules are streamlined so as not to duplicate provisions that are already located in the statutes and rules of the Commission and Department in the Texas Occupations Code and in 16 TAC Chapter 60, which apply to all programs regulated by the Commission and the Department.

There will be no anticipated economic effect on small and micro-businesses or to persons who are required to comply with the rules as proposed.

Since the agency has determined that the proposed new rules will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032; or electronically to [erule.comments@tdlr.texas.gov](mailto:erule.comments@tdlr.texas.gov). The deadline for comments is 30 days after publication in the *Texas Register*.

## SUBCHAPTER A. GENERAL PROVISIONS

### 16 TAC §116.1, §116.2

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

#### §116.1. Authority.

The sections in this chapter are promulgated under the authority of the Texas Occupations Code, Chapters 51 and 701.

#### §116.2. Definitions.

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

(1) Academy--The Academy of Nutrition and Dietetics, which is the national professional association of dietitians.

(2) Accredited facilities--Facilities accredited by the Joint Commission on Accreditation of Health Care Organizations.

(3) Act--The Licensed Dietitian Act, Texas Occupations Code, Chapter 701.

(4) Advisory Board--Dietitians Advisory Board.

(5) Certified facilities, agencies, or organizations--Facilities, agencies, or organizations certified by federal agencies.

(6) Commission--The Texas Commission of Licensing and Regulation.

(7) Commission on Dietetic Registration (CDR)--The Commission on Dietetic Registration, the credentialing agency for the Academy of Nutrition and Dietetics, is the agency that evaluates credentials, administers proficiency examinations, and issues certificates of registration to qualifying dietitians, and is a member of the National Commission on Health Certifying Agencies. The Commission on Dietetic Registration also approves continuing education activities.

(8) CPE--Continuing Professional Experience.

(9) Department--The Texas Department of Licensing and Regulation.

(10) Dietitian--A person licensed under the Act.

(11) Dietetics--The professional discipline of applying and integrating scientific principles of food, nutrition, biochemistry, physiology, management, and behavioral and social sciences under different health, social, cultural, physical, psychological, and economic conditions to the proper nourishment, care, and education of individuals or groups throughout the life cycle to achieve and maintain the health of people. The term includes, without limitation, the development, management, and provision of nutrition services.

(12) Executive director--The executive director of the department.

(13) Licensed dietitian (LD)--A person licensed under the Act.

(14) Licensed facilities, agencies, or organizations--Facilities, agencies, or organizations licensed by state agencies.

(15) Licensee--A person who holds a current license as a dietitian or provisional licensed dietitian issued under the Act.

(16) Nutrition assessment--The evaluation of the nutritional needs of individuals and groups based on appropriate biochemical, anthropometric, physical, and dietary data to determine nutrient needs and recommend appropriate nutritional intake including enteral and parenteral nutrition. Nutrition assessment is an important component of medical nutrition therapy.

(17) Nutrition counseling--Advising and assisting individuals or groups 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. Nutrition counseling is an important component of medical nutrition therapy.

(18) Nutrition services--This term means:

(A) assessing the nutritional needs of individuals and groups and determining resources and constraints in the practice;

(B) establishing priorities, goals, and objectives that meet nutritional needs and are consistent with available resources and constraints;

(C) providing nutrition counseling in health and disease;

(D) developing, implementing, and managing nutrition care systems; or

(E) evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition care services.

(19) Provisional licensed dietitian (PLD)--A person provisionally licensed under the Act.

(20) Registered dietitian (RD)--A person who is currently registered as a dietitian by the Commission on Dietetic Registration.

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

Filed with the Office of the Secretary of State on December 18, 2015.

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William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-8179



## SUBCHAPTER B. DIETITIANS ADVISORY BOARD

### 16 TAC §§116.10 - 116.14

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

#### §116.10. Membership.

The Dietitians Advisory Board consists of nine members appointed by the presiding officer of the commission with the approval of the commission as follows:

(1) six licensed dietitian members, each of whom has been licensed under the Act for not less than three years before the member's date of appointment; and

(2) three members who represent the public.

#### §116.11. Duties.

The advisory board shall provide advice and recommendations to the department on technical matters relevant to the administration of the Act and this chapter.

#### §116.12. Terms; Vacancies.

(a) Members of the advisory board serve staggered six-year terms. The terms of three members begin on September 1 of each odd-numbered year.

(b) If a vacancy occurs during a member's term, the presiding officer of the commission, with the commission's approval, shall appoint a replacement who meets the qualifications for the vacant position to serve for the remainder of the term.

(c) A member of the advisory board may be removed from the advisory board pursuant to Texas Occupations Code §51.209, Advisory Boards; Removal of Advisory Board Member.

#### §116.13. Officers.

(a) The presiding officer of the commission shall designate a member of the advisory board as the presiding officer of the advisory board to serve for a term of one year.

(b) The presiding officer of the advisory board shall preside at all board meetings at which he or she is in attendance. The presiding officer of the advisory board may vote on any matter before the advisory board.

#### §116.14. Meetings.

(a) The advisory board shall meet at the call of the presiding officer of the commission or the executive director.

(b) Meetings shall be announced and conducted under the provisions of the Open Meetings Act, Texas Government Code, Chapter 551.

(c) A quorum of the advisory board is necessary to conduct official business. A quorum is five members.

(d) Advisory board action shall require a majority vote of those members present and voting.

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. EDUCATION REQUIREMENTS

### 16 TAC §§116.20, §116.21

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

#### §116.20. Degrees and Course Work.

(a) The department shall accept as meeting licensure requirements baccalaureate and post-baccalaureate degrees and course work received from United States colleges or universities which held accreditation, at the time the degree was conferred or the course work was taken, from accepted regional educational accrediting associations as reported by the American Association of Collegiate Registrars and Admissions Officers.

(b) Degrees and course work received at foreign colleges and universities shall be acceptable only if such course work could be counted as transfer credit from accredited colleges or universities as reported by the American Association of Collegiate Registrars and Admissions Officers.

(c) Persons applying for licensure or provisional licensure must possess a baccalaureate or post-baccalaureate degree with a major course of study in human nutrition, food and nutrition, nutrition education dietetics, or food systems management.

(d) In place of the requirements in subsection (c), a person may have an equivalent major course of study defined as either:

(1) a baccalaureate or post-baccalaureate degree or course work including a minimum of thirty (30) semester hours in the following areas:

(A) twelve (12) semester hours must be specifically designed to train a person to apply and integrate scientific principles of human nutrition under different health, social, cultural, physical, psychological, and economic conditions to the proper nourishment, care, and education of individuals or groups throughout the life cycle;

(B) six (6) semester hours must be from human nutrition, food and nutrition, dietetics, or food systems management; and

(C) twelve (12) semester hours must be from four of the following three-hour courses:

(i) upper-division human nutrition related to disease;

(ii) upper-division food service systems management;

(iii) bio- or physiological chemistry, or advanced normal human nutrition;

(iv) food science; or

(v) upper-division nutrition education; or

(2) a baccalaureate or post-baccalaureate degree, including a major course of study meeting the minimum academic requirements to qualify for examination by the Commission on Dietetic Registration.

(e) The relevance to licensure of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other means acceptable to the department.

(f) In the event that an academic deficiency is present, an applicant may have one year in which to complete the additional course work acceptable to the department before the application will be voided and the applicant will be required to reapply and to pay additional application fees.

(g) The semester hours may be part of a degree plan or in addition to a degree.

§116.21. Transcripts.

(a) Applicants must submit official transcripts of all relevant academic credit.

(b) The department will not accept a course for which an applicant's transcript indicates was not completed with a passing grade for credit.

(c) A course completed more than once within a five-year period will not be counted more than once to meet the academic requirements as specified in subsection (d).

(d) In evaluating transcripts, the department shall consider a quarter hour of academic credit as two-thirds of a semester hour.

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. EXPERIENCE REQUIREMENTS

### 16 TAC §116.30

The new rule is proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

#### §116.30. Preplanned Professional Experience Programs and Internships.

(a) Applicants for examination must have satisfactorily completed an approved preplanned professional experience program or internship in dietetics practice of not less than 900 hours under the supervision of a licensed dietitian or a registered dietitian.

(b) The preplanned professional experience program or internship must be approved by the department as prescribed under subsections (c) and (d).

(c) A preplanned professional experience program shall be:

(1) a preplanned professional experience program approved or recognized by the Commission on Dietetic Registration; or

(2) an individualized program, beyond the undergraduate level, that is planned and supervised by at least one licensed or registered dietitian, and is completed within three years after commencement of the program.

(d) An internship shall:

(1) be a dietetic internship, a coordinated undergraduate program in dietetics, or a professional experience program in dietetics; and

(2) have a signed statement submitted from the director of the program with the application.

(e) A person who participates in a department-approved preplanned professional experience program or internship must:

- (1) be provisionally licensed under this chapter; and
- (2) have a supervision agreement under this chapter.

(f) Documentation of the preplanned professional experience program or internship must be provided to the department on a department-approved form or in a manner prescribed by the department.

(g) Applicants who are registered in active status by the Commission on Dietetic Registration at the time of making application shall submit a photocopy of the registration card issued by the Commission on Dietetic Registration or submit the registration card number. The applicant's internship or preplanned professional experience program accepted for registration by the Commission on Dietetic Registration shall be acceptable for licensure by the department. No further proof of completion of an internship or preplanned professional experience program shall be required from the applicant.

(h) Provisional licensed dietitians shall be deemed to have met the academic requirements for admission into department approved preplanned professional experience and internship programs.

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. EXAMINATION REQUIREMENTS

### 16 TAC §§116.40 - 116.44

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

#### §116.40. License Examination Requirements--General.

(a) Except as provided by subsection (c), an applicant must pass a license examination to qualify for a dietitian license under this chapter.

(b) Pursuant to Texas Occupations Code §701.253, the examination required for licensure as a Licensed Dietitian is the examination given by the Commission on Dietetic Registration.

(c) The department shall waive the examination requirement for an applicant who, at the time of application, is a dietitian registered by the Commission on Dietetic Registration and whose registration is in active status.

#### §116.41. License Examination Qualifications.

(a) An applicant must meet the education and experience requirements under Texas Occupations Code §701.254 in order to qualify to take the licensing examination.

(b) Pursuant to Texas Occupations Code §701.255, the department will review an applicant's application and other submitted documentation as prescribed under §116.50 to determine whether the applicant qualifies to take the examination.

(c) The department shall notify the applicant in writing of the department's determination of whether the applicant has qualified to take the examination. If the applicant has not qualified, the notice shall state the reasons for the applicant's failure to qualify.

(d) Upon notice of qualification, the applicant may take the examination given by the Commission on Dietetic Registration.

#### §116.42. License Examination Process.

(a) An applicant who wishes to take the examination is responsible for completing the examination registration form and submitting it with the appropriate fee to the Commission on Dietetic Registration (CDR) or its designee.

(b) Examinations administered by the CDR or its designee will be held in locations to be announced by the CDR or its designee.

(c) Examinations administered by the CDR or its designee shall be graded by the CDR or its designee. The passing grade is determined by the CDR.

(d) The CDR or its designee shall notify the applicant of the examination results. Applicants must provide documentation showing examination passage to the department.

#### §116.43. Examination Failures.

Pursuant to Texas Occupations Code §701.257, an applicant who fails the licensing examination three times must provide evidence to the department, in a manner prescribed by the department, that the applicant has successfully completed credit hours in the applicant's areas of weakness before the applicant may apply for reexamination.

#### §116.44. Texas Jurisprudence Examination.

(a) An applicant for licensure as a licensed dietitian or provisional licensed dietitian shall pass the Texas Jurisprudence Examination prescribed by the department.

(b) The Texas Jurisprudence Examination is separate from the license examination under §§116.40 - 116.43. The Texas Jurisprudence Examination tests the applicant's knowledge of the statute, rules and any other applicable law affecting the applicant's dietetics practice.

(c) The applicant must register online and pay the Texas Jurisprudence Examination fee to the third-party provider. The applicant does not need to qualify through the department to take the Texas Jurisprudence Examination.

(d) The applicant must successfully complete the Texas Jurisprudence Examination and submit a certificate of completion prior to receiving a license as a licensed dietitian or a provisional licensed dietitian.

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. LICENSED DIETITIANS**

**16 TAC §§116.50 - 116.53**

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

§116.50. Licensed Dietitians--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official department-approved forms.

(b) An applicant must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) the internship or preplanned professional experience program documentation form;

(3) official transcript(s) of all relevant college work showing successful completion of education requirements under §701.254(1);

(4) copy of registration issued by Commission of Dietetic Registration, if applicable;

(5) the form providing information regarding other state licenses, certificates or registrations that an applicant holds or held, if applicable;

(6) proof of successfully completing the Texas Jurisprudence Examination; and

(7) the fee required under §116.110.

(c) The applicant must successfully pass a criminal history background check.

(d) The applicant must meet the fitness requirements under §116.51.

(e) The department will notify the applicant pursuant to §116.41, regarding whether the applicant qualifies to take the license examination.

(f) Pursuant to Texas Occupations Code §701.151, the commission or the department shall deny the application for violation of the Act, this chapter, or a provision of the Code of Ethics in §116.105.

§116.51. Licensed Dietitians--Fitness of Applicants for Licensure.

(a) Pursuant to Texas Occupations Code §701.151(b)(3), this section applies to initial applications, renewal applications, and applications for reciprocal licenses.

(b) In determining the fitness of an applicant for licensure, the department shall consider the following:

(1) the skills and abilities of an applicant to provide adequate nutrition services; and

(2) the ethical behavior of an applicant in relationships with other professionals and clients.

(c) In determining the fitness of an applicant for licensure the department may request and consider any of the following:

(1) evaluations of supervisors or instructors;

(2) statements from persons submitting references for the applicant;

(3) evaluations of employers and/or professional associations;

(4) transcripts or findings from official court, hearing, or investigative proceedings; and

(5) any other information which the commission or department considers pertinent to determining the fitness of an applicant.

(d) The substantiation of any of the following items related to an applicant may be, as the department determines, the basis for the denial of licensure of the applicant:

(1) lack of the necessary skills and abilities to provide adequate nutrition services;

(2) misrepresentation of professional qualifications or affiliations with associations;

(3) misrepresentation of nutrition services, dietary supplements and the efficacy of nutrition services to clients;

(4) use of misleading or false advertising;

(5) violation of any provision of any federal or state statute relating to confidentiality of client communication and/or records;

(6) abuse of alcohol or drugs or the use of illegal drugs of any kind in any manner which detrimentally affects the provision of nutrition services;

(7) any misrepresentation in application or other materials submitted to the department; and

(8) the violation of any commission rule in effect at the time of application which is applicable to an unlicensed person.

§116.52. Licensed Dietitians--Issuing Licenses and Identification Cards.

(a) The department will send each applicant, who meets the requirements of the Act and this chapter, a license certificate and identification card containing the licensee's name, license number, and expiration date.

(b) Pursuant to Texas Occupations Code §701.351(b), any certificate or identification card issued by the department remains the property of the department and must be surrendered to the department on demand.

(c) The department may replace a lost, damaged, or destroyed license certificate or identification card upon a written request from the licensee and payment of the duplicate/replacement license fee under §116.110.

§116.53. Licensed Dietitians--License Term; Renewals.

(a) A license held by a licensed dietitian is valid for two years after the date of issuance and may be renewed biennially.

(b) Each licensee is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification prior to the expiration date of the license shall not excuse failure to file for renewal or late renewal.

(c) To renew a license, a licensed dietitian must:

(1) submit a completed renewal application on a department-approved form;

(2) submit proof of successfully completing the Texas Jurisprudence Examination;

(3) successfully pass a criminal history background check;

(4) meet the fitness requirements under §116.51;

(5) complete twelve (12) hours of continuing education as required under §116.80;

(6) comply with the continuing education audit process described under §116.82, as applicable; and

(7) submit the fee required under §116.110.

(d) The commission or department shall renew the license of the licensee who has met all requirements for renewal, except as provided in the following subsections.

(e) Pursuant to Texas Occupations Code §701.151, the commission or department shall not renew the license of the licensee who is in violation of the Act, this chapter, or a provision of the Code of Ethics under §116.105 at the time of application for renewal.

(f) Pursuant to Texas Occupations Code §701.304, the commission or department may refuse to renew the license of a person who fails to pay an administrative penalty imposed under the Act unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

(g) A person whose license has expired may late renew the license in accordance with §60.31 and §60.83.

(h) A person whose license has expired may not use the title or represent or imply that he or she has the title of "licensed dietitian" or use the letters "LD", and may not use any facsimile of those titles in any manner.

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 G. PROVISIONAL LICENSED DIETITIANS

16 TAC §§116.60 - 116.65

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

§116.60. Provisional Licensed Dietitians--Application and Eligibility Requirements.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official department-approved forms.

(b) An applicant must submit the following required documentation:

(1) a completed application on a department-approved form;

(2) official transcript(s) of all relevant college work showing successful completion of education requirements under §701.254(1);

(3) designation of the licensed dietitian that will supervise the provisional licensed dietitian;

(4) a signed and completed supervision agreement;

(5) proof of successfully completing the Texas Jurisprudence Examination; and

(6) the fee required under §116.110.

(c) The applicant must successfully pass a criminal history background check.

(d) The applicant must meet the fitness requirements under §116.61.

(e) Pursuant to Texas Occupations Code §701.151, the department shall deny the application for violation of the Act, this chapter, or a provision of the Code of Ethics in §116.105.

§116.61. Provisional Licensed Dietitians--Fitness of Applicants for Licensure.

(a) Pursuant to Texas Occupations Code §701.151(b)(3), this section applies to initial applications, renewal applications, and applications for reciprocal licenses.

(b) In determining the fitness of an applicant for licensure, the department shall consider the following:

(1) the skills and abilities of an applicant to provide adequate nutrition services; and

(2) the ethical behavior of an applicant in relationships with other professionals and clients.

(c) In determining the fitness of applicants for licensure the department may request and consider any of the following:

(1) evaluations of supervisors or instructors;

(2) statements from persons submitting references for the applicant;

(3) evaluations of employers and/or professional associations;

(4) transcripts or findings from official court, hearing, or investigative proceedings; and

(5) any other information which the commission or department considers pertinent to determining the fitness of an applicant.

(d) The substantiation of any of the following items related to an applicant may be, as the department determines, the basis for the denial of licensure of the applicant:

(1) lack of the necessary skills and abilities to provide adequate nutrition services;

(2) misrepresentation of professional qualifications or affiliations with associations;

(3) misrepresentation of nutrition services, dietary supplements and the efficacy of nutrition services to clients;

(4) use of misleading or false advertising;

(5) violation of any provision of any federal or state statute relating to confidentiality of client communication and/or records;

(6) abuse of alcohol or drugs or the use of illegal drugs of any kind in any manner which detrimentally affects the provision of nutrition services;

(7) any misrepresentation in application or other materials submitted to the department; and

(8) the violation of any commission rule in effect at the time of application which is applicable to an unlicensed person.

§116.62. Provisional Licensed Dietitians--Issuing Licenses and Identification Cards.

(a) The department will send each applicant, who meets the requirements of the Act and this chapter, a license certificate and identification card containing the licensee's name, license number, and expiration date.

(b) Pursuant to Texas Occupations Code §701.351(b), any certificate or identification card issued by the department remains the property of the department and must be surrendered to the department on demand.

(c) The department may replace a lost, damaged, or destroyed license certificate or identification card upon a written request from the licensee and payment of the duplicate/replacement license fee under §116.110.

§116.63. Provisional Licensed Dietitians--License Term; Renewals.

(a) A provisional license is valid for one year and may be renewed annually. A provisional license may only be renewed twice.

(b) Each licensee is responsible for renewing the license before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification prior to the expiration date of the license shall not excuse failure to file for renewal or late renewal.

(c) To renew a license, a provisional licensed dietitian must:

(1) submit a completed renewal application on a department-approved form;

(2) submit a supervision agreement that is signed by the licensed dietitian and that indicates whether the supervisor and the provisional licensed dietitian have complied with §116.65;

(3) submit proof of successfully completing the Texas Jurisprudence Examination;

(4) successfully pass a criminal history background check;

(5) meet the fitness requirements under §116.61;

(6) complete six (6) hours of continuing education as required under §116.80;

(7) comply with the continuing education audit process described under §116.82, as applicable; and

(8) submit the fee required under §116.110.

(d) The commission or department shall renew the license of the licensee who has met all requirements for renewal, except as provided in the following subsections.

(e) Pursuant to Texas Occupations Code §701.151, the commission or department shall not renew the license of the licensee who is in violation of the Act, this chapter, or a provision of the Code of Ethics under §116.105 at the time of application for renewal.

(f) Pursuant to Texas Occupations Code §701.304, the commission or department may refuse to renew the license of a person who fails to pay an administrative penalty imposed under the Act unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

(g) A person whose license has expired may late renew the license in accordance with the procedures set out under §60.31 and §60.83 of this title.

(h) A person whose license has expired may not use the title or represent or imply that he or she has the title of "provisional licensed dietitian" or use the letters "PLD", and may not use any facsimile of those titles in any manner.

§116.64. Provisional Licensed Dietitians--Upgrading to Licensed Dietitian.

(a) The purpose of this section is to set out the procedure to upgrade from a provisional licensed dietitian to a licensed dietitian.

(b) The provisional licensed dietitian who has completed a department-approved preplanned professional experience program or internship in accordance with §116.30, must submit to the department a letter from the supervisor indicating the date the provisional licensed dietitian completed the program or internship.

(c) A provisional licensed dietitian who becomes registered by the Commission on Dietetic Registration must submit proof of current registration status.

(d) A provisional licensed dietitian must submit:

(1) a written request to upgrade on a department-approved form; and

(2) pay the required fee under §116.110 to upgrade to a licensed dietitian.

(e) The requirements of supervision under §116.65, shall continue until the provisional licensed dietitian becomes a licensed dietitian.

§116.65. Provisional Licensed Dietitians--Supervision.

(a) Supervision. The purpose of this section is to set out the nature and the scope of the supervision provided for a provisional licensed dietitian (PLD). The supervisor shall be a licensed dietitian.

(b) Supervision Agreement. The PLD must submit an agreement on a department-approved form to the department prior to the date that supervision is to begin. The agreement shall include:

(1) the name and signature of the supervisor and the name and signature of the PLD;

(2) the license number of the supervisor and the license number of the PLD if applicable;

(3) the primary location and address where nutrition services are to be rendered;

(4) a description of nutrition services to be rendered by the PLD;

(5) a statement that the supervisor and the PLD have read and agree to adhere to the requirements of the Act and this chapter; and

(6) the date that the supervisor and the PLD signed the agreement.

(c) Agreement Termination. The supervisor must submit a written notification of termination of supervision to the department and the PLD within fourteen (14) days of when supervision has ceased. The PLD shall make a good faith effort to ensure that the supervisor submits the appropriate notification. The notification of termination of supervision shall include:

(1) the name, license number, and signature of the supervisor and the name and license number of the PLD;

(2) a statement that supervision has terminated;

(3) the reason for termination;

(4) the date of termination of supervision; and

(5) a statement indicating whether the supervisor and the PLD have complied with the requirements of the Act and this chapter.

(d) Changes. Any change in the supervision agreement shall require submission of a new agreement.

(e) Requirements of supervision.

(1) The supervisor must have adequate training, knowledge, and skill to render competently any nutrition services that the PLD undertakes. The supervisor shall have discretion to refer the PLD for specific supervision from another licensed dietitian.

(2) The supervisor is responsible for determining the adequacy of the PLD's ability to perform the nutrition services.

(3) The supervisor may not supervise more than three (3) PLDs concurrently unless department approval is provided in advance.

(4) The PLD must clearly state the supervised status to patients, clients, and other interested parties and must provide the name, address, and telephone number of the supervisor.

(5) The supervisor may not be employed by the PLD, may not lease or rent space from the PLD, and must avoid any dual relationship with the PLD which could impair the supervisor's professional judgment.

(6) The supervisor must provide each PLD with no less than one hour of regularly scheduled one-to-one, face-to-face meetings weekly, regardless of the number of hours employed per week, or no less than four hours monthly. Group meetings are not a substitute for one-to-one meetings. A written record of the scheduled meetings must be maintained by the supervisor and include a summary of the PLD's work activities. The record shall be provided to the department on request.

(7) The supervisor must be available for discussion of any problems encountered by the PLD at reasonable times in addition to the scheduled meetings.

(8) The supervisor will provide an alternate licensed dietitian to provide supervision for the PLD in circumstances when the supervisor is not available for more than four continuous weeks.

(f) Payment. A PLD may not pay for supervision.

(g) Required supervisor. A PLD must have a supervising licensed dietitian at all times whether or not the PLD is actively employed.

(h) Notwithstanding the supervision provisions in this section, the department may establish procedures, processes, and mechanisms for the monitoring and reporting of the supervision requirements.

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## SUBCHAPTER H. TEMPORARY LICENSED DIETITIANS

### 16 TAC §116.70

The new rule is proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

*§116.70. Temporary Licensed Dietitians--Application and Eligibility Requirements; License Term.*

(a) This section sets out the application procedures for a temporary license, which may be issued to a person licensed in good standing as a dietitian in another state, territory, or jurisdiction of the United States that has licensing requirements that are substantially equivalent to the requirements of the Act and this chapter.

(b) An applicant for a temporary license shall submit:

(1) a completed application on a department-approved form;

(2) a current copy of the law and rules of the other state, District of Columbia, or territory of the United States governing its licensing and regulation of dietitians;

(3) verification acceptable to the department that the applicant has passed the Commission of Dietetic Registration's examination or an examination offered by another state, the District of Columbia, or a territory of the United States for licensure as a dietitian;

(4) verification that the licensee is or will be supervised by a licensed dietitian in the same manner as set out in §116.65;

(5) a copy of the applicant's dietitian's license or certificate in the other state, District of Columbia, or territory of the United States and the name, address and telephone number of the licensing or certifying agency;

(6) a letter of good standing from the licensing or certifying agency in the other state, District of Columbia, or territory of the United States; and

(7) the fee required under §116.110.

(c) A temporary license is valid for 180 days from the date of issue, or until the date the department approves or denies the temporary licensee's application for a dietitian license, whichever is earlier. The department may extend the 180-day deadline to receive pending examination results.

(d) A temporary license may not be renewed. A person whose temporary license has expired is not eligible to receive another temporary license.

(e) The department shall issue a dietitian license to the holder of a temporary license after the temporary licensee meets all of the requirements for obtaining a dietitian license as set out in Subchapter F, Licensed Dietitians.

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## SUBCHAPTER I. CONTINUING EDUCATION

### 16 TAC §§116.80 - 116.83

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

#### §116.80. Continuing Education--General Requirements and Hours.

(a) Licensed dietitians and provisional licensed dietitians are required to take continuing education.

(b) A licensed dietitian must complete a minimum of twelve (12) continuing education hours during each two-year licensing period.

(c) A provisional licensed dietitian must complete a minimum of six (6) continuing education hours during each one-year licensing period.

(d) The hours must have been completed prior to the date of expiration of the license.

#### §116.81. Continuing Education--Approved Courses and Credits.

(a) The department has determined that to meet the continuing education requirements under the Act and this chapter a licensee must take the courses and hours offered or approved by the Commission on Dietetic Registration or its agents or a regionally accredited college or university.

(b) Continuing education undertaken by a licensee for renewal shall be acceptable if the experience falls in one or more of the following categories:

(1) academic courses related to dietetics;

(2) clinical courses related to dietetics;

(3) in-service educational programs, training programs, institutes, seminars, workshops and conferences in dietetics;

(4) instructing or presenting continuing education programs or activities that were offered or approved by the Commission on Dietetic Registration or its agents. Multiple presentations of the same programs only count once;

(5) acceptance and participation in poster sessions offered by a nationally recognized professional organization in the dietetics field or its state equivalent organization. Participation will be credited one hour for six (6) poster sessions with a maximum of two clock hours for twelve (12) poster sessions;

(6) books or articles published by the licensee in relevant professional books and referred journals. A minimum of three (3) continuing education hours will be credited for the publication; or

(7) self-study of professional materials that include self-assessment examinations. Six (6) hours maximum will be credited for self-study during the two-year licensure period.

(c) Activities unacceptable as continuing education for which the department may not grant continuing education credit are:

(1) education incidental to the regular professional activities of a licensee such as learning occurring from experience or research;

(2) professional organization activity such as serving on committees or councils or as an officer;

(3) any continuing education activity completed before or after the period of time described in subsection (a)(1);

(4) activities described in subsection (b), which have been completed more than once during the continuing education period;

(5) performance of duties that are routine job duties or requirements; or

(6) participation in conference exhibits.

(d) Continuing education experiences shall be credited as follows.

(1) Completion of course work at or through an accredited college or university shall be credited for each semester hour on the basis of two clock hours of credit for each semester hour successfully completed for credit or audit.

(2) An activity which meets the criteria of subsection (b)(2) or (3) shall be credited on a one-for-one basis with CPE as approved by the Academy.

(e) The Texas Jurisprudence Examination shall be required as follows:

(1) The licensee must successfully complete the Texas Jurisprudence Examination for renewal.

(2) Proof of successfully completing the examination must be retained by the licensee as required in §116.82.

(3) One hour of continuing education credit will be granted for successful completion of the Texas Jurisprudence Examination.

§116.82. Continuing Education--Records and Audits.

(a) The department shall employ an audit system for continuing education reporting. The license holder shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal unless the license holder has been selected for audit.

(b) The audit process shall be as follows:

(1) The department shall select for audit a random sample of license holders for each renewal month. License holders will be notified of the continuing education audit when they receive their renewal documentation.

(2) If selected for an audit, the licensee shall submit copies of certificates, transcripts or other documentation satisfactory to the department, verifying the licensee's attendance, participation and completion of the continuing education. All documentation must be provided at the time of renewal.

(3) Failure to timely furnish this information or providing false information during the audit process or the renewal process are grounds for disciplinary action against the license holder.

(4) A licensee who is selected for continuing education audit may renew through the online renewal process. However, the license will not be considered renewed until required continuing education documents are received, accepted and approved by the department.

(5) Licenses will not be renewed until continuing education requirements have been met.

§116.83. Continuing Education--Failure to Complete.

(a) A person who fails to complete continuing education requirements for renewal holds an expired license and may not use the titles "licensed dietitian" or "provisional licensed dietitian."

(b) A person may renew late after all the continuing education requirements have been met.

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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William H. Kuntz, Jr.  
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**SUBCHAPTER J. RESPONSIBILITIES OF THE COMMISSION AND THE DEPARTMENT**

**16 TAC §116.90, §116.91**

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

§116.90. Registry.

(a) The department shall publish a registry of current license holders that includes the name, mailing address, and telephone number of current licensees.

(b) The registry will be available on the department's website.

§116.91. Rules.

(a) Pursuant to the authority under Texas Occupations Code §51.203, the commission shall adopt rules necessary to implement the Dietitians program. Pursuant to 16 Texas Administrative Code (TAC) §60.22, the department is authorized to propose rules.

(b) Pursuant to §51.2031, the department will not propose changes to standards of practice rules without being proposed by the advisory board.

(c) The commission will adopt rules governing changes to the standards of practice rules pursuant to §51.2031.

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 K. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS**

**16 TAC §§116.100, 116.101, 116.103 - 116.105**

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

§116.100. Display of License.

(a) This section applies to licensed dietitians and provisional licensed dietitians.

(b) The license certificate must be displayed in an appropriate and public manner as follows.

(1) The license certificate shall be displayed in the primary office or place of employment of the licensee.

(2) In the absence of a primary office or place of employment, or when the licensee is employed at multiple locations, the licensee shall carry a current identification card.

(c) Neither the licensee nor anyone else shall display a photocopy of a license certificate or carry a photocopy of an identifica-

tion card in lieu of the original document. A file copy shall be clearly marked as a copy across the face of the document.

(d) Neither the licensee nor anyone else shall make any alteration on a license certificate or identification card.

(e) Pursuant to Texas Occupations Code §701.351(b), any certificate or identification card issued by the department remains the property of the department and must be surrendered to the department on demand.

§116.101. Changes of Name or Address.

(a) This section applies to licensed dietitians and provisional licensed dietitians.

(b) The licensee shall notify the department of changes in name or mailing address within thirty (30) days of such change(s) on a department-approved form or using a department-approved method.

(c) Notification of name changes must be mailed or faxed to the department and shall include a copy of a marriage certificate, court decree evidencing such change, or a social security card reflecting the new name. The licensee shall submit the duplicate/replacement fee required under §116.110.

§116.103. Disclosure.

(a) A licensee shall notify each client of the name, mailing address, telephone number, and website address of the department for the purpose of directing complaints to the department by providing notification:

(1) on each written contract for services of a licensee;

(2) on a sign prominently displayed in the primary place of business of each licensee; or

(3) in a bill for service provided by a licensee to a client or third party.

(b) A provisional licensed dietitian must include the name and telephone number of his or her supervisor in all advertising and announcements of services including business cards and applications for employment.

§116.104. Unlawful, False, Misleading, or Deceptive Advertising.

(a) A licensee shall use factual information to inform the public and colleagues of his/her services. A licensee shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification.

(b) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(4) contains a testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(6) advertises or represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductibles or copayments are required;

(7) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;

(8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(9) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(c) As used in this section, a "health care professional" includes a licensed dietitian, provisional licensed dietitian, temporary licensed dietitian, or any other person licensed, certified, or registered by the state in a health-related profession.

§116.105. Code of Ethics.

(a) Professional representation and responsibilities.

(1) A licensee shall conduct himself/herself with honesty, integrity and fairness.

(2) A licensee shall not misrepresent any professional qualifications or credentials. A licensee shall not make any false or misleading claims about the efficacy of any nutrition services or dietary supplements.

(3) A licensee shall not permit the use of his/her name for the purpose of certifying that nutrition services have been rendered unless that licensee has provided or supervised the provision of those services.

(4) A licensee shall not promote or endorse products in a manner that is false or misleading.

(5) A licensee shall disclose to a client, a person supervised by the licensee, or an associate any personal gain or profit from any item, procedure, or service used by the licensee with the client, supervisee, or associate.

(6) A licensee shall maintain knowledge and skills required for professional competence. A licensee shall provide nutrition services based on scientific principles and current information. A licensee shall present substantiated information and interpret controversial information without bias.

(7) A licensee shall not abuse alcohol or drugs in any manner which detrimentally affects the provision of nutrition services.

(8) A licensee shall comply with the provisions of the Texas Controlled Substances Act, the Health and Safety Code, Chapter 481 and Chapter 483, relating to dangerous drugs; and any rules of the department or the Texas State Board of Pharmacy implementing those chapters.

(9) A licensee shall have the responsibility of reporting alleged misrepresentations or violations of commission rules to the department.

(10) A licensee shall comply with any order relating to the licensee which is issued by the commission or the executive director.

(11) A licensee shall not aid or abet the practice or misrepresentation of an unlicensed person when that person is required to have a license under the Act.

(12) A licensed dietitian shall supervise a provisional licensed dietitian in accordance with §116.65.

(13) A licensee shall not make any false, misleading, or deceptive claims in any advertisement, announcement, or presentation

relating to the services of the licensee, any person supervised by the licensee or any dietary supplement.

(14) A licensee shall conform to generally accepted principles and standards of dietetic practice which are those generally recognized by the profession as appropriate for the situation presented, including those promulgated or interpreted by or under the Academy or Commission on Dietetic Registration, and other professional or governmental bodies. A licensee shall recognize and exercise professional judgment within the limits of his/her qualifications and collaborate with others, seek counsel, or make referrals as appropriate.

(15) A licensee shall not interfere with an investigation or disciplinary proceeding by willful misrepresentation of facts to the department or its authorized representative or by the use of threats or harassment against any person.

(16) A licensee shall report information if required by the following statutes:

(A) Texas Family Code, Chapter 261, concerning abuse or neglect of minors; or

(B) Texas Human Resources Code, Chapter 48, concerning abuse, neglect, or exploitation of elderly or disabled persons.

(b) Professional relationships.

(1) A licensee shall make known to a prospective client the important aspects of the professional relationship including fees and arrangements for payment which might affect the client's decision to enter into the relationship. A licensee shall bill a client or a third party in the manner agreed to by the licensee and in accordance with state and federal law.

(2) A licensee shall not receive or give a commission or rebate or any other form of remuneration for the referral of clients for professional services.

(3) A licensee shall disclose to clients any interest in commercial enterprises which the licensee promotes for the purpose of personal gain or profit.

(4) A licensee shall take reasonable action to inform a client's physician and any appropriate allied health care provider in cases where a client's nutritional status indicates a change in medical status.

(5) A licensee shall provide nutrition services without discrimination based on race, creed, gender, religion, national origin, or age.

(6) A licensee shall not violate any provision of any federal or state statute relating to confidentiality of client communication and/or records. A licensee shall protect confidential information and make full disclosure about any limitations on his/her ability to guarantee full confidentiality.

(7) A licensee shall not engage in sexual contact with a client. The term "sexual contact" means any type of sexual behavior described in the Texas Penal Code, §21.01, and includes sexual intercourse. A licensee shall not engage in sexual harassment in connection with professional practice.

(8) A licensee shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from the services provided.

(9) A licensee shall not provide services to a client or the public if by reason of any mental or physical condition of the licensee, the services cannot be provided with reasonable skill or safety to the client or the public.

(10) A licensee shall not provide any services which result in mental or physical injury to a client or which create an unreasonable risk that the client may be mentally or physically harmed.

(11) A licensee shall provide sufficient information to enable clients and others to make their own informed decision regarding nutritional services.

(12) A licensee shall be alert to situations that might cause a conflict of interest or have the appearance of a conflict. A licensee shall make full disclosure when a real or potential conflict of interest arises.

(c) A licensed dietitian shall supervise a provisional licensed dietitian or a temporary licensed dietitian for whom the licensee has assumed supervisory responsibility.

(d) On the written request of a client, a client's guardian, or a client's parent, if the client is a minor, a licensee shall provide, in plain language, a written explanation of the charges for client nutrition services previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(e) A licensee may not persistently or flagrantly overcharge or overtreat a client.

(f) Sanctions. A licensee shall be subject to disciplinary action by the commission or department if under the Crime Victims Compensation Act, Texas Code of Criminal Procedure, Article 56.31, the licensee is issued a public letter of reprimand, is assessed a civil penalty by a court, or has been convicted and ordered to pay court costs under the Crime Victims Compensation Act, Texas Code of Criminal Procedure, Chapter 56, Subchapter B, Article 56.55.

(g) Applicants. A violation of any provision of this section by a person who is an applicant or who subsequently applies for a license (even though the person was not a licensee at the time of the violation) may be a basis for disapproval of the application.

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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William H. Kuntz, Jr.

Executive Director

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## SUBCHAPTER L. FEES

### 16 TAC §116.110

The new rule is proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

§116.110. Fees.

(a) All fees paid to the department are nonrefundable.

(b) Licensed Dietitian Fees:

(1) Initial application fee (includes two-year initial license)--\$108;

(2) License fee for upgrade of provisional licensed dietitian to licensed dietitian--\$20;

(3) Renewal application fee (for two-year license)--\$90; and

(4) Application processing fee for preplanned professional experience approval--\$350.

(c) Provisional Licensed Dietitian Fees:

(1) Initial application fee (includes one-year initial license)--\$54;

(2) License fee for upgrade of provisional licensed dietitian to licensed dietitian--\$20;

(3) Renewal application fee (for one-year license; may only be renewed twice)--\$45; and

(4) Application processing fee for preplanned professional experience approval--\$350.

(d) Temporary Licensed Dietitian Fees. Initial application fee (includes initial license)--\$54.

(e) A duplicate/replacement fee for licenses issued under this chapter is \$25.

(f) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(g) A dishonored/returned check or payment fee is the fee prescribed under §60.82 of this title (relating to Dishonored Payment Device).

(h) The fee for a criminal history evaluation letter is the fee prescribed under §60.42 of this title (relating to Criminal History Evaluation Letters).

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 M. COMPLAINTS

### 16 TAC §116.120

The new rule is proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement

these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

#### *§116.120. Complaints Regarding Standard of Care.*

The commission will adopt rules related to handling complaints regarding standard of care pursuant to Texas Occupations Code §51.2031.

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 N. ENFORCEMENT PROVISIONS

### 16 TAC §§116.130 - 116.132

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

#### *§116.130. Administrative Penalties and Sanctions.*

If a person or entity violates any provision of Texas Occupations Code, Chapters 51 or 701, this chapter, or any rule or order of the executive director or commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both in accordance with the provisions of Texas Occupations Code, Chapter 51 and 701 and any associated rules.

#### *§116.131. Enforcement Authority.*

The enforcement authority granted under Texas Occupations Code, Chapters 51 and 701 and any associated rules may be used to enforce Texas Occupations Code, Chapter 701 and this chapter.

#### *§116.132. License Surrender.*

Pursuant to Texas Occupations Code §701.351(b), a license issued by the department is the property of the department and shall be surrendered on demand.

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

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## SUBCHAPTER O. THE DIETETIC PROFESSION

### 16 TAC §§116.140 - 116.142

The new rules are proposed under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 701. No other statutes, articles, or codes are affected by the proposal.

#### §116.140. Areas of Expertise.

The profession of dietetics includes six primary areas of expertise: clinical, educational, management, consultation, community and research; and includes without limitation the development, management, and provision of nutrition services, as follows:

- (1) planning, developing, controlling, and evaluating food service systems;
- (2) coordinating and integrating clinical and administrative aspects of dietetics to provide quality nutrition care;
- (3) establishing and maintaining standards of food production, service, sanitation, safety, and security;
- (4) planning, conducting, and evaluating educational programs relating to nutrition care;
- (5) developing menu patterns and evaluating them for nutritional adequacy;
- (6) planning layout designs and determining equipment requirements for food service facilities;
- (7) developing specifications for the procurement of food and food service equipment and supplies;
- (8) developing and implementing plans of nutrition care for individuals based on assessment of nutrition needs;
- (9) counseling individuals, families, and groups in nutrition principles, dietary plans, and food selection and economics;
- (10) communicating appropriate diet history and nutrition intervention data through medical record systems;
- (11) participating with physicians and allied health personnel as the provider of nutrition care;
- (12) planning, conducting or participating in, and interpreting, evaluating, and utilizing pertinent current research related to nutrition care;

(13) providing consultation and nutrition care to community groups and identifying and evaluating needs to establish priorities for community nutrition programs;

(14) publishing and evaluating technical and lay food and nutrition publications for all age, socioeconomic, and ethnic groups; and

(15) planning, conducting, and evaluating dietary studies and participating in nutrition and epidemiologic studies with a nutrition component.

#### §116.141. Provider of Nutrition Services.

(a) A person licensed by the department is designated as a health care provider of nutrition services.

(b) A licensed dietitian, acting within the scope of his or her license and consistent with medical direction or authorization as provided in this section, may accept, transcribe into a patient's medical record or transmit verbal or electronically-transmitted orders, including medication orders, from a physician to other authorized health care professionals relating to the implementation or provision of medical nutrition therapy and related medical protocols for an individual patient or group of patients.

(1) In a licensed health facility, the medical direction or authorization shall be provided, as appropriate, through a physician's order, or a standing medical order, or standing delegation order, or medical protocol issued in accordance with Texas Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Texas Medical Board implementing the subchapter.

(2) In a private practice setting, the medical direction or authorization shall be provided, as appropriate, through the physician's order, standing medical order, or standing delegation order of a referring physician, in accordance with Texas Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Texas Medical Board implementing the subchapter.

(c) A licensed dietitian, acting within the scope of his or her license and consistent with medical direction or authorization as provided in this section, may order medical laboratory tests relating to the implementation or provision of medical nutrition therapy and related medical protocols for individual patients or groups of patients.

(1) In a licensed health facility, the medical direction or authorization shall be provided, as appropriate, through a physician's order, or a standing medical order, or standing delegation order, or medical protocol, issued in accordance with Texas Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Texas Medical Board implementing the subchapter.

(2) In a private practice setting, the medical direction or authorization shall be provided through the physician's order, standing medical order, or a standing delegation order of the referring physician, in accordance with Texas Occupations Code, Chapter 157, Subchapter A, and rules adopted by the Texas Medical Board implementing the subchapter.

#### §116.142. Licensed Dietitians Providing Diabetes Self-Management Training.

(a) This section implements the Insurance Code, Title 8, Subtitle E, Chapter 1358, §1358.055.

(b) Diabetes self-management training. Diabetes self-management training covers the following training:

(1) training provided to a qualified enrollee after the initial diagnosis of diabetes in the care and management of that condition,

including nutrition counseling and proper use of diabetes equipment and supplies;

(2) additional training authorized on the diagnosis of a physician or other health care practitioner of a significant change in the qualified enrollee's symptoms or condition that requires changes in the qualified enrollee's self-management regimen; and

(3) periodic or episodic continuing education training when prescribed by an appropriate health care practitioner as warranted by the development of new techniques and treatments for diabetes.

(c) Providing diabetes self-management training as a member of a multi-disciplinary team.

(1) Prior to beginning to provide diabetes self-management training as member of a multi-disciplinary team under Insurance Code, Title 8, Subtitle E, Chapter 1358, §1358.055(c)(2), a licensed dietitian must complete at least six (6) hours of continuing education in diabetes-specific or diabetes-related topics within the previous two years.

(2) Thereafter, to remain qualified to continue to provide such services, a licensed dietitian shall complete at least six (6) hours of continuing education biennially in diabetes-specific or diabetes-related topics.

(3) A licensed dietitian who is not a Certified Diabetes Educator and who is providing diabetes self-management training as a member of a multi-disciplinary team under Insurance Code, Title 8, Subtitle E, Chapter 1358, §1358.055(c)(2), shall confine his or her professional services to nutrition education and/or counseling, lifestyle modifications, the application of self-management skills, reinforcing diabetes self-management training, and other acts within the scope of his or her professional education and training which are conducted under the supervision of the coordinator of the multi-disciplinary team.

(d) Providing the nutrition component of diabetes self-management training.

(1) Prior to beginning to provide the nutrition component of diabetes self-management training under Insurance Code, Title 8, Subtitle E, Chapter 1358, §1358.055(c)(4), a licensed dietitian must complete at least six (6) hours of continuing education in diabetes-specific or diabetes-related topics within the previous two years.

(2) Thereafter, to remain qualified to continue to provide such services, a licensed dietitian shall show proof to the department completion of at least six (6) hours of continuing education biennially in diabetes-specific or diabetes-related topics.

(e) Continuing education. The continuing education completed under this section shall meet the requirements described in Subchapter I, Continuing Education. The continuing education completed under this section may be part of the credits required for renewal of a license.

(f) Submission of continuing education to the department. Upon written request by the department, the licensed dietitian shall submit to the department proof of completion of the continuing education completed under this section. The licensed dietitian shall submit the proof of completion in a manner and a timeframe acceptable to the department.

(g) Provisional Licensed Dietitians. A provisional licensed dietitian shall not provide diabetes self-management training under these rules.

(h) Certified Diabetes Educator. This section does not apply to a licensed dietitian who is a diabetes educator certified by the National Certification Board for Diabetes Educators.

(i) Non-application of rules. This section does not pertain to or restrict a licensed dietitian who does not qualify under this section from providing the nutrition component of diabetes self-management training within the scope of the license issued by the department, to a person:

(1) who is not a qualified enrollee as defined in the Insurance Code, Title 8, Subtitle E, Chapter 1358, §1358.051;

(2) who does not intend to seek payment for or reimbursement for diabetes self-management training; or

(3) without the written order of a licensed physician or other healthcare practitioner.

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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## PART 8. TEXAS RACING COMMISSION

### CHAPTER 301. DEFINITIONS

#### 16 TAC §301.1

The Texas Racing Commission proposes an amendment to 16 TAC §301.1, concerning Definitions. The proposed amendment removes the definition for "historical racing". This change is proposed in conjunction with the proposed repeal of rules authorizing and regulating historical racing under Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register*. Since this section lists the definitions in alphabetical order, the amendment renumbers subsequent definitions in order to accommodate the change.

Chuck Trout, Executive Director, has determined that for the first five-year period that this amendment, as well as the repeal of rules authorizing and regulating historical racing, is in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

Mr. Trout has determined that for each year of the first five years that this amendment, as well as the repeal of rules authorizing and regulating historical racing, is in effect the anticipated public benefit will be to bring the rules into conformity with the decision by the 261st District Court of Travis County that the rules relating to historical racing exceeded the Commission's authority.

The amendment will have no adverse economic effect on small or micro-businesses since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

The amendment will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

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 requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

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

§301.1. *Definitions.*

(a) (No change.)

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

(1) - (31) (No change.)

~~[(32) Historical racing--to present for pari-mutuel wagering, through a totalisator system that meets the requirements of Chapter 321, Subchapter F of this title (relating to Regulation of Historical Racing), a previously run horse or greyhound race that was:]~~

~~[(A) authorized by the commission or by another racing jurisdiction;]~~

~~[(B) concluded with official results and without scratches, disqualifications or dead-heat finishes; and]~~

~~[(C) recorded by video, film, electronic, or similar means of preservation.]~~

(32) [(33)] Horse--an equine of any breed, including a stallion, gelding, mare, colt, filly, or ridgling.

(33) [(34)] Horse Race--a running contest between horses for entry fees, purse, prize, or other reward, including the following:

(A) Claiming race--a race in which a horse may be claimed in accordance with the Rules.

(B) Derby race--a race in which the first condition of eligibility is to be three years old.

(C) Futurity race--a race in which the first condition of eligibility is to be two years old.

(D) Guaranteed race--a race for which the association guarantees by its conditions a specified purse, which is the limit of its liability.

(E) Handicap race--a race in which the weights to be carried by the entered horses are adjusted by the racing secretary for the purpose of equalizing their respective chances of winning.

(F) Match race--a race between only two horses that are owned by different owners.

(G) Maturity race--a race in which the first condition of eligibility is to be four years of age or older.

(H) Optional claiming race--a claiming race in which there is an option to have horses entered to be claimed for a stated price or not eligible to be claimed.

(I) Progeny race--a race restricted to the offspring of a specific stallion or stallions.

(J) Purse or overnight race--a race for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(K) Stakes race--a race to which nominators of the entries contribute to a purse.

(L) Starter race--an overnight race under allowance or handicap conditions, restricted to horses which have previously started for a designated claiming price or less, as stated in the conditions of the race.

(M) Walkover race--a stakes race in which only one horse starts or all the starters are owned by the same interest.

(N) Weight for age race--a race in which weights are assigned in keeping with the scale of weights in these rules.

(34) [(35)] In today horse--a horse that is in the body of a race program which is entered into a race on the next consecutive race day.

(35) [(36)] Kennel area--an area on association grounds for the boarding or training of greyhounds.

(36) [(37)] Lead out--an individual who handles a greyhound from the lockout kennel to the starting box.

(37) [(38)] Locked in the gate--a horse or greyhound that is prevented from leaving the starting gate or box due to the failure of the front door of the gate or box to open simultaneously with the other doors.

(38) [(39)] Lure--a mechanical apparatus at a greyhound racetrack consisting of a stationary rail installed around the track, a motorized mechanism that travels on the rail, and a pole that is attached to the mechanism and extends over the track, and to which a decoy is attached.

(39) [(40)] Maiden--a horse or greyhound that has never won a race at a recognized race meeting authorized by the Commission or by another racing jurisdiction.

(40) [(41)] Minus pool--a pool in which there are insufficient net proceeds to pay the minimum price to holders of the winning tickets.

(41) [(42)] Mutuel field--a group of horses joined as a single betting interest in a race due to the limited numbering capacity of the totalisator.

(42) [(43)] No race--a race that is canceled after being run due to a malfunction of the starting gate or box or any other applicable reason as determined by the Rules.

(43) [(44)] Nominator--the person in whose name a horse or greyhound is entered for a race.

(44) [(45)] Occupational licensee--an individual to whom the Commission has issued a license to participate in racing with pari-mutuel wagering.

(45) [(46)] Odds--a number indicating the amount of profit per dollar wagered to be paid to holders of winning pari-mutuel tickets.

(46) [(47)] Off time--the moment when, on signal from the starter, the horses or greyhounds break from the starting gate or box and run the race.

(47) [(48)] Paddock--the area in which horses or greyhounds gather immediately before a race.

(48) [(49)] Patron--an individual present on association grounds during a race meeting who is eligible to wager on the racing.

(49) [(50)] Pecuniary interest--includes a beneficial ownership interest in an association, but does not include bona fide indebtedness or a debt instrument of an association.

(50) [(51)] Performance--the schedule of horse or greyhound races run consecutively as one program. A greyhound performance consists of fifteen or fewer races unless approved by the executive secretary.

(51) [(52)] Photofinish--the system of recording pictures or images of the finish of a race to assist in determining the order of finish.

(52) [(53)] Place--to finish second in a race.

(53) [(54)] Post position--the position assigned to a horse or greyhound in the starting gate or box.

(54) [(55)] Post time--the time set for the arrival at the starting gate or boxes by the horses or greyhounds in a race.

(55) [(56)] Purse--the cash portion of the prize for a race.

(56) [(57)] Race date--a date on which an association is authorized by the Commission to conduct races.

(57) [(58)] Race day--a day in which a numerical majority of scheduled races is conducted and is a part of the association's allocated race days.

(58) [(59)] Race meeting--the specified period and dates each year during which an association is authorized to conduct racing and/or pari-mutuel wagering by approval of the Commission.

(59) [(60)] Racetrack facility--the buildings, structures and fixtures located on association grounds used by an association to conduct horse or greyhound racing.

(60) [(61)] Racetrack official--an individual appointed or approved by the Commission to officiate at a race meeting.

(61) [(62)] Racing judge--the executive racing official at a greyhound track.

(62) [(63)] Reasonable belief--a belief that would be held by an ordinary and prudent person in the same circumstances as the actor.

(63) [(64)] Recognized race meeting--a race meeting held under the sanction of a turf authority.

(64) [(65)] Refunded ticket--a pari-mutuel ticket that has been refunded for the value of a wager that is no longer valid.

(65) [(66)] Rule off--to bar an individual from the enclosure of an association and to deny all racing privileges to the individual.

(66) [(67)] Rules--the rules adopted by the Texas Racing Commission found in Title 16, Part VIII of the Texas Administrative Code.

(67) [(68)] Schooling race--a practice race conducted under actual racing conditions but for which wagering is not permitted.

(68) [(69)] Scratch--to withdraw an entered horse or greyhound from a race after the closing of entries.

(69) [(70)] Scratch time--the closing time set by an association for written requests to withdraw from a race.

(70) [(71)] Show--to finish third in a race.

(71) [(72)] Specimen--a bodily substance, such as blood, urine, or saliva, taken for analysis from a horse, greyhound, or individual in a manner prescribed by the Commission.

(72) [(73)] Stakes payments--the fees paid by subscribers in the form of nomination, entry, or starting fees to be eligible to participate.

(73) [(74)] Stallion owner--a person who is owner of record, at the time of conception, of the stallion that sired the accredited Texas-bred horse.

(74) [(75)] Starter--a horse or greyhound entered in a race when the doors of the starting gate or box open in front of the horse or greyhound at the time the official starter dispatches the horses or greyhounds.

(75) [(76)] Straight pool--a mutuel pool that involves wagers on a horse or greyhound to win, place, or show.

(76) [(77)] Subscription--money paid to nominate, enter, or start a horse or greyhound in a stakes race.

(77) [(78)] Tack room--a room in the stable area of a horse racetrack in which equipment for training and racing the horses is stored.

(78) [(79)] Totalisator--a machine or system for registering and computing the wagering and payoffs in pari-mutuel wagering.

(79) [(80)] Tote board--a facility at a racetrack that is easily visible to the public on which odds, payoffs, advertising, or other pertinent information is posted.

(80) [(81)] Tote room--the room in which the totalisator equipment is maintained.

(81) [(82)] Tout--an individual licensed to furnish selections on a race in return for a set fee.

(82) [(83)] Trial--a race designed primarily to determine qualifiers for finals of a stakes race.

(83) [(84)] Uplink--an earth station broadcasting facility, whether mobile or fixed, which is used to transmit audio-visual signals and/or data emanating from a sending racetrack, and includes the electronic transfer of received signals from the receiving antenna to TV monitors within the receiving location.

(84) [(85)] Weigh in--the process by which a jockey is weighed after a race or by which a greyhound is weighed before being placed in the lockout kennel.

(85) [(86)] Weighing in weight--the weight of a greyhound on weighing in to the lockout kennel.

(86) [(87)] Weigh out--the process by which a jockey or greyhound is weighed before a race.

(87) [(88)] Weighing out weight--the weight of a greyhound on weighing out of the lockout kennel immediately before post time for the race in which the greyhound is entered.

(88) [(88)] Win--to finish first in a race.

(89) [(90)] Winner--

(A) for horse racing, the horse whose nose reaches the finish line first, while carrying the weight of the jockey or is placed first through disqualification by the stewards; and

(B) for greyhound racing, the greyhound whose muzzle, or if the muzzle is lost or hanging, whose nose reaches the finish line first or is placed first through disqualification by the judges.

(90) [(91)] Active license--a racetrack license designated by the commission as active.

(91) [(92)] Inactive license--a racetrack license designated by the commission as inactive.

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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Mark Fenner

General Counsel

Texas Racing Commission

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## CHAPTER 303. GENERAL PROVISIONS

### SUBCHAPTER B. POWERS AND DUTIES OF THE COMMISSION

#### 16 TAC §303.31, §303.42

The Texas Racing Commission proposes amendments to 16 TAC §303.31, concerning the regulation of racing, and §303.42, concerning the approval of charity race days. These changes are proposed in conjunction with the proposed repeal of rules authorizing and regulating historical racing under Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register*.

The proposed amendments restore the rules to the language that existed prior to the adoption of the historical racing rules. To accomplish this goal, the amendment to §303.31 reinserts the phrase "live and simulcast" into the rule and the amendments to §303.42 eliminate all provisions and references related to historical racing.

Chuck Trout, Executive Director, has determined that for the first five-year period that these amendments, as well as the repeal of rules authorizing and regulating historical racing, are in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

Mr. Trout has determined that for each year of the first five years that these amendments, as well as the repeal of rules authorizing and regulating historical racing, are in effect the anticipated public benefit will be to bring the rules into conformity with the decision by the 261st District Court of Travis County that the rules relating to historical racing exceeded the Commission's authority.

The amendments will have no adverse economic effect on small or micro-businesses since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County, 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 amendments since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

The amendments will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

All comments or questions regarding the proposed amendments 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 to §303.41 is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering. The amendment to §303.42 is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §§8.02 and 10.01, which require the Commission to adopt rules relating to the conduct of race days.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

#### §303.31. Regulation of Racing.

The commission shall regulate each live and simulcast race meeting conducted in this state and supervise the operation of racetracks and the persons other than patrons who participate in a race meeting.

#### §303.42. Approval of Charity Race Days.

(a) An association shall conduct charity days as required by the Act. A greyhound association shall conduct at least five charity race days each year. A Class 1 or Class 2 horse racetrack [~~that is not conducting historical racing~~] shall conduct at least two and not more than five charity race days each year. [~~A Class 1 or Class 2 horse racetrack that is conducting historical racing shall conduct at least three and not more than five charity race days each year.~~]

(b) An association shall apply to the commission not later than July 1 of each year for charity race dates to be conducted in the next calendar year. [~~During each application period in which an association applies for live race dates, the association shall also apply for charity~~]

race dates as necessary to comply with subsection (a) of this section.]  
The application must be in writing and contain:

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

(c) An association shall pay to the charity at least 2.0% of the total pari-mutuel handle generated at the association's racetrack on live races and imported simulcast races on the charity race day.

(d) [~~Charities.~~]

~~[(1)] At least one of the charity days must be conducted for a [percent of the pari-mutuel handle from live racing and simulcasting on charity racing days shall be contributed to a] charity that directly benefits the persons who work in the stable or kennel area of the racetrack[. At least one of the charity days must be conducted for[, and at least one percent shall be contributed to] a charity that primarily benefits research into the health or safety of race animals.~~

~~[(2) For a horse racing association conducting historical racing, at least 1.5% of the pari-mutuel handle from historical racing on charity racing days shall be contributed to a charity that directly funds veterinary research beneficial to promoting the health and soundness of horses; and at least one-half of one percent of the pari-mutuel handle from historical racing on charity racing days shall be contributed to a charity that facilitates youth participation in equestrian sports and activities.]~~

~~[(3) For a greyhound association conducting historical racing, at least two percent of the pari-mutuel handle from historical racing on charity racing days shall be contributed to a charity that provides for the medical care and rehabilitation of injured greyhounds.]~~

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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Mark Fenner

General Counsel

Texas Racing Commission

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



## CHAPTER 307. PROCEEDINGS BEFORE THE COMMISSION

### SUBCHAPTER C. PROCEEDINGS BY STEWARDS AND RACING JUDGES

#### 16 TAC §307.62

The Texas Racing Commission proposes an amendment to 16 TAC §307.62. The section relates to disciplinary actions against occupational licensees. The proposed amendment extends the period of time in which a summary suspension hearing may be held from three days to seven days. The current rule authorizes boards of stewards or racing judges to summarily suspend a license if a licensee's actions constitute an immediate danger to the public health, safety or welfare. The rule also provides that the licensee is entitled to a hearing on the suspension not later than three calendar days after the license is suspended. However, current racing schedules, which may call for a little as two

race days in a week, are so limited as to make the three day requirement impractical. Extending the three-day period for a summary suspension hearing to seven days will ensure that the licensee has an adequate opportunity to request a hearing and that both the Commission and the licensee have an adequate opportunity to prepare for the hearing.

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 government as a result of enforcing the new rule. The rule will have positive fiscal implications for state government by reducing the number of hours that the Commission has to pay staff to conduct summary suspension hearings when they would otherwise not be scheduled to work.

Mr. Trout has determined that for each year of the first five years that the new rule is in effect the anticipated public benefit will be to reduce costs to the state and to provide additional time for both staff and the licensee to prepare for a summary suspension hearing.

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 no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry.

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 §3.16, which authorizes the stewards or judges to summarily suspend a licensee.

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

#### §307.62. *Disciplinary Action*

(a) - (h) (No change.)

(i) Summary Suspension. If the stewards or racing judges determine that a licensee's actions constitute an immediate danger to the public health, safety, or welfare, the stewards or racing judges may enter a ruling summarily suspending the license, without a prior hearing. A summary suspension takes effect immediately on issuance of the ruling. If the stewards or racing judges suspend a license under this subsection, the licensee is entitled to a hearing on the suspension not later than seven [~~three~~] calendar days after the day the license is suspended. The licensee may waive his or her right to a hearing on the summary suspension within the seven [~~three~~]-day period.

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

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Mark Fenner  
General Counsel  
Texas Racing Commission

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



## CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

The Texas Racing Commission proposes amendments to 16 TAC §309.8, concerning racetrack license fees, §309.297, concerning purse accounts, §309.299, concerning the horsemen's representative, and §309.361, concerning the Greyhound Purse Account and Kennel Account. These changes are proposed in conjunction with the proposed repeal of rules authorizing and regulating historical racing under Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register*.

The proposed amendments to §§309.8, 309.297, 309.299, and 309.361 restore the rules to the language that existed prior to the adoption of the historical racing rules.

Chuck Trout, Executive Director, has determined that for the first five-year period that these amendments, as well as the repeal of rules authorizing and regulating historical racing, are in effect there will be no fiscal implications for state or local government as a result of enforcing the amendment since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

Mr. Trout has determined that for each year of the first five years that these amendments, as well as the repeal of rules authorizing and regulating historical racing, are in effect the anticipated public benefit will be to bring the rules into conformity with the decision by the 261st District Court of Travis County that the rules relating to historical racing exceeded the Commission's authority.

The amendments will have no adverse economic effect on small or micro-businesses since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County, 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 amendments since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County and because non-operating racetracks have no employees.

The amendments will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

All comments or questions regarding the proposed amendments 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.

### SUBCHAPTER A. RACETRACK LICENSES

## DIVISION 1. GENERAL PROVISIONS

### 16 TAC §309.8

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

§309.8. *Racetrack License Fees.*

(a) Purpose of Fees. An association shall pay a license fee to the Commission to pay the Commission's costs to administer and enforce the Act, and to regulate, oversee, and license live and simulcast racing [and pari-mutuel wagering] at racetracks.

(b) Annual License Fee.

(1) (No change.)

(2) An association that is conducting live racing[, ~~historical racing~~] or simulcasting shall pay its annual license fee by remitting to the Commission 1/12th of the fee on the first business day of each month.

(3) An association that is not conducting live racing[, ~~historical racing~~] or simulcasting shall pay its annual license fee in four equal installments on September 1, December 1, March 1, and June 1 of each fiscal year.

(c) (No change.)

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

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General Counsel

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## SUBCHAPTER C. HORSE RACETRACKS DIVISION 4. OPERATIONS

### 16 TAC §309.297, §309.299

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §6.08, which provides that legal title to purse accounts at a horse racing association is vested in the horsemen's organization, and §1.03(77), which establishes that the horsemen's organization is recognized by the commission to represent horse owners and trainers in negotiating and contracting with associations on subjects relating to racing.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

§309.297. *Purse Accounts.*

(a) All money required to be set aside for purses, whether from wagering on live races or on simulcast wagering, are trust funds held by an association as custodial trustee for the benefit of horsemen. No more than three business days after the end of each week's wagering, the association shall deposit the amount set aside for purses into purse accounts maintained as trust accounts for the benefit of horsemen by breed by the horsemen's organization in one or more federally or privately insured depositories.

(b) - (f) (No change.)

§309.299. *Horsemen's Representative.*

(a) Findings. The Commission finds a need for horse owners and trainers to negotiate and covenant with associations as to the conditions of live race meetings, the distribution of purses not governed by statute, simulcast transmission and reception, and other matters relating to the welfare of the owners and trainers participating in live racing at an association. To ensure the uninterrupted, orderly conduct of racing in this state, the Commission shall recognize one organization to represent horse owners and trainers on matters relating to the conduct of live racing and simulcasting at Texas racetracks.

(b) (No change.)

(c) Authority and Responsibilities.

(1) An organization recognized under this section shall negotiate with each association regarding the association's live racing program, including but not limited to the allocation of purse money to various live races, the exporting of simulcast signals, [~~issues related to historical racing,~~] and the importing of simulcast signals during live race meetings.

(2) - (6) (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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Mark Fenner

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## SUBCHAPTER D. GREYHOUND RACETRACKS

### DIVISION 2. OPERATIONS

#### 16 TAC §309.361

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves

pari-mutuel wagering, and §10.05, which recognizes the Texas Greyhound Association as the officially designated state greyhound breed registry.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

§309.361. *Greyhound Purse Account and Kennel Account.*

(a) Greyhound Purse Account.

(1) All money required to be set aside for purses, whether from wagering on live races or simulcast races, are trust funds held by an association as custodial trustee for the benefit of kennel owners and greyhound owners. No more than three business days after the end of each week's wagering, the association shall deposit the amount set aside for purses into a greyhound purse account maintained in a federally or privately insured depository.

(2) (No change.)

(b) (No change.)

(c) The Texas Greyhound Association ("TGA") shall negotiate with each association regarding the association's live racing program, including but not limited to the allocation of purse money to various live races, the exporting of simulcast signals, [~~issues related to historical racing,~~] and the importing of simulcast signals during live race meetings.

(d) - (f) (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 B. OPERATIONS OF RACETRACKS

### DIVISION 2. FACILITIES AND EQUIPMENT

#### 16 TAC §309.126, §309.127

The Texas Racing Commission proposes amendments to 16 TAC §309.126, relating to videotape equipment, and §309.127, relating to the maintenance of negatives and videotapes. The proposed amendments update the rules to reflect current digital technology in use at the racetracks. The amendment to §309.126 would replace the word "videotape" with "video recording" in several instances. The amendment to §309.127 also replaces the word "videotape" with "video recording" in several instances, and in addition allows an association to provide a digital image, instead of a print, from a negative.

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 state or local government as a result of enforcing the new rule.

Mr. Trout has determined that for each year of the first five years that the new rule is in effect the anticipated public benefit will be bring the rules into consistency with the technology currently in use at the racetracks.

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 no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry.

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 for conducting horse racing and to adopt other rules to administer the Act.

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

§309.126. *Video Recording [Videotape] Equipment.*

(a) An association shall provide a video recording [videotape] system to record each race in color from start to finish.

(b) The video recording [videotape] of a horse race must provide a clear panoramic and head-on view of the position and action of the horses and jockeys at a range sufficient for motions to be easily discerned by the stewards. The video recording [videotape] of a greyhound race must provide a clear view of the position and action of the greyhounds at a range sufficient for motions to be easily discerned by the racing judges.

(c) - (d) (No change.)

(e) The location and height of video towers and the operation of the video recording [videotape] system must be approved by the executive secretary before its first use in a race.

(f) An association shall provide a viewing room in which, on approval of the stewards or racing judges, an owner, trainer, jockey, or other interested individual may view a video [videotape] recording of a race.

(g) The association shall maintain an auxiliary video recording [videotape] system in case of an emergency.

(h) (No change.)

§309.127. *Maintenance of Still Images [Negatives] and Video Recordings [Videotapes].*

(a) An association shall preserve either the negative of each photograph of the finish of a race or the image of each electronic photofinish of a race, whichever device is used, and the video recording [videotape] of a race for at least one year after the last day of the race meeting during which the photograph, electronic photofinish image or video recording [videotape] was made.

(b) On request by the Commission, the association shall provide a digital image or print from a negative, or copy of the image

from the electronic photofinish device or a copy of a video recording [videotape] to the 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.

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Mark Fenner

General Counsel

Texas Racing Commission

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



CHAPTER 311. OTHER LICENSES  
SUBCHAPTER A. LICENSING PROVISIONS  
DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.2

The Texas Racing Commission proposes an amendment to 16 TAC §311.2. The section relates to application procedures for occupational licenses. The proposed amendment modifies the procedures by which certain individuals apply for occupational licenses. The changes are proposed to address the requirements of Senate Bills 807 and 1307, 84th Texas Legislative Session, which require occupational licensing agencies to waive certain education and examination requirements as well as licensure fees for military members, veterans, and military spouses. The amended rule would allow these persons to apply to have those educational and examination requirements and fees waived.

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 government as a result of enforcing the new rule, and that the fiscal implications for state government from losing these licensing fees will be minimal.

Mr. Trout has determined that for each year of the first five years that the new rule is in effect the anticipated public benefit will be to facilitate the licensing of military members, veterans, and military spouses.

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 agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry by facilitating the licensing of military members, veterans, and military spouses.

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 §7.02, which requires the Commission to specify the qualifications and experience required for licensing in each category of license that requires qualifications or experience.

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

§311.2. *Application Procedure.*

(a) - (e) (No change.)

(f) License provisions for military service members, military spouses, and military veterans.

(1) The terms "military service member," "military spouse," and "military veteran" shall have the same meaning as those terms are defined in Texas Occupations Code, Chapter 55.

(2) Credit for Military Service. Military service members and military veterans[; as defined in Texas Occupations Code, Chapter 55.] will receive credit toward any experience requirements for a license as appropriate for the particular license type and the specific experience of the military service member or veteran.

(3) Credit for holding a current license issued by another jurisdiction. Military service members, military spouses, and military veterans who hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the license in this state will receive credit toward any experience requirements for a license as appropriate for the particular license type.

(4) Supporting documentation must be submitted with the license application.

(5) The executive director may waive any prerequisite to obtaining a license for an applicant who is a military service member, military veteran, or military spouse, after reviewing the applicant's credentials.

(6) Expedited license procedure. As soon as practicable after a military service member, military veteran, or military spouse files an application for a license, the commission will process the application and issue the license to an applicant who qualifies under this section.

(7) License application and examination fees will be waived for the initial application of an applicant who qualifies under this subsection.

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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Mark Fenner

General Counsel

Texas Racing Commission

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



CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING  
SUBCHAPTER C. CLAIMING RACES

**16 TAC §313.310**

The Texas Racing Commission proposes an amendment to 16 TAC §313.310. The section relates to restrictions on claims for horses entered into claiming races. The proposed amendment would amend the claiming rules to more closely follow the Association of Racing Commissioners International's model rules regarding restrictions on claims. The proposal is made in response to a recent incident in which the stewards voided a trainer's claim on the basis that it was a "protection claim," although that term is not defined anywhere in the Act or the Rules. Instead of using this term, the model rules enumerate the specific relationships and circumstances that prevent a claim from being allowed.

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 state or local government as a result of enforcing the new rule.

Mr. Trout has determined that for each year of the first five years that the new rule is in effect the anticipated public benefit will be to promote national uniformity in claiming races and to clarify the various restrictions on claims.

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 no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry.

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 for conducting horse racing and to adopt other rules to administer the Act.

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

§313.310. *Restrictions on Claims.*

(a) A horse that is claimed may not remain in the care or custody of the owner or trainer from whom the horse was claimed.

(b) A person may not claim more than one horse in a race nor submit more than one claim for a race. An authorized agent may not submit more than one claim in a race, regardless of the number of persons the agent represents. A trainer may not be listed as the trainer for a claimant on more than one claim in the same race.

(c) A person may not offer or agree to claim or refrain from claiming a horse. A person may not prevent or attempt to prevent another person from claiming a horse.

(d) A person may not prevent or attempt to prevent a horse from racing in a claiming race for the purpose of avoiding a claim.

(e) A person shall not claim a horse in which the person has a financial or beneficial interest as an owner or trainer. [A protection

claim is prohibited and a person making such a claim is subject to disciplinary action by the stewards.]

(f) A person shall not cause another person to claim a horse for the purpose of obtaining or retaining an undisclosed financial or beneficial interest in the horse.

(g) A person shall not claim a horse, or enter into any agreement to have a horse claimed, on behalf of an ineligible or undisclosed person.

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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Mark Fenner

General Counsel

Texas Racing Commission

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



## CHAPTER 321. PARI-MUTUEL WAGERING SUBCHAPTER A. MUTUEL OPERATIONS

The Texas Racing Commission proposes amendments to 16 TAC §321.5, concerning the pari-mutuel auditor, §321.12, concerning time synchronization, §321.13, concerning the pari-mutuel track report, §321.23, concerning wagering explanations, §321.25, concerning wagering information, and §321.27, concerning the posting of race results. These changes are proposed in conjunction with the proposed repeal of rules authorizing and regulating historical racing under Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register*.

The proposed amendments to §§321.5, 321.12, 321.13, 321.23, 321.25, and 321.27 restore the rules to the language that existed prior to the adoption of the historical racing rules.

Chuck Trout, Executive Director, has determined that for the first five-year period these amendments, as well as the repeal of rules authorizing and regulating historical racing, are in effect there will be no fiscal implications for state or local government as a result of enforcing the amendments since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

Mr. Trout has determined that for each year of the first five years that these amendments, as well as the repeal of rules authorizing and regulating historical racing, are in effect the anticipated public benefit will be to bring the rules into conformity with the decision by the 261st District Court of Travis County that the rules relating to historical racing exceeded the Commission's authority.

The amendments will have no adverse economic effect on small or micro-businesses since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County, 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 amendments since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

The amendments will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

All comments or questions regarding the proposed amended and new rules 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.

## DIVISION 1. GENERAL PROVISIONS

### 16 TAC §§321.5, 321.12, 321.13

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

#### §321.5. *Pari-mutuel Auditor.*

(a) (No change.)

(b) The pari-mutuel auditor shall verify the wagering pool totals for each live and simulcast performance [~~and any historical racing pools~~]. The pari-mutuel auditor's verification of the pool totals is the basis for computing the amount of money to be set aside from each pool for the following:

(1) - (6) (No change.)

(c) (No change.)

#### §321.12. *Time Synchronization.*

(a) Display and verification of the accurate off time and start of a [~~live or simulcast~~] race is critical. To ensure accurate verification of off time with the close of betting on all [~~live and simulcast~~] races, the association shall ensure:

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

(b) (No change.)

#### §321.13. *Pari-mutuel Track Report.*

(a) Daily Pari-Mutuel Summary Report.

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

(4) The report must contain, by each live and simulcast performance[, and for each day historical racing is conducted], the following:

(A) - (D) (No change.)

(E) all purses earned, broken out by source, such as live, [~~historical racing~~], simulcast, cross species, and export;

(F) - (H) (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.

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Mark Fenner

General Counsel

Texas Racing Commission

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## DIVISION 2. WAGERING INFORMATION AND RESULTS

### 16 TAC §§321.23, 321.25, 321.27

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

#### §321.23. *Wagering Explanations.*

(a) (No change.)

~~[(b) Historical racing terminals operated by an association must provide:]~~

~~[(1) an explanation of the rules of the various types of wagers offered through that terminal; and]~~

~~[(2) information about the expiration date of vouchers issued by the terminal, which must be printed on the vouchers.]~~

(b) ~~[(e)]~~ Wagering explanations must be reviewed and approved by the executive secretary before publication.

#### §321.25. *Wagering Information.*

(a) - (c) (No change.)

~~[(d) Wagering information for historical racing must be audited by an independent third party approved by the executive secretary before the information is displayed or wagers taken on the associated race.]~~

#### §321.27. *Posting of Race Results.*

An association shall submit to the executive secretary for approval a plan for providing live and simulcast race results to the wagering public. The plan must include:

- (1) methods by which the results will be provided;
- (2) types of results to be provided; and

(3) the retention period of the race results.

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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Mark Fenner

General Counsel

Texas Racing Commission

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



## SUBCHAPTER F. REGULATION OF HISTORICAL RACING

### 16 TAC §§321.701, 321.703, 321.705, 321.707, 321.709, 321.711, 321.713, 321.715, 321.717, 321.719

The Texas Racing Commission proposes the repeal of 16 TAC §321.701, concerning the purpose of historical racing, §321.703, concerning historical racing, §321.705, concerning requests to conduct historical racing, §321.707, concerning the requirements for operating a historical racing totalisator system, §321.709, concerning types of pari-mutuel wagers for historical racing, §321.711, concerning historical racing pool and seed pools, §321.713, concerning deductions from pari-mutuel pools, §321.715, concerning contract retention and pari-mutuel wagering record retention, §321.717, effect of conflict, and §321.719, severability.

The repeal of these rules is necessary to bring the Commission's rules into conformity with the decision by the 261st District Court of Travis County that the rules relating to historical racing exceeded the Commission's authority.

Chuck Trout, Executive Director, has determined that for the first five-year period that the rules are repealed there will be no fiscal implications for state or local government as a result of enforcing the amendments since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

Mr. Trout has determined that for each year of the first five years that the rules are repealed the anticipated public benefit will be to bring the rules into conformity with the decision by the 261st District Court of Travis County that the rules relating to historical racing exceeded the Commission's authority.

The repeal of these rules will have no adverse economic effect on small or micro-businesses since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County, 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 repeal of these rules since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

The repeal of these rules will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and

greyhound training industry since the rules authorizing historical racing have never been put into practice after the adverse ruling by the 261st District Court of Travis County.

All comments or questions regarding the proposed repeal of these rules 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 repeal of these rules is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

The proposed repeal of these rules implements Texas Revised Civil Statutes Annotated, Article 179e.

§321.701. *Purpose.*

§321.703. *Historical Racing.*

§321.705. *Request to Conduct Historical Racing.*

§321.707. *Requirements for Operating a Historical Racing Totalisator System.*

§321.709. *Types of Pari-Mutuel Wagers for Historical Racing.*

§321.711. *Historical Racing Pools; Seed Pools.*

§321.713. *Deductions from Pari-Mutuel Pools.*

§321.715. *Contract Retention, Pari-Mutuel Wagering Record Retention.*

§321.717. *Effect of Conflict.*

§321.719. *Severability.*

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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Mark Fenner

General Counsel

Texas Racing Commission

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## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 21. STUDENT SERVICES

#### SUBCHAPTER G. TEACH FOR TEXAS LOAN REPAYMENT ASSISTANCE PROGRAM

#### 19 TAC §§21.171 - 21.176

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§21.171 - 21.176 concerning Teach for Texas Loan Repayment Assistance Program (TFTLRAP). The Board will also propose new rules that will add definitions, eliminate redundant language, add clarifying language, and renumber sections, as appropriate.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for each year of the first five years the rules are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of administering the sections will be better understanding of application ranking criteria and program requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles Puls, Deputy Assistant Commissioner for Student Financial Assistance Programs at 1200 E. Anderson Lane, Austin, Texas 78752 and [Charles.Puls@theccb.state.tx.us](mailto:Charles.Puls@theccb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeals are proposed under the Texas Education Code (TEC), §56.352, which authorizes the Coordinating Board to provide repayment assistance to qualifying persons, in accordance with the statute and Board rules.

The repeals affect TEC, Chapter 56, Subchapter O and §§21.171 - 21.176 of Chapter 21, Subchapter G of the Texas Administrative Code.

§21.171. *Authority and Purpose.*

§21.172. *Definitions.*

§21.173. *Priorities of Application Acceptance.*

§21.174. *Eligible Teacher.*

§21.175. *Eligible Education Loan.*

§21.176. *Repayment of Education Loans.*

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

Filed with the Office of the Secretary of State on December 18, 2015.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Earliest possible date of adoption: January 31, 2016

For further information, please call: (512) 427-6114



#### 19 TAC §§21.171 - 21.176

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§21.171 - 21.176 concerning the Teach for Texas Loan Repayment Assistance Program (TFTLRAP). The new sections replace repealed §§21.171 - 21.176, introducing changes to some sections, while retaining language in

other sections, in addition to renumbering resulting from the changes. The changes to rules as they existed before repeal are described below.

Section 21.171 regarding authority and purpose does not include any changes.

Section 21.172 introduces new definitions for certified educator, shortage communities, shortage teaching fields, and teaching full time.

Section 21.173 (formerly §21.174) regarding teacher eligibility requirements excludes language that is provided in proposed new definitions, making the section more concise.

Section 21.174 (formerly §21.173) regarding priorities of application acceptance and ranking of applications provides more details on the criteria for ranking applications. The financial need component, the final criterion considered in the ranking process if funds remain available after applying other ranking criteria, is proposed to be based on the applicant's adjusted gross income reported on the most recent federal income tax return, rather than being based on the amount of student loan indebtedness. To date, the financial need criterion has not been a factor because funds have not been available after the preceding four ranking criteria have been applied. However, should financial need become a factor in the ranking process, adjusted gross income is a more appropriate reflection of general financial need than the amount of student loan debt.

Section 21.175 regarding eligible lender and eligible education loan adds language stating that credit card debt, equity loans, and other similar personal loan products are not considered educational loans eligible for repayment.

Section 21.176 regarding repayment of education loans does not include any changes.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Charles Puls has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be better understanding of application ranking criteria and program requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles Puls, Deputy Assistant Commissioner for Student Financial Assistance Programs at 1200 E. Anderson Lane, Austin, Texas 78752 and [Charles.Puls@theccb.state.tx.us](mailto:Charles.Puls@theccb.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new rules are proposed under the Texas Education Code (TEC), §56.352, which authorizes the Coordinating Board to provide repayment assistance to qualifying persons, in accordance with the statute and Board rules.

The proposed new rules affect TEC, Chapter 56, Subchapter O, §56.352 and Chapter 21, Subchapter G, §§21.171 - 21.176 of the Texas Administrative Code.

§21.171. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in Texas Education Code, Chapter 56, Subchapter O, Teach for Texas Loan Repayment Assistance Program. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code, §56.352.

(b) Purpose. The purpose of the Teach for Texas Loan Repayment Assistance Program is to recruit and retain classroom teachers in communities and subjects for which there is an acute shortage of teachers in Texas.

§21.172. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) Certified Educator--A person who has completed all requirements for a standard teaching certificate in the State of Texas. A person holding a probationary certificate, temporary classroom assignment permit, emergency permit, or a nonrenewable permit is not considered a certified educator. The term does not include a teacher's aide or a full-time administrator.

(3) Default--For purposes of this subchapter, a loan is considered in default if it is reduced to judgment.

(4) Service Period--A period of service of at least 9 months of a 12-month academic year.

(5) Shortage Communities--Texas public schools identified annually by the Texas Commissioner of Education, or his/her designee, whose percentage of economically disadvantaged students is higher than the statewide average percentage of students receiving free or reduced cost lunches.

(6) Shortage Teaching Fields--Subjects identified annually by the Texas Commissioner of Education, or his/her designee, as having a critical shortage of teachers.

(7) Teaching full-time--Teaching at least four hours each day performing instructional duties as a full-time employee of a Texas public school district.

§21.273. Eligible Teacher.

To be eligible for loan repayment an individual must:

(1) be certified in a shortage teaching field, be currently teaching full time in that field at the time of application, and have taught in that field full time for at least one year at the preschool, primary, or secondary level in a Texas public school; or

(2) be a certified educator currently teaching in a shortage community full time at the time of application at the preschool, primary, or secondary level and have taught in that community full time for at least one year; and

(3) submit a completed application to the Board by the stated deadline.

§21.174. Priorities of Application Acceptance and Ranking of Applications.

Renewal applications shall be given priority over first-time applications unless a break in service periods has occurred. Acceptance of initial applications will depend upon the availability of funds. An application deadline will be established each year and published on the Board's website. Applications will be ranked according to the following criteria, in order of priority:

(1) Teaching in a shortage field while also teaching in a shortage community that has the most severe teacher shortages.

(2) Teaching any subject in a shortage community that has the most severe teacher shortages.

(3) Teaching in a shortage field while also teaching in a shortage community.

(4) Financial need based on the applicant's adjusted gross income as reported on the most recently filed federal income tax return.

§21.175. Eligible Lender and Eligible Education Loan.

(a) The Board shall retain the right to determine the eligibility of lenders and holders of education loans to which payments may be made. An eligible lender or holder shall, in general, make or hold education loans made to individuals for purposes of undergraduate, or graduate education of the teacher and shall not be any private individual. An eligible lender or holder may be, but is not limited to, a bank, savings and loan association, credit union, institution of higher education, secondary market, governmental agency, or private foundation. Credit card, equity loans and other similar personal loan products are not considered educational loans eligible for repayment.

(b) To be eligible for repayment, an education loan must:

(1) be evidenced by a promissory note for loans to pay for the cost of attendance for the undergraduate or graduate education of the individual applying for repayment assistance;

(2) not be in default at the time of the teacher's application;

(3) not have an existing obligation to provide service for loan forgiveness through another program; and

(4) if the loan was consolidated with other loans, the applicant must provide documentation of the portion of the consolidated debt that was originated to pay for the cost of attendance for his or her undergraduate or graduate education.

§21.176. Repayment of Education Loans.

Eligible education loans shall be repaid under the following conditions:

(1) the annual repayment(s) shall be in one disbursement made payable to the holder(s) of the loan(s) or co-payable to the teacher and the holder(s) of the loan(s);

(2) the Commissioner of Higher Education shall determine the annual repayment amount, taking into consideration the amount of available funding; and

(3) the teacher shall not receive loan repayment assistance for more than five years.

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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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



## PART 2. TEXAS EDUCATION AGENCY

## CHAPTER 61. SCHOOL DISTRICTS SUBCHAPTER BB. COMMISSIONER'S RULES ON REPORTING REQUIREMENTS

### 19 TAC §61.1027

The Texas Education Agency proposes an amendment to §61.1027, concerning reporting requirements. The section addresses the report on the number of disadvantaged students. The proposed amendment would modify the rule to reflect changes in statute made by House Bill (HB) 1305, 84th Texas Legislature, 2015.

The Texas Education Code (TEC), §33.901, provides requirements for certain school districts and open-enrollment charter schools to provide a free or reduced-price breakfast program for eligible students. HB 1305, 84th Texas Legislature, 2015, amended the TEC, §33.901, to allow a school district or charter school that would otherwise be required to participate in the national School Breakfast Program (SBP) to instead develop and implement a locally funded program to provide free or reduced-price meals to all students in the school(s) who are eligible for the national program.

The TEC, §42.152, establishes the state compensatory education (SCE) allotment and provides the methods for determining the number of educationally disadvantaged students in a district. Before amendment by HB 1305, the TEC, §42.152(b), allowed school districts and open-enrollment charter schools to use the alternative reporting method only if no campuses participated in the National School Lunch Program (NSLP) or SBP. HB 1305 amended the statute to permit districts and open-enrollment charter schools to generate SCE funding both for students who participate in the NSLP or SBP at one or more campuses in the district and for students who participate in a locally funded program at one or more campuses in the district.

HB 1305 also amended the TEC, §42.152, to change the calculation of the number of educationally disadvantaged students for purposes of calculating the SCE allotment within the Foundation School Program from averaging the best six months' enrollment in the NSLP for the preceding school year to averaging the best six months' number of students eligible for enrollment in the NSLP.

Finally, the TEC, §42.152, was changed by HB 1305 to allow a student receiving a full-time virtual education to be included in the determination of the number of educationally disadvantaged students in a district if the school district submits a plan to the commissioner detailing the enhanced services that will be provided to the students and the plan is approved by the commissioner.

The proposed amendment to 19 TAC §61.1027 would reflect the changes made by HB 1305. Subsection (a) would be amended to clarify which school districts and open-enrollment charter schools may use the alternative method of calculating the number of disadvantaged students. In addition, language would be added to subsection (b) to specify the requirements school districts and charter schools must follow in order to count students receiving a full-time virtual education in the number of disadvantaged students.

The proposed amendment would have no new procedural or reporting implications. The rule currently requires school districts and open-enrollment charter schools to follow current reporting requirements outlined in 19 TAC §61.1027(b) and (c).

The proposed amendment would have no new locally maintained paperwork requirements. The rule currently requires school districts and open-enrollment charter schools to maintain household income documentation for students included in the count of educationally disadvantaged students as outlined in 19 TAC §61.1027(b) and (c).

**FISCAL NOTE.** Lisa Dawn-Fisher, associate commissioner for school finance / chief school finance officer, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government beyond what the authorizing statute requires as a result of enforcing or administering the amendment. The proposed amendment would provide SCE weighted funding to an increased number of students in school districts and open-enrollment charter schools that choose to offer a locally funded program.

**PUBLIC BENEFIT/COST NOTE.** Ms. Dawn-Fisher has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to increase the number of disadvantaged students used for computing a school district's SCE allotment and, therefore, the funding available for the district to fund supplemental programs and services designed to eliminate any disparity in performance on assessment instruments administered under the TEC, Chapter 39, Subchapter B, or disparity in the rates of high school completion between students at risk of dropping out of school, as defined by the TEC, §29.081, and all other students. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL 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 January 1, 2016, and ends February 1, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.texas.gov](mailto:rules@tea.texas.gov) or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on January 1, 2016.

**STATUTORY AUTHORITY.** The amendment is proposed under the Texas Education Code, §42.152, as amended by House Bill 1305, 84th Texas Legislature, 2015, which authorizes the commissioner to adopt rules to provide a method other than participation in the National School Lunch Program for school districts to count their educationally disadvantaged students in order to qualify for compensatory education program funding.

**CROSS REFERENCE TO STATUTE.** The amendment implements the Texas Education Code, §42.152, as amended by House Bill 1305, 84th Texas Legislature, 2015.

§61.1027. *Report on the Number of Disadvantaged Students.*

(a) Student eligibility. School districts and open-enrollment charter schools with one or more campuses ~~that do~~ not participating ~~[participate]~~ in the national school lunch program may derive an eligible student count by an alternative method for the purpose of receiving

ing the compensatory education allotment pursuant to Texas Education Code, §42.152(b).

(1) To be considered educationally disadvantaged in order to be counted for compensatory education funding using the alternative method, a student must meet the income requirements for eligibility under the national school lunch program.

(2) The total number of eligible students is the average of the best six months' count of students ~~[pupils]~~ in accordance with paragraph (1) [subsection (a)(1)] of this subsection [section]. For school districts and open-enrollment charter schools in the first year of operation, the count is taken from the current school year. For all others, the count is from the preceding school year.

(b) Application and reporting procedures.

(1) The commissioner of education will make available to school districts and open-enrollment charter schools appropriate income eligibility guidelines and application and reporting forms. The number of eligible students in accordance with subsection (a)(1) of this section will be reported on a monthly basis to the Texas Education Agency in a manner and with a deadline specified by the commissioner.

(2) School districts and open-enrollment charter schools must request prior approval from the commissioner to claim students receiving a full-time virtual education through the state virtual school network in their counts of educationally disadvantaged students. The request must include a plan detailing the enhanced services to be delivered to full-time state virtual school network students and submitted in a manner and with a deadline specified by the commissioner.

(c) Recordkeeping. School districts and open-enrollment charter schools that receive compensatory education program funding pursuant to this section are responsible for obtaining the appropriate data from families of potentially eligible students, verifying that information, and retaining records.

(d) Auditing procedures. The Texas Education Agency will conduct an audit of data submitted by school districts and open-enrollment charter schools that receive compensatory education program funding pursuant to this section approximately every five years or on an alternative schedule adopted at the discretion of the commissioner.

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



## PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

### CHAPTER 231. REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS

The State Board for Educator Certification (SBEC) proposes amendments to 19 TAC §§231.5, 231.11, 231.77, 231.91,

231.209, 231.253, 231.257, 231.333, 231.335, 231.337, 231.481, 231.483, 231.489, and 231.579, concerning requirements for public school personnel assignments. The sections establish Prekindergarten-Grade 6, Grades 6-8, Grades 6-12, and Grades 9-12 assignments. The proposed amendments would clarify the appropriate credential for placement in a particular teaching assignment and implement applicable requirements from the 84th Texas Legislature, Regular Session, 2015.

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

The proposed amendments to 19 TAC Chapter 231, Subchapters B - E, would identify the appropriate certificates for placement in particular Prekindergarten-Grade 6, Grades 6-8, Grades 6-12, and Grades 9-12 classroom assignments.

#### *Subchapter B, Prekindergarten-Grade 6 Assignments*

As a result of House Bill (HB) 218, 84th Texas Legislature, Regular Session, 2015, language in 19 TAC §231.5, Bilingual, Prekindergarten, and §231.11, Bilingual, Kindergarten-Grade 6, would be amended to ensure individuals are appropriately certified in bilingual education or English as a second language if teaching the English component only of a dual language immersion/one-way or two-way program model in Prekindergarten-Grade 6. The proposed amendments to §231.5 and §231.11 would also specify that a valid classroom teaching certificate appropriate for the grade level and subject areas taught plus any bilingual education certificate or endorsement would also be an acceptable combination of credentials to teach in the respective bilingual assignments. The proposed amendments would allow broader application of all bilingual certificates in combination with the valid classroom teaching certificate appropriate for the grade level and subject areas taught, would provide clarity for assigning individuals into bilingual assignments, and would eliminate some of the confusion that currently exists about the various names of bilingual certificates issued over the years.

#### *Subchapter C, Grades 6-8 Assignments*

Language in 19 TAC §231.77 would be amended to delete Technology Applications: Grades 7-12 from the list of certificates appropriate for the Technology Applications, Grades 6-8 assignment because SBEC approved deletion of the Technology Applications: Grades 7-12 certificate in another section of the SBEC rules. Remaining paragraphs would be renumbered accordingly.

#### *Subchapter D, Electives, Disciplinary Courses, Local Credit Courses, and Innovative Courses, Grades 6-12 Assignments*

As a result of SB 1309, 84th Texas Legislature, Regular Session, 2015, language in 19 TAC §231.91 would be amended to add the proposed new standard Junior Reserve Officer Training Corps: Grades 6-12 certificate to the list of credentials appropriate to teach Reserve Officer Training Corps (ROTC). SBEC approved for publication a proposed rule to establish the Junior Reserve Officer Training Corps: Grades 6-12 certificate in another chapter of its rules. The proposed amendment to §231.91 would also change the grade level reference for the ROTC assignment from Grades 9-12 to Grades 6-12 to ensure that districts providing ROTC courses at the middle school level would

have guidance on placement of teachers into that assignment. Remaining subsections would be relettered accordingly.

#### *Subchapter E, Grades 9-12 Assignments*

Language in 19 TAC §231.209 would be amended to delete the reference to TEA-approved training to match wording adopted effective May 17, 2015, by the SBEC in an earlier rule change for the same course in 19 TAC §231.573, Principles of Technology, Grades 9-12. References to Technology Applications: Grades 7-12 would be deleted from the list of certificates appropriate for the various assignments for Grades 9-12 specified in 19 TAC §§231.253, 231.257, 231.333, 231.335, 231.337, 231.481, 231.483, and 231.489 because SBEC approved for publication a rule amendment that, if adopted, would delete the Technology Applications: Grades 7-12 certificate. Remaining paragraphs in those sections would be renumbered accordingly. In addition, language would be amended in 19 TAC §231.579, Principles of Engineering, Grades 9-12, to delete the reference to required hours of physics to be eligible to teach the course.

The proposed amendments would have no procedural and reporting implications. Also, the proposed amendments would have no 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 will be no additional fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

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 to 19 TAC Chapter 231 would be updated requirements relating to the assignment of educators in Texas public schools. There are no additional costs to persons required to comply with the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL 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 January 1, 2016, and ends February 1, 2016. The SBEC will take registered oral and written comments on the proposed amendments to 19 TAC Chapter 231, Subchapters B - E, at the February 12, 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, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.texas.gov](mailto:sbecrules@tea.texas.gov) or faxed to (512) 463-5337. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, 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 January 1, 2016.

## SUBCHAPTER B. PREKINDERGARTEN- GRADE 6 ASSIGNMENTS

### 19 TAC §231.5, §231.11

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The proposed amendments implement the TEC, §21.031(a) and §21.041(b)(2).

#### §231.5. *Bilingual, Prekindergarten.*

(a) An assignment for Bilingual, Prekindergarten, is allowed with one of the following certificates.

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

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

(3) A valid classroom teaching certificate appropriate for the grade level and subject areas taught plus any bilingual education certificate or endorsement [one of the following].

~~[(A) Bilingual Education Supplemental.]~~

~~[(B) Bilingual Education Supplemental (Early Childhood-Grade 4).]~~

~~[(C) Bilingual Education Supplemental (Grades 4-8).]~~

~~[(D) Bilingual Endorsement.]~~

~~[(E) Bilingual/English as a Second Language Endorsement.]~~

(4) Early Childhood Education (Prekindergarten and Kindergarten).

(A) Initial assignments beginning with the 1991-1992 school year require the bilingual education delivery system or endorsement.

(B) Teachers assigned prior to the 1991-1992 school year are required to verify oral and written proficiency in the language of the target population as measured by examinations approved by the Texas Education Agency (TEA) by September 1, 1993, to be eligible for assignment.

(5) Elementary--General.

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

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

(C) Teachers assigned prior to the 1991-1992 school year are required to verify oral and written proficiency in the language of the target population as measured by examinations approved by the TEA by September 1, 1993, to be eligible for assignment.

(6) Elementary--General (Grades 1-6).

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

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

(C) Teachers assigned prior to the 1991-1992 school year are required to verify oral and written proficiency in the language of the target population as measured by examinations approved by the TEA by September 1, 1993, to be eligible for assignment.

(7) Elementary--General (Grades 1-8).

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

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

(C) Teachers assigned prior to the 1991-1992 school year are required to verify oral and written proficiency in the language of the target population as measured by examinations approved by the TEA by September 1, 1993, to be eligible for assignment.

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

(A) Initial assignments beginning with the 1991-1992 school year require the bilingual education delivery system or endorsement.

(B) Teachers assigned prior to the 1991-1992 school year are required to verify oral and written proficiency in the language of the target population as measured by examinations approved by the TEA by September 1, 1993, to be eligible for assignment.

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

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

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

(10) Elementary teacher certification with Bilingual Endorsement.

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

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

(11) Prekindergarten-Grade 5--General.

(A) Initial assignments beginning with the 1991-1992 school year require the bilingual education delivery system or endorsement.

(B) Teachers assigned prior to the 1991-1992 school year are required to verify oral and written proficiency in the language of the target population as measured by examinations approved by the TEA by September 1, 1993, to be eligible for assignment.

(12) Prekindergarten-Grade 6--General.

(A) Initial assignments beginning with the 1991-1992 school year require the bilingual education delivery system or endorsement.

(B) Teachers assigned prior to the 1991-1992 school year are required to verify oral and written proficiency in the language of the target population as measured by examinations approved by the TEA by September 1, 1993, to be eligible for assignment.

(13) Prekindergarten-Grade 6--Bilingual/English as a Second Language.

(14) Prekindergarten-Grade 12--Bilingual/English as a Second Language.

(15) Kindergarten.

(A) Initial assignments beginning with the 1991-1992 school year require the bilingual education delivery system or endorsement.

(B) Teachers assigned prior to the 1991-1992 school year are required to verify oral and written proficiency in the language of the target population as measured by examinations approved by the TEA by September 1, 1993, to be eligible for assignment.

(16) Teacher of Young Children--General.

(A) Initial assignments beginning with the 1991-1992 school year require the bilingual education delivery system or endorsement.

(B) Teachers assigned prior to the 1991-1992 school year are required to verify oral and written proficiency in the language of the target population as measured by examinations approved by the TEA by September 1, 1993, to be eligible for assignment.

(b) An assignment for the English component only of a dual language immersion/one-way or two-way bilingual education program model for Prekindergarten is allowed with a valid classroom teaching certificate appropriate for the grade level and subject areas taught plus a bilingual education certificate or endorsement or an English as a Second Language certificate or endorsement.

§231.11. *Bilingual, Kindergarten-Grade 6.*

(a) An assignment for Bilingual, Kindergarten-Grade 6, is allowed with one of the following certificates.

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

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

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

(4) A valid classroom teaching certificate appropriate for the grade level and subject areas taught plus any bilingual education certificate or endorsement [one of the following].

~~{(A) Bilingual Education Supplemental.}~~

~~{(B) Bilingual Education Supplemental (Early Childhood-Grade 4).}~~

~~{(C) Bilingual Education Supplemental (Grades 4-8).}~~

~~{(D) Bilingual Endorsement.}~~

~~{(E) Bilingual/English as a Second Language Endorsement.}~~

(5) Prekindergarten-Grade 5--Bilingual/English as a Second Language (Prekindergarten-Grade 5 only).

(6) Prekindergarten-Grade 6--Bilingual/English as a Second Language.

(7) Prekindergarten-Grade 12--Bilingual/English as a Second Language.

(b) An assignment for the English component only of a dual language immersion/one-way or two-way bilingual education program model for Prekindergarten is allowed with a valid classroom teaching certificate appropriate for the grade level and subject areas taught plus a bilingual education certificate or endorsement or an English as a Second Language certificate or endorsement.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

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



## SUBCHAPTER C. GRADES 6-8 ASSIGNMENTS

### 19 TAC §231.77

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and §21.0486, which allows one with a technology applications certificate to teach principles of arts, audio/video technology, and communications, and to teach principles of information technology, in addition to teaching technology applications courses.

CROSS REFERENCE TO STATUTE. The proposed amendment implements the TEC, §§21.031(a); 21.041(b)(2); and 21.0486.

§231.77. *Technology Applications, Grades 6-8.*

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

- (1) Elementary teacher certificate plus verification of competency to teach computer literacy.
- (2) Grades 6-12 or Grades 6-8--Computer Information Systems.
- (3) Information Processing Technologies Endorsement (Level I or II).
- (4) Junior High School or High School--Computer Information Systems.
- (5) Secondary Computer Information Systems (Grades 6-12).
- (6) Secondary teacher certificate plus verification of competency to teach computer literacy.
- (7) Technology Applications: Early Childhood-Grade 12.
- ~~{(8) Technology Applications: Grades 7-12.}~~
- (8) ~~[(9)]~~ Technology Applications: Grades 8-12 (Grade 8 only).

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. ELECTIVES, DISCIPLINARY COURSES, LOCAL CREDIT COURSES, AND INNOVATIVE COURSES, GRADES 6-12 ASSIGNMENTS

### 19 TAC §231.91

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and §21.0487, as added by Senate Bill (SB) 1309, 84th Texas Legislature, Regular Session, 2015, which requires the SBEC to establish a standard Junior Reserve Officer Training Corps (JROTC) teaching certificate to provide JROTC instruction; however, a person is not required to hold a JROTC certificate to be employed by a school district as a JROTC instructor.

CROSS REFERENCE TO STATUTE. The proposed amendment implements the TEC, §§21.031(a); 21.041(b)(2); and

21.0487, as added by SB 1309, 84th Texas Legislature, Regular Session, 2015.

§231.91. *Reserve Officer [Officers'] Training Corps.*

(a) An assignment for Reserve Officer [Officers'] Training Corps (ROTC), Grades 6-12 [9-12], is allowed with one of the following credentials [an Emergency Permit].

(1) Junior Reserve Officer Training Corps: Grades 6-12 certificate.

(2) Emergency permit for Reserve Officer Training Corps (ROTC), Grades 6-12.

(b) An emergency permit [Emergency Permit] for ROTC may not be renewed, but must be reissued every year as specified in §230.77(g)(4) of this title (relating to Specific Requirements for Initial Emergency Permits).

(c) ~~[(b)]~~ School districts must apply and pay for reissuance of a new ROTC instructor emergency permit each year the instructor serves.

(d) ~~[(e)]~~ ROTC may be used for Physical Education substitution credit.

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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## SUBCHAPTER E. GRADES 9-12 ASSIGNMENTS DIVISION 5. SCIENCE, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.209

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The proposed amendment implements the TEC, §21.031(a) and §21.041(b)(2).

§231.209. *Principles of Technology, Grades 9-12.*

(a) An assignment for Principles of Technology, Grades 9-12, is allowed with one of the following certificates.

(1) Grades 6-12 or Grades 9-12--Industrial Arts.

(2) Grades 6-12 or Grades 9-12--Industrial Technology.

(3) Grades 6-12 or Grades 9-12--Physics.

- (4) Grades 6-12 or Grades 9-12--Science.
- (5) Grades 6-12 or Grades 9-12--Science, Composite.
- (6) Junior High School (Grades 9-10 only) or High School--Industrial Arts.
- (7) Junior High School (Grades 9-10 only) or High School--Physics.
- (8) Junior High School (Grades 9-10 only) or High School--Science, Composite.
- (9) Master Science Teacher (Grades 8-12).
- (10) Mathematics/Physical Science/Engineering: Grades 6-12.
- (11) Mathematics/Physical Science/Engineering: Grades 8-12.
- (12) Physical Science: Grades 6-12.
- (13) Physical Science: Grades 8-12.
- (14) Physics/Mathematics: Grades 7-12.
- (15) Physics/Mathematics: Grades 8-12.
- (16) Science: Grades 7-12.
- (17) Science: Grades 8-12.
- (18) Secondary Industrial Arts (Grades 6-12).
- (19) Secondary Industrial Technology (Grades 6-12).
- (20) Secondary Physics (Grades 6-12).
- (21) Secondary Science (Grades 6-12).
- (22) Secondary Science, Composite (Grades 6-12).
- (23) Technology Education: Grades 6-12.

(b) An assignment for Principles of Technology, Grades 9-12, may also be taught with a vocational agriculture certificate or a trades and industry certificate with verifiable physics applications experience in business and industry, if assigned prior to the 1998-1999 school year. Six semester credit hours of college physics, chemistry, or electricity/electronics may be substituted for the business and industry experience.

~~[(e) All teachers assigned to Principles of Technology shall participate in Texas Education Agency-approved training and have eight semester credit hours in physics prior to teaching the course. At the discretion of the employing school district, persons assigned to Principles of Technology prior to the 2010-2011 school year may continue in the assignment.]~~

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

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Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency  
State Board for Educator Certification

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

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## DIVISION 8. TECHNOLOGY APPLICATIONS, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.253, §231.257

**STATUTORY AUTHORITY.** The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and §21.0486, which allows one with a technology applications certificate to teach principles of arts, audio/video technology, and communications, and to teach principles of information technology, in addition to teaching technology applications courses.

**CROSS REFERENCE TO STATUTE.** The proposed amendments implement the TEC, §§21.031(a); 21.041(b)(2); and 21.0486.

*§231.253. Technology Applications, Grades 9-12.*

An assignment for Digital Video and Audio Design, Web Communications, Digital Design and Media Production, Digital Art and Animation, 3-D Modeling and Animation, Digital Communications in the 21st Century, Web Design, Web Game Development, Independent Study in Technology Applications, or Independent Study in Evolving/Emerging Technologies, Grades 9-12, is allowed with one of the following certificates.

- (1) Technology Applications: Early Childhood-Grade 12.

~~[(2) Technology Applications: Grades 7-12.]~~

- (2) ~~[(3)]~~ Technology Applications: Grades 8-12.

*§231.257. Game Programming and Design or Mobile Application Development, Grades 9-12.*

An assignment for 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 7-12.]~~

- (6) ~~[(7)]~~ 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 12. ARTS, AUDIO VIDEO TECHNOLOGY, AND COMMUNICATIONS, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.333, 231.335, 231.337

**STATUTORY AUTHORITY.** The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and §21.0486, which allows one with a technology applications certificate to teach principles of arts, audio/video technology, and communications, and to teach principles of information technology, in addition to teaching technology applications courses.

**CROSS REFERENCE TO STATUTE.** The proposed amendments implement the TEC, §§21.031(a); 21.041(b)(2); and 21.0486.

§231.333. *Principles of Arts, Audio Video Technology, and Communications, Grades 9-12.*

An assignment for Principles of Arts, Audio Video Technology, and Communications, 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) Secondary Industrial Arts (Grades 6-12).
- (5) Secondary Industrial Technology (Grades 6-12).
- (6) Technology Applications: Early Childhood-Grade 12.
- ~~[(7) Technology Applications: Grades 7-12.]~~
- (7) [(8)] Technology Applications: Grades 8-12.
- (8) [(9)] Technology Education: Grades 6-12.
- (9) [(10)] Trade and Industrial Education: Grades 6-12.

This assignment requires appropriate work approval.

(10) [(11)] Trade and Industrial Education: Grades 8-12.  
This assignment requires appropriate work approval.

(11) [(12)] Vocational Trades and Industry. This assignment requires appropriate work approval.

§231.335. *Animation, Grades 9-12.*

An assignment for Animation or Advanced Animation, 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) Secondary Industrial Arts (Grades 6-12).
- (5) Secondary Industrial Technology (Grades 6-12).
- (6) Technology Applications: Early Childhood-Grade 12.
- ~~[(7) Technology Applications: Grades 7-12.]~~
- (7) [(8)] Technology Applications: Grades 8-12.
- (8) [(9)] Technology Education: Grades 6-12.
- (9) [(10)] Trade and Industrial Education: Grades 6-12.

This assignment requires appropriate work approval.

(10) [(11)] Trade and Industrial Education: Grades 8-12.  
This assignment requires appropriate work approval.

(11) [(12)] Vocational Trades and Industry. This assignment requires appropriate work approval.

§231.337. *Audio Video Production; Graphic Design and Illustration, Grades 9-12.*

(a) An assignment for Audio Video Production, Advanced Audio Video Production, Graphic Design and Illustration, or Advanced Graphic Design and Illustration, Grades 9-12, is allowed with one of the following certificates.

- (1) Secondary Industrial Arts (Grades 6-12).
- (2) Secondary Industrial Technology (Grades 6-12).
- (3) Technology Applications: Early Childhood-Grade 12.
- ~~[(4) Technology Applications: Grades 7-12.]~~
- (4) [(5)] Technology Applications: Grades 8-12.
- (5) [(6)] Technology Education: Grades 6-12.
- (6) [(7)] Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(7) [(8)] Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(8) [(9)] Vocational Trades and Industry. This assignment requires appropriate work approval.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Audio Video Production or Practicum in Graphic Design and Illustration, Grades 9-12, is allowed with one of the following certificates.

- (1) Secondary Industrial Arts (Grades 6-12).
- (2) Secondary Industrial Technology (Grades 6-12).
- (3) Technology Education: Grades 6-12.
- (4) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
- (5) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
- (6) Vocational Trades and Industry. This assignment requires appropriate work approval.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Audio Video Production or Practicum in Graphic Design and Illustration, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

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



## DIVISION 20. INFORMATION TECHNOLOGY, GRADES 9-12 ASSIGNMENTS

### 19 TAC §§231.481, 231.483, 231.489

**STATUTORY AUTHORITY.** The amendments are proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; and §21.0486, which allows one with a technology applications certificate to teach principles of arts, audio/video technology, and communications, and to teach principles of information technology, in addition to teaching technology applications courses.

**CROSS REFERENCE TO STATUTE.** The proposed amendments implement the TEC, §§21.031(a); 21.041(b)(2); and 21.0486.

#### §231.481. *Information Technology, Grades 9-12.*

An assignment for Principles of Information Technology, Research in Information Technology Solutions, or Telecommunications and Networking, 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) Secondary Industrial Arts (Grades 6-12).
- (5) Secondary Industrial Technology (Grades 6-12).
- (6) Technology Applications: Early Childhood-Grade 12.
- ~~(7) Technology Applications: Grades 7-12.~~
- ~~(8) Technology Applications: Grades 8-12.~~
- ~~(9) Technology Education: Grades 6-12.~~
- ~~(10) Trade and Industrial Education: Grades 6-12.~~

This assignment requires appropriate work approval.

~~(11) Trade and Industrial Education: Grades 8-12.~~  
This assignment requires appropriate work approval.

~~(12) Vocational Trades and Industry.~~ This assignment requires appropriate work approval.

#### §231.483. *Digital and Interactive Media or Web Technologies, Grades 9-12.*

An assignment for Digital and Interactive Media or Web Technologies, 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) Secondary Industrial Arts (Grades 6-12).
- (5) Secondary Industrial Technology (Grades 6-12).
- (6) Technology Education: Grades 6-12.
- (7) Technology Applications: Early Childhood-Grade 12.
- ~~(8) Technology Applications: Grades 7-12.~~
- ~~(9) Technology Applications: Grades 8-12.~~
- ~~(10) Trade and Industrial Education: Grades 6-12.~~

This assignment requires appropriate work approval.

~~(11) Trade and Industrial Education: Grades 8-12.~~  
This assignment requires appropriate work approval.

~~(12) Vocational Trades and Industry.~~ This assignment requires appropriate work approval.

#### §231.489. *Computer Technician, Grades 9-12.*

An assignment for Computer Technician, Grades 9-12, is allowed with one of the following certificates.

- (1) Secondary Industrial Arts (Grades 6-12).
- (2) Secondary Industrial Technology (Grades 6-12).
- (3) Technology Education: Grades 6-12.
- (4) Technology Applications: Early Childhood-Grade 12.
- ~~(5) Technology Applications: Grades 7-12.~~
- ~~(6) Technology Applications: Grades 8-12.~~
- ~~(7) Trade and Industrial Education: Grades 6-12.~~ This assignment requires appropriate work approval.
- ~~(8) Trade and Industrial Education: Grades 8-12.~~ This assignment requires appropriate work approval.
- ~~(9) Vocational Trades and Industry.~~ This assignment requires appropriate work 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

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## DIVISION 24. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS, GRADES 9-12 ASSIGNMENTS

### 19 TAC §231.579

**STATUTORY AUTHORITY.** The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate

and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; and §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The proposed amendment implements the TEC, §21.031(a) and §21.041(b)(2).

§231.579. *Principles of Engineering, Grades 9-12.*

(a) Subject to the requirements in subsection (b) of this section, an assignment for Principles of Engineering, Grades 9-12, is allowed with one of the following certificates.

- (1) Master Science Teacher (Grades 8-12).
- (2) Mathematics/Physical Science/Engineering: Grades 6-12.
- (3) Mathematics/Physical Science/Engineering: Grades 8-12.
- (4) Physical Science: Grades 6-12.
- (5) Physical Science: Grades 8-12.
- (6) Physics/Mathematics: Grades 7-12.
- (7) Physics/Mathematics: Grades 8-12.
- (8) Science: Grades 7-12.
- (9) Science: Grades 8-12.
- (10) Science, Technology, Engineering, and Mathematics: Grades 6-12.
- (11) Secondary Industrial Arts (Grades 6-12).
- (12) Secondary Industrial Technology (Grades 6-12).
- (13) Secondary Physics (Grades 6-12).
- (14) Secondary Science (Grades 6-12).
- (15) Secondary Science, Composite (Grades 6-12).
- (16) Technology Education: Grades 6-12.

(b) All teachers assigned to Principles of Engineering shall participate in Texas Education Agency-approved training [and have eight semester credit hours in physics] prior to teaching this course.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

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## CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §§233.1, 233.3 - 233.5, 233.7, 233.10, 233.14, 233.15, 233.17

The State Board for Educator Certification (SBEC) proposes amendments to 19 TAC §§233.1, 233.3-233.5, 233.7, 233.10, 233.14, and 233.15 and proposes new §233.17, concerning categories of classroom teaching certificates. The sections contain the current classroom teaching certificates by category, grade level, and subject areas. The proposed amendments would update the list of classroom certificates that either are eligible for issuance or that would continue to be recognized if they were issued prior to being phased out. Proposed new 19 TAC §233.17 would establish a new Junior Reserve Officer Training Corps: Grades 6-12 certificate.

The Texas Education Code, §21.041(b)(2), authorizes the SBEC to adopt rules that specify the classes of educator certificates to be issued, including emergency certificates. The SBEC rules in 19 TAC Chapter 233 are organized by subsection and 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 revisions to 19 TAC Chapter 233 would amend language relating to certificates that no longer are issued and would establish a new standard Junior Reserve Officer Training Corps: Grades 6-12 certificate.

### §233.1. *General Authority*

Language would be amended to expand subsection (e) to include "oral or communication proficiency examination in the target language" to clarify all testing requirements needed for certificate areas such as bilingual, visually impaired, and deaf and hard of hearing.

### §233.3. *English Language Arts and Reading; Social Studies*

Language would be amended in subsections (d), (f), and (h), which reference the certificates for English Language Arts and Reading: Grades 8-12, Social Studies: Grades 8-12, and History: Grades 8-12, which will be issued for the last time in 2015. The Grades 7-12 certificates replace each of these certificate areas, and the individuals issued these Grades 8-12 certificates are still eligible to teach with that credential. Remaining subsections would be relettered accordingly.

### §233.4. *Mathematics; Science*

Language would be amended in subsections (d), (f), (h), (j), and (p), which reference the certificates for Mathematics: Grades 8-12, Science: Grades 8-12, Life Science: Grades 8-12, Physical Science: Grades 8-12, and Chemistry: Grades 8-12, which will be issued for the last time in 2015. A Grades 7-12 or Grades 6-12 certificate replaces each of these certificate areas, and the individuals issued these Grades 8-12 certificates are still eligible to teach with that credential. Remaining subsections would be relettered accordingly.

### §233.5. *Technology Applications and Computer Science*

Language would be amended in subsection (b), Technology Applications: Grades 7-12, since the majority of educator preparation programs (EPPs) already offer the Technology Applications: Early Childhood-Grade 12 certificate. When the current Technology Applications: Grades 8-12 certificate is no longer issued, the one remaining technology applications certificate covering all grade levels should be sufficient for classroom assignment coverage. The individuals issued these Grades 8-12 certificates are still eligible to teach with that credential. Remaining subsections would be relettered accordingly.

### §233.7. *English as a Second Language*

As a result of House Bill 218, 84th Texas Legislature, Regular Session, 2015, language would be amended to address certification requirements for teachers assigned to provide only the English component of a dual language immersion/one-way or two-way bilingual education program model for prekindergarten-Grade 6.

### §233.10. *Fine Arts*

Language would be amended in subsection (c) to specify that Musical Theatre would be taught by the holder of a Theatre: Early Childhood-Grade 12 certificate. Language would also be 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. These proposed changes have already been incorporated into 19 TAC Chapter 231, Requirements for Public School Personnel Assignments, to ensure courses approved by the State Board of Education are included in SBEC rules and that the rules identify the appropriate teaching certificate needed for these course assignments. The Dance: Grades 8-12 certificate satisfies the requirement to teach Dance, Middle School 1-3 courses for Grades 6-8. It also ensures that all levels of middle school dance can be taught by certified dance instructors.

### §233.14. *Career and Technical Education (Certificates requiring experience and preparation in a skill area)*

Language would be amended in subsections (f) and (g) to align required years of full-time, wage-earning experience for the Trade and Industrial Education: Grades 8-12 and Trade and Industrial Education: Grades 6-12 certificates. In October 2015, staff presented a discussion item with a new option for individuals with a bachelor's degree only in a specific work approval area to be eligible for admission into an approved EPP for Trade and Industrial Education certification. Texas Education Agency (TEA) staff has not included this option in the proposed amendment to 19 TAC §233.14 at this time to give further review of this issue, implications of this change, and the possible impact on other career and technical education areas. TEA staff will work with the Texas Higher Education Coordinating Board, TEA Curriculum staff, and other key stakeholders to fully vet these issues and will present proposed changes for further discussion and possible rule changes at a future meeting.

### §233.15. *Languages Other Than English*

Language would be amended to delete subsection (k) that references the Secondary Latin certificate issued for the last time in 2012. Language would also be amended to add two new certificate areas for Korean: Early Childhood-Grade 12 and Portuguese: Early Childhood-Grade 12 in response to stakeholder feedback. Remaining subsections would be relettered accordingly.

### §233.17. *Junior Reserve Officer Training Corps*

As a result of Senate Bill 1309, 84th Texas Legislature, Regular Session, 2015, proposed new 19 TAC §233.17 would be added to establish certification requirements for the new five-year standard certificate for Junior Reserve Officer Training Corps: Grades 6-12.

The proposed rule actions would have no procedural and reporting implications. Also, the proposed rule actions would have no 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 will be no additional fiscal implications for state or local government as a result of enforcing or administering the proposed rule actions.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for the first five-year period the proposed revisions are in effect the public and student benefit anticipated as a result of the proposed revisions to 19 TAC Chapter 233 would be the continuation of guidelines for categories of classroom teaching certificates. There are no additional costs to persons required to comply with the proposed revisions.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL 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 January 1, 2016, and ends February 1, 2016. The SBEC will take registered oral and written comments on the proposed revisions to 19 TAC Chapter 233 at the February 12, 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, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.texas.gov](mailto:sbecrules@tea.texas.gov) or faxed to (512) 463-5337. All requests for a public hearing on the proposed revisions 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 January 1, 2016.

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; §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.031(b), which states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; §21.041(b)(4), which requires the SBEC to propose

rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(6), which requires the SBEC to propose rules that provide for special or restricted certification of educators, including certification of instructors of American Sign Language; §21.044(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; §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); §21.048(a), which specifies that the board shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board; §21.0487, as added by Senate Bill (SB) 1309, 84th Texas Legislature, Regular Session, 2015, which requires the SBEC to establish a standard Junior Reserve Officer Training Corps (JROTC) teaching certificate to provide JROTC instruction; however, a person is not required to hold a JROTC certificate to be employed by a school district as a JROTC instructor; §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; §21.050(b), which states that the SBEC may not require more than 18 semester credit hours of education courses at the baccalaureate level for the granting of a teaching certificate; §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; §22.0831(f), which authorizes the SBEC to propose rules to implement the national criminal history record information review of certified educators; §29.061(b-1), as added by House Bill (HB) 218, 84th Texas Legislature, Regular Session, 2015, which requires that a teacher assigned to a bilingual education program using a dual language immersion/one-way or two-way program model be appropriately certified by the SBEC; and §29.061(b-2), as added by HB 218, 84th Texas Legislature, Regular Session, 2015, which specifies the assignment of teachers in a school district that provides bilingual education programs using a dual language immersion/one-way or two-way program model.

**CROSS REFERENCE TO STATUTE.** The proposed amendments and new section implement the TEC, §§21.003(a), 21.031, 21.041(b)(1)-(4) and (6), 21.044(e) and (f), 21.048(a), 21.0487, as added by SB 1309, 84th Texas Legislature, Regular Session, 2015, 21.050, 22.0831(f), and 29.061(b-1) and (b-2), as added by HB 218, 84th Texas Legislature, Regular Session, 2015.

*§233.1. General Authority.*

(a) In this chapter, the State Board for Educator Certification (SBEC) establishes separate certificate categories within the certificate class for the classroom teacher established under §230.33 of this title (relating to Classes of Certificates).

(b) For purposes of authorizing a person to be employed by a school district under the Texas Education Code, §21.003(a), a certificate category identifies:

(1) the content area or the special student population the holder may teach;

(2) the grade levels the holder may teach; and

(3) the earliest date the certificate may be issued.

(c) Unless provided otherwise in this title, the content area and grade level of a certificate category as well as the standards underlying the certification examination for each category are aligned with the Texas Essential Knowledge and Skills curriculum adopted by the State Board of Education.

(d) A category includes both a standard certificate and the related emergency or temporary credential. A category may comprise a standard base certificate or a supplemental certificate. A supplemental certificate may be issued only to a person who already holds the appropriate standard base certificate.

(e) A person must satisfy all applicable requirements and conditions under this title and other law to be issued a certificate in a category. A person seeking an initial standard certification must pass the appropriate grade level of pedagogy and professional responsibility certification examination, and the appropriate content subject examination(s), and, as applicable, the appropriate oral or communication proficiency examination in the target language for the certification sought as established by the SBEC. A person completing requirements for a standard certificate using a score on an examination that has been eliminated must apply and pay for the certification not later than one year from the last test administration of the deleted examination. Exceptions may be granted for a period of two years after the elimination of the examination for catastrophic illness of the educator or an immediate family member or military service of the applicant.

(f) A person seeking a languages other than English certificate valid for Early Childhood-Grade 12 specified in §233.15 of this title (relating to Languages Other Than English) must successfully complete an approved oral or communication proficiency examination in the target language in addition to the appropriate grade level of pedagogy and professional responsibility and content subject examinations as specified in subsection (e) of this section.

(g) A holder of a certificate valid for Grades 4-8 may teach technology applications in Grades 4-8 if integrated within an academic course or through interdisciplinary methodology in those subjects that the individual is certified to teach. The school district is responsible for ensuring that the educator has the appropriate technology applications knowledge and skills to teach the course(s) to which he or she is assigned. If Technology Applications is taught as a separate course, the educator shall be required to hold an appropriate technology applications certificate as specified in §233.5 of this title (relating to Technology Applications and Computer Science).

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

*§233.3. English Language Arts and Reading; Social Studies.*

(a) English Language Arts and Reading: Grades 4-8. The English Language Arts and Reading: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the English Language Arts and Reading: Grades 4-8 certificate may teach English language arts and reading in Grades 4-8.

(b) Social Studies: Grades 4-8. The Social Studies: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The

holder of the Social Studies: Grades 4-8 certificate may teach social studies in Grades 4-8.

(c) English Language Arts and Reading/Social Studies: Grades 4-8. The English Language Arts and Reading/Social Studies: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the English Language Arts and Reading/Social Studies: Grades 4-8 certificate may teach English language arts and reading, and social studies in Grades 4-8.

~~{(d) English Language Arts and Reading: Grades 8-12. The English Language Arts and Reading: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the English Language Arts and Reading: Grades 8-12 certificate may teach English language arts and reading in Grade 8 and all English language arts and reading courses in Grades 9-12, excluding journalism and speech courses. A candidate must meet the requirements for an English Language Arts and Reading: Grades 8-12 certificate by August 31, 2015. All applications must be complete and received by the Texas Education Agency (TEA) by October 30, 2015.}~~

(d) ~~{(e) English Language Arts and Reading: Grades 7-12. The English Language Arts and Reading: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the English Language Arts and Reading: Grades 7-12 certificate may teach English language arts and reading in Grades 7 and 8 and all English language arts and reading courses in Grades 9-12, excluding journalism and speech courses.}~~

~~{(f) Social Studies: Grades 8-12. The Social Studies: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Social Studies: Grades 8-12 certificate may teach social studies in Grade 8 and all social studies and economics courses in Grades 9-12. A candidate must meet the requirements for a Social Studies: Grades 8-12 certificate by August 31, 2015. All applications must be complete and received by the TEA by October 30, 2015.}~~

(e) ~~{(g) Social Studies: Grades 7-12. The Social Studies: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the Social Studies: Grades 7-12 certificate may teach social studies in Grades 7 and 8 and all social studies and economics courses in Grades 9-12.}~~

~~{(h) History: Grades 8-12. The History: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the History: Grades 8-12 certificate may teach social studies in Grade 8 and all history courses in Grades 9-12. A candidate must meet the requirements for a History: Grades 8-12 certificate by August 31, 2015. All applications must be complete and received by the TEA by October 30, 2015.}~~

(f) ~~{(i) History: Grades 7-12. The History: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the History: Grades 7-12 certificate may teach social studies in Grades 7 and 8 and all history courses in Grades 9-12.}~~

(g) ~~{(j) Journalism: Grades 8-12. The Journalism: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Journalism: Grades 8-12 certificate is eligible to teach all journalism courses in Grades 8-12. A candidate must meet the requirements for a Journalism: Grades 8-12 certificate by August 31, 2016. All applications must be complete and received by the TEA by October 30, 2016.}~~

(h) ~~{(k) Journalism: Grades 7-12. The Journalism: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the Journalism: Grades 7-12 certificate is eligible to teach all journalism courses in Grades 7-12.}~~

(i) ~~{(l) Speech: Grades 7-12. The Speech: Grades 7-12 certificate may be issued no earlier than November 1, 2010. The holder of the Speech: Grades 7-12 certificate is eligible to teach all speech courses in Grades 7-12.}~~

§233.4. *Mathematics; Science.*

(a) Mathematics: Grades 4-8. The Mathematics: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Mathematics: Grades 4-8 certificate may teach mathematics in Grades 4-8, including Algebra I for high school credit.

(b) Science: Grades 4-8. The Science: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Science: Grades 4-8 certificate may teach science in Grades 4-8.

(c) Mathematics/Science: Grades 4-8. The Mathematics/Science: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Mathematics/Science: Grades 4-8 certificate may teach mathematics and science in Grades 4-8.

~~{(d) Mathematics: Grades 8-12. The Mathematics: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Mathematics: Grades 8-12 certificate may teach mathematics in Grade 8 and all mathematics courses in Grades 9-12. A candidate must meet the requirements for a Mathematics: Grades 8-12 certificate by August 31, 2015. All applications must be complete and received by the Texas Education Agency (TEA) by October 30, 2015.}~~

(d) ~~{(e) Mathematics: Grades 7-12. The Mathematics: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the Mathematics: Grades 7-12 certificate may teach mathematics in Grades 7 and 8 and all mathematics courses in Grades 9-12.}~~

~~{(f) Science: Grades 8-12. The Science: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Science: Grades 8-12 certificate may teach science in Grade 8 and all science courses in Grades 9-12. A candidate must meet the requirements for a Science: Grades 8-12 certificate by August 31, 2015. All applications must be complete and received by the TEA by October 30, 2015.}~~

(e) ~~{(g) Science: Grades 7-12. The Science: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the Science: Grades 7-12 certificate may teach science in Grades 7 and 8 and all science courses in Grades 9-12.}~~

~~{(h) Life Science: Grades 8-12. The Life Science: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Life Science: Grades 8-12 certificate may teach science in Grade 8 and all biology, environmental systems, environmental science, and aquatic science courses in Grades 9-12. A candidate must meet the requirements for a Life Science: Grades 8-12 certificate by August 31, 2015. All applications must be complete and received by the TEA by October 30, 2015.}~~

(f) ~~{(i) Life Science: Grades 7-12. The Life Science: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the Life Science: Grades 7-12 certificate may teach science in Grades 7 and 8 and all biology, environmental systems, environmental science, and aquatic science courses in Grades 9-12.}~~

~~{(j) Physical Science: Grades 8-12. The Physical Science: Grades 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Physical Science: Grades 8-12 certificate is eligible to teach science in Grade 8 and all physics and chemistry courses, including Integrated Physics and Chemistry, in Grades 9-12. A candidate must meet the requirements for a Physical Science: Grades 8-12 certificate by August 31, 2015. All applications must be complete and received by the TEA by October 30, 2015.}~~

certificate by August 31, 2015. All applications must be complete and received by the TEA by October 30, 2015.}]

(g) [(k)] Physical Science: Grades 6-12. The Physical Science: Grades 6-12 certificate may be issued no earlier than September 1, 2013. The holder of the Physical Science: Grades 6-12 certificate is eligible to teach science in Grades 6-8 and all physics and chemistry courses, including Integrated Physics and Chemistry, in Grades 9-12.

(h) [(h)] Physics/Mathematics: Grades 8-12. The Physics/Mathematics: Grades 8-12 certificate may be issued no earlier than September 1, 2004. The holder of the Physics/Mathematics: Grades 8-12 certificate is eligible to teach mathematics in Grade 8 and all mathematics courses in Grades 9-12. The holder may also teach science in Grade 8 and all physics courses in Grades 9-12. A candidate must meet the requirements for a Physics/Mathematics: Grades 8-12 certificate by August 31, 2016. All applications must be complete and received by the TEA by October 30, 2016.

(i) [(m)] Physics/Mathematics: Grades 7-12. The Physics/Mathematics: Grades 7-12 certificate may be issued no earlier than September 1, 2014. The holder of the Physics/Mathematics: Grades 7-12 certificate is eligible to teach mathematics in Grades 7 and 8 and all mathematics courses in Grades 9-12. The holder may also teach science in Grades 7 and 8 and all physics courses in Grades 9-12.

(j) [(n)] Mathematics/Physical Science/Engineering: Grades 8-12. The Mathematics/Physical Science/Engineering: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Mathematics/Physical Science/Engineering: Grades 8-12 certificate is eligible to teach mathematics in Grade 8 and all mathematics courses in Grades 9-12. The holder is also eligible to teach science in Grade 8 and all physics and chemistry courses, including Integrated Physics and Chemistry, in Grades 9-12. A candidate must meet the requirements for a Mathematics/Physical Science/Engineering: Grades 8-12 certificate by August 31, 2016. All applications must be complete and received by the TEA by October 30, 2016.

(k) [(o)] Mathematics/Physical Science/Engineering: Grades 6-12. The Mathematics/Physical Science/Engineering: Grades 6-12 certificate may be issued no earlier than September 1, 2014. The holder of the Mathematics/Physical Science/Engineering: Grades 6-12 certificate is eligible to teach mathematics in Grades 6-8 and all mathematics courses in Grades 9-12. The holder is also eligible to teach science in Grades 6-8 and all physics and chemistry courses, including Integrated Physics and Chemistry, in Grades 9-12.

[(p)] Chemistry: Grades 8-12. The Chemistry: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Chemistry: Grades 8-12 certificate is eligible to teach science in Grade 8 and all chemistry courses in Grades 9-12. A candidate must meet the requirements for a Chemistry: Grades 8-12 certificate by August 31, 2015. All applications must be complete and received by the TEA by October 30, 2015.}]

(l) [(q)] Chemistry: Grades 7-12. The Chemistry: Grades 7-12 certificate may be issued no earlier than September 1, 2013. The holder of the Chemistry: Grades 7-12 certificate is eligible to teach science in Grades 7 and 8 and all chemistry courses in Grades 9-12.

#### §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: Grades 7-12. The Technology Applications: Grades 7-12 certificate may be issued no earlier than September 1, 2014. The holder of the Technology Applications: Grades 7-12 certificate may teach Technology Applications in Grades 7 and 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.}]

(b) [(e)] 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) [(4)] 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 in Grades 8-12.

#### §233.7. *English as a Second Language.*

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

(b) English as a Second Language Generalist: Grades 4-8. The English as a Second Language Generalist: Grades 4-8 certificate may be issued no earlier than September 1, 2003. The holder of the English as a Second Language Generalist: Grades 4-8 certificate may teach in an English as a second language program in Grades 4-8. The holder of an English as a Second Language Generalist: Grades 4-8 certificate may also teach the component of a dual language immersion/one-way or two-way bilingual education program model that is provided in English for Grades 4-6 only. The holder of the English as a Second Language Generalist: Grades 4-8 certificate may teach the same content areas, in either an English as a second language or a general education program, as the holder of the Generalist: Grades 4-8 certificate may teach under §233.2(b) of this title. A candidate must meet the requirements for an English as a Second Language Generalist: Grades 4-8 certificate by August 31, 2017. All applications must be complete and received by the TEA by October 30, 2017.

(c) English as a Second Language Supplemental. The English as a Second Language Supplemental certificate may be issued no earlier than September 1, 2003. The holder of the English as a Second Language Supplemental certificate may teach in an English as a second language program at the same grade levels and in the same content area(s) of the holder's base certificate. The holder of an English as a Second Language Supplemental certificate may also teach the component of a dual language immersion/one-way or two-way bilingual program model that is provided in English for prekindergarten-Grade 6.

*§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.

*§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 [~~three~~] years of full-time wage-earning experience within the past ten [~~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. 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 [~~three~~] years of full-time wage-earning experience within the past ten [~~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.

(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 [~~three~~] years of full-time wage-earning experience within the past ten [~~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 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 [~~three~~] years of full-time wage-earning experience within the past ten [~~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 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 [~~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 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, 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.

§233.15. *Languages Other Than English.*

(a) American Sign Language: Early Childhood-Grade 12. The American Sign Language: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the American Sign Language: Early Childhood-Grade 12 certificate is eligible to teach American Sign Language in a prekindergarten program, in kindergarten, and in Grades 1-12.

(b) Arabic: Early Childhood-Grade 12. The Arabic: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007. The holder of the Arabic: Early Childhood-Grade 12 certificate is eligible to teach Arabic in a prekindergarten program, in kindergarten, and in Grades 1-12.

(c) Chinese: Early Childhood-Grade 12. The Chinese: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007. The holder of the Chinese: Early Childhood-Grade 12 certificate is eligible to teach Chinese in a prekindergarten program, in kindergarten, and in Grades 1-12.

(d) French: Early Childhood-Grade 12. The French: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2009. The holder of the French: Early Childhood-Grade 12 certificate is eligible to teach French in a prekindergarten program, in kindergarten, and in Grades 1-12.

(e) German: Early Childhood-Grade 12. The German: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2009. The holder of the German: Early Childhood-Grade 12 certificate is eligible to teach German in a prekindergarten program, in kindergarten, and in Grades 1-12.

(f) Hindi: Early Childhood-Grade 12. The Hindi: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2010. The holder of the Hindi: Early Childhood-Grade 12 certificate is eligible to teach Hindi in a prekindergarten program, in kindergarten, and in Grades 1-12.

(g) Italian: Early Childhood-Grade 12. The Italian: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2010. The holder of the Italian: Early Childhood-Grade 12 certificate is eligible to teach Italian in a prekindergarten program, in kindergarten, and in Grades 1-12.

(h) Japanese: Early Childhood-Grade 12. The Japanese: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007. The holder of the Japanese: Early Childhood-Grade 12 certificate is eligible to teach Japanese in a prekindergarten program, in kindergarten, and in Grades 1-12.

(i) Korean: Early Childhood-Grade 12. The Korean: Early Childhood-Grade 12 certificate may be issued no earlier than June 1, 2016. The holder of the Korean: Early Childhood-Grade 12 certificate is eligible to teach Korean in a prekindergarten program, in kindergarten, and in Grades 1-12.

(j) [(+) Latin: Early Childhood-Grade 12. The Latin: Early Childhood-Grade 12 certificate may be issued no earlier than January 1, 2010. The holder of the Latin: Early Childhood-Grade 12 certificate is eligible to teach Latin in a prekindergarten program, in kindergarten, and in Grades 1-12.

(k) Portuguese: Early Childhood-Grade 12. The Portuguese: Early Childhood-Grade 12 certificate may be issued no earlier than June 1, 2016. The holder of the Portuguese: Early Childhood-Grade 12 certificate is eligible to teach Portuguese in a prekindergarten program, in kindergarten, and in Grades 1-12.

(l) [(+) Russian: Early Childhood-Grade 12. The Russian: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007. The holder of the Russian: Early Childhood-Grade 12 certificate is eligible to teach Russian in a prekindergarten program, in kindergarten, and in Grades 1-12.

[(k) Secondary Latin: The Secondary Latin certificate shall expire on September 1, 2012.]

(m) [(+) Spanish: Early Childhood-Grade 12. The Spanish: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2009. The holder of the Spanish: Early Childhood-Grade 12 certificate is eligible to teach Spanish in a prekindergarten program, in kindergarten, and in Grades 1-12.

(n) [(+) Turkish: Early Childhood-Grade 12. The Turkish: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2010. The holder of the Turkish: Early Childhood-Grade 12 certificate is eligible to teach Turkish in a prekindergarten program, in kindergarten, and in Grades 1-12.

(o) [(+) Urdu: Early Childhood-Grade 12. The Urdu: Early Childhood-Grade 12 certificate may be issued no earlier than November 1, 2010. The holder of the Urdu: Early Childhood-Grade 12 certificate is eligible to teach Urdu in a prekindergarten program, in kindergarten, and in Grades 1-12.

(p) [(+) Vietnamese: Early Childhood-Grade 12. The Vietnamese: Early Childhood-Grade 12 certificate may be issued no earlier than October 15, 2007. The holder of the Vietnamese: Early Childhood-Grade 12 certificate is eligible to teach Vietnamese in a prekindergarten program, in kindergarten, and in Grades 1-12.

§233.17. *Junior Reserve Officer Training Corps.*

Junior Reserve Officer Training Corps: Grades 6-12 certificate. The holder of the Junior Reserve Officer Training Corps: Grades 6-12 certificate is eligible to teach all junior reserve officer training courses in Grades 6-12. A candidate for the standard Junior Reserve Officer Training Corps: Grades 6-12 certificate must:

- (1) hold a Junior Reserve Officer Training Corps instructor certificate issued by one of the military branches;
- (2) complete an approved educator preparation program;
- (3) 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; and
- (4) obtain a passing performance on the pedagogy and professional responsibilities certification examination.

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

Filed with the Office of the Secretary of State on December 18, 2015.

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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



## CHAPTER 249. DISCIPLINARY PROCEEDINGS, SANCTIONS, AND CONTESTED CASES

The State Board for Educator Certification (SBEC) proposes amendments to 19 TAC §§249.5, 249.15, 249.17, and 249.35, concerning disciplinary proceedings, sanctions, and contested cases. The SBEC rules in Chapter 249 establish guidelines and procedures for conducting investigations and disciplinary actions relating to educator misconduct. The proposed amendments would create more specific penalty guidelines for Texas Education Agency (TEA) staff to follow in settling or prosecuting educator discipline cases. In addition, the proposed amendments would set out the process that the SBEC will use when the State Office of Administrative Hearings (SOAH) dismisses and remands a case in accordance with Texas Government Code, §2001.058(d-1), as amended by House Bill (HB) 2154, 84th Texas Legislature, Regular Session, 2015, after a respondent fails to appear for a contested case hearing.

On March 6, 2015, the SBEC established a Committee on Educator Discipline (Committee), and on August 7, 2015, the SBEC charged the Committee with creating more specific penalty guidelines for TEA staff to follow in settling or prosecuting educator discipline cases. The Committee met on October 15, 2015, and developed recommendations for penalty guidance. The proposed amendments to 19 TAC §249.5 and §249.17 reflect the recommendations of the Committee on how to improve and clarify the SBEC's rules regarding penalties for certified educators subject to discipline.

The proposed amendment to 19 TAC §249.5 would allow the SBEC to impose higher sanctions for certified administrators subject to discipline than for teachers and paraprofessionals because administrators have, as a result of their positions of authority over both students and other educators, an even greater obligation to maintain good moral character than teachers and paraprofessionals.

The proposed amendment to 19 TAC §249.15 would allow the SBEC a clearer and more efficient means to discipline educators who violate SBEC disciplinary orders.

The proposed amendment to 19 TAC §249.17 would clarify the factors that the SBEC considers as mitigating or enhancing factors in making sanctioning decisions for educators subject to discipline; set minimum sanctions for contract abandonment, felony-level conduct, misdemeanor-level conduct, and test security violations to achieve more consistency in sanctions; and clarify the factors that SBEC considers as good cause for contract abandonment.

With regard to contract abandonment, if an educator has worked at a school district after abandoning a contract at another school district, the educator's suspension would begin at the start of the next school year so as to neither harm the students the educator is instructing nor to allow the educator to use summer months to count as suspension time.

For educators who have not worked as educators while on felony community supervision or deferred adjudication, the suspension sanction in an agreed settlement order would run concurrently with the period the individual is on felony community supervision or deferred adjudication, because an educator on felony community supervision or deferred adjudication is not an appropriate role model worthy to instruct the students of Texas. For individuals who continue to work while on felony community supervision or deferred adjudication, the period of the suspension sanction in an agreed settlement order would be equal to the court-ordered term of felony community supervision or deferred adjudication, but would begin from the effective date of the agreed order so that the educator serves the same length of suspension as for an individual who had not worked as an educator while on felony community supervision or deferred adjudication.

If the educator has completed felony community supervision or deferred adjudication before the SBEC disciplines the educator, the educator's suspension sanction in an agreed final order would be at least half as long as the initial court-ordered term of felony community supervision or deferred adjudication to prevent inequities that could be caused by the length of time required for the SBEC disciplinary process to run its course, while still requiring the educator to serve a suspension as a deterrent punishment for the educator's misconduct.

In accordance with Texas Government Code, §2001.058(d-1), as amended by HB 2154, 84th Texas Legislature, Regular Session, 2015, the proposed amendment to 19 TAC §249.35 would allow an administrative law judge to dismiss and remand a contested case to the SBEC without issuing a proposal for decision when a licensee defaults by failing to appear at a contested case hearing before the SOAH. The proposed amendment would create procedures for the SBEC to issue a default order in such situations.

The proposed amendments would have no additional procedural and reporting implications. Also, 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 will be no additional fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

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 to 19 TAC §§249.5, 249.15, 249.17, and 249.35 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 are no additional costs to persons required to comply with the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL 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 January 1, 2016, and ends February 1, 2016. The SBEC will take registered oral and written comments on the proposed amendments to 19 TAC §§249.5, 249.15, 249.17, and 249.35 at the February 12, 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, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.texas.gov](mailto:sbecrules@tea.texas.gov) or faxed to (512) 463-5337. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Leadership and Quality, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Mr. Ryan Franklin, 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 January 1, 2016.

## SUBCHAPTER A. GENERAL PROVISIONS

### 19 TAC §249.5

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by the Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose

rules that provide for the enforcement of an educator's code of ethics; §21.044(a), which authorizes the SBEC to propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program and specify the minimum academic qualifications required for a certificate; §21.058, which provides for the revocation of educator certificates based on conviction of certain offenses; §21.060, which allows the SBEC to suspend or revoke educator certificates based on conviction for certain offenses related to the duties and responsibilities of the education profession; §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; §22.0831, which requires the SBEC to conduct a national criminal history record information review of all applicants for or holders of educator certificates who are employed in Texas schools; §22.085, which allows the SBEC to impose a sanction on an educator who does not discharge an employee or refuse to hire an applicant if the educator knows or should have known, through a criminal history record information review, that the employee or applicant has been convicted of a criminal offense, and requires that school district superintendents and chief operating officers of open-enrollment charter schools certify to the commissioner that the district or school has not failed to discharge or refused to hire any individuals with criminal history; and §22.087, as amended by House Bill (HB) 1783, 84th Texas Legislature, Regular Session, 2015, which requires superintendents to notify the SBEC whenever they obtain knowledge that an applicant for or holder of an educator certificate has a reported criminal history; the Texas Government Code, §411.087, as amended by Senate Bill (SB) 1902, 84th Texas Legislature, Regular Session, 2015, which authorizes the SBEC to receive criminal history record information from the Federal Bureau of Investigation; and §411.090, which allows the SBEC to obtain criminal history record information from the Department of Public Safety of the State of Texas; and the Texas Occupations Code, §53.021(a), as amended by HB 2299, 84th Texas Legislature, Regular Session, 2015, effective January 1, 2017, which provides that a licensing agency may suspend, revoke, or deny a license to a person convicted of an offense related to the duties and responsibilities of the education profession and certain other offenses; §53.022, which provides the factors to be considered by the SBEC in determining whether a criminal conviction relates to the duties and responsibilities of the education profession; §53.023, which provides additional factors to be considered by the SBEC in determining the fitness of a person convicted of a crime to hold an educator certificate; §53.024, which provides that licensing proceedings brought pursuant to Chapter 53 are governed by the Administrative Procedure Act; §53.025, which requires the SBEC to issue guidelines providing the reasons for determinations made by the SBEC pursuant to Chapter 53; §53.051, which requires the SBEC to notify a person in writing of the reasons for a denial, suspension, or revocation of a certificate because of a prior conviction of a crime and the procedures for appeal of that decision; and §53.052, which allows a person who has exhausted administrative remedies to file an action for judicial review within 30 days after the SBEC decision becomes final and appealable.

CROSS REFERENCE TO STATUTE. The proposed amendment implements the TEC, §§21.031(a); 21.040(6); 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a); 21.058; 21.060; 22.082; 22.0831; 22.085; and 22.087, as amended by HB 1783, 84th Texas Legislature, Regular Session, 2015; the Texas Government Code, §411.087, as amended by SB 1902, 84th Texas Legislature, Regular Session, 2015; and §411.090; and Texas Occupations Code, §§53.021(a), as amended by HB 2299, 84th Texas Legislature, Regular Session, 2015, effective January 1, 2017; 53.022 - 53.025; 53.051; and 53.052.

§249.5. *Purpose; Policy Governing Disciplinary Proceedings.*

(a) Purpose. The purpose of this chapter is:

- (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;
- (3) to regulate and to enforce the standards of conduct of educators and applicants;
- (4) to provide for disciplinary proceedings in conformity with the Texas Government Code, Chapter 2001, and the rules of practice and procedure of the State Office of Administrative Hearings;
- (5) to enforce an educators' code of ethics;
- (6) to fairly and efficiently resolve disciplinary proceedings at the least expense possible to the parties and the state;
- (7) to promote the development of legal precedents through State Board for Educator Certification (SBEC) decisions to the end that disciplinary proceedings may be justly resolved; and
- (8) to provide for regulation and general administration pursuant to the SBEC's enabling statutes.

(b) Policy governing disciplinary proceedings [~~Governing Disciplinary Proceedings~~].

(1) A certified educator holds a unique position of public trust with almost unparalleled access to the hearts and minds of impressionable students. The conduct of an educator must be held to the highest standard. Because SBEC sanctions are imposed for reasons of public policy, and are not penal in nature, criminal procedural and punishment standards are not appropriate to educator disciplinary proceedings.

(2) The following general principles shall apply.

(A) Because the SBEC's primary duty is to safeguard the interests of Texas students, educator certification must be considered a privilege and not a right.

(B) The SBEC may pursue disciplinary proceedings and sanctions based on convictions of felonies and misdemeanors as provided by the Texas Education Code (TEC), §21.060; the Texas Occupations Code, Chapter 53; and this chapter.

(C) The SBEC may also pursue disciplinary proceedings and sanctions based on educator conduct that is proved by a preponderance of the evidence, and such proceedings and sanctions do not require a criminal conviction, deferred adjudication, community supervision, an indictment, or an arrest.

(D) An educator's good moral character, as defined in §249.3 of this title (relating to Definitions), constitutes the essence of the role model that the educator represents to students both inside and outside the classroom. Chapter 247 of this title (relating to Educators' Code of Ethics) and this chapter provide for educator disciplinary pro-

ceedings and provide a minimum standard for educator conduct. Conduct or conditions that may demonstrate that an educator or applicant lacks good moral character, is a negative role model to students, and does not possess the moral fitness necessary to be a certified educator include, but are not limited to:

- (i) active community supervision or criminal probation;
- (ii) conduct that indicates dishonesty or untruthfulness;
- (iii) habitual impairment through drugs or alcohol;
- (iv) abuse or neglect of students and minors, including the educator's own children; and
- (v) reckless endangerment of the safety of others.

(E) "Unworthy to instruct or to supervise the youth of this state," defined in §249.3 of this title, which serves as a basis for sanctions under §249.15(b)(2) of this title (relating to Disciplinary Action by State Board for Educator Certification), is a broad concept that is not limited to the specific criminal convictions that are described in the TEC, §21.058 and §21.060. The moral fitness of a person to instruct the youth of this state must be determined from an examination of all relevant conduct, is not limited to conduct that occurs while performing the duties of a professional educator, and is not limited to conduct that constitutes a criminal violation or results in a criminal conviction or to conduct that constitutes a violation of Chapter 247 of this title.

(F) Educators have positions of authority, have extensive access to students when no other adults (or even other students, in some cases) are present, and have access to confidential information that could provide a unique opportunity to exploit student vulnerabilities. Educators must clearly understand the boundaries of the educator-student relationship that they are trusted not to cross. Any violation of that trust, such as soliciting or engaging in a romantic or sexual relationship with any student or minor, is considered conduct that may result in permanent revocation of an educator's certificate.

(G) Administrators who hold Superintendent, Principal, or Mid-Management Administrator certificates issued by the SBEC have, as a result of their actual or potential positions of authority over both students and other educators, an even greater obligation to maintain good moral character than teachers and paraprofessionals. When an administrator's conduct demonstrates that the administrator lacks good moral character, is a negative role model to students, or does not possess the moral fitness necessary to be a certified educator as described in subparagraph (D) of this paragraph, the administrator may be subject to greater sanction than a teacher or paraprofessional would receive for the same conduct.

(H) [~~(G)~~] Evidence of rehabilitation with regard to educator conduct that could result in sanction, denial of a certification application, or denial of an application for reinstatement of a certificate shall be recognized and considered. In addition, the following shall also be considered:

- (i) the nature and seriousness of prior conduct;
- (ii) the potential danger the conduct poses to the health and welfare of students;
- (iii) the effect of the prior conduct upon any victims of the conduct;
- (iv) whether sufficient time has passed and sufficient evidence is presented to demonstrate that the educator or applicant has been rehabilitated from the prior conduct; and

(iv) the effect of the conduct upon the educator's good moral character and ability to be a proper role model for students.

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

Filed with the Office of the Secretary of State on December 18, 2015.

TRD-201505787

Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

Earliest possible date of adoption: January 31, 2016

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



## SUBCHAPTER B. ENFORCEMENT ACTIONS AND GUIDELINES

### 19 TAC §249.15, §249.17

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.006(c), as amended by House Bill (HB) 1783, 84th Texas Legislature, Regular Session, 2015, and (g), which require the State Board for Educator Certification (SBEC) to propose rules that require the reporting of educator misconduct; §21.007, which requires the SBEC to propose rules that provide for a procedure for placing a notice of investigation of certain alleged misconduct on an educator's public certification records; §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.035, as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015, which allows the SBEC to delegate authority to the Commissioner of Education or Texas Education Agency (TEA) staff to settle contested cases involving educator certification and directs the TEA to provide the administrative functions and services of the SBEC; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.040(7), which requires the SBEC to execute contracts as necessary for the performance of its administrative functions; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by the Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.044(a), which authorizes the SBEC to propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program and specify the minimum academic qualifications required for a certificate; §21.058, which provides for the revocation of educator certificates based on conviction of certain offenses; §21.060, which allows the SBEC to suspend or revoke educator certifi-

cates based on conviction for certain offenses related to the duties and responsibilities of the education profession; §21.105(c), which allows the SBEC to impose contract abandonment sanctions against a teacher employed under a probationary contract; §21.160(c), which allows the SBEC to impose contract abandonment sanctions against a teacher employed under a continuing contract; §21.210(c), which allows the SBEC to impose contract abandonment sanctions against a teacher employed under a term contract; §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; §22.0831, which requires the SBEC to conduct a national criminal history record information review of all applicants for or holders of educator certificates who are employed in Texas schools; §22.085, which allows the SBEC to impose a sanction on an educator who does not discharge an employee or refuse to hire an applicant if the educator knows or should have known, through a criminal history record information review, that the employee or applicant has been convicted of a criminal offense, and requires that school district superintendents and chief operating officers of open-enrollment charter schools certify to the commissioner that the district or school has not failed to discharge or refused to hire any individuals with criminal history; §22.087, as amended by HB 1783, 84th Texas Legislature, Regular Session, 2015, which requires superintendents to notify the SBEC whenever they obtain knowledge that an applicant for or holder of an educator certificate has a reported criminal history; and §57.491(g), which requires the SBEC to not renew a certificate due to loan default on a guaranteed student loan; the Texas Government Code, §411.087, as amended by Senate Bill (SB) 1902, 84th Texas Legislature, Regular Session, 2015, which authorizes the SBEC to receive criminal history record information from the Federal Bureau of Investigation; §411.090, which allows the SBEC to obtain criminal history record information from the Department of Public Safety of the State of Texas; and §2001.058(e), which allows the SBEC to vacate or modify an order issued by an administrative law judge, or change a finding of fact or conclusion of law made by an administrative law judge, only when the SBEC determines that the administrative law judge did not properly apply or interpret law, rules, written policies or a prior administrative decision; that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or made a technical error in a finding of fact; the Texas Family Code, §261.308(d), which, under certain circumstances, requires the Texas Department of Family and Protective Services (DFPS) to provide information to the SBEC regarding a person alleged to have committed child abuse or neglect; §261.308(e), which requires DFPS to release information that the SBEC has a reasonable basis for believing is necessary to assist the SBEC in protecting children from a person alleged to have committed abuse or neglect; §261.406(a), which requires the DFPS to investigate reports of possible abuse of a child in a public school; and §261.406(b), as amended by SB 206, 84th Texas Legislature, Regular Session, 2015, which requires the DFPS to send a written report to the SBEC on investigations in schools for appropriate action; and the Texas Occupations Code, §53.021(a), as amended by HB 2299, 84th Texas Legislature, Regular Session, 2015, effective January 1, 2017, which provides that a licensing agency may suspend, revoke, or deny a license to a person convicted of an offense related to

the duties and responsibilities of the education profession and certain other offenses; §53.022, which provides the factors to be considered by the SBEC in determining whether a criminal conviction relates to the duties and responsibilities of the education profession; §53.023, which provides additional factors to be considered by the SBEC in determining the fitness of a person convicted of a crime to hold an educator certificate; §53.024, which provides that licensing proceedings brought pursuant to Chapter 53 are governed by the Administrative Procedure Act; §53.025, which requires the SBEC to issue guidelines providing the reasons for determinations made by the SBEC pursuant to Chapter 53; §53.051, which requires the SBEC to notify a person in writing of the reasons for a denial, suspension, or revocation of a certificate because of a prior conviction of a crime and the procedures for appeal of that decision; and §53.052, which allows a person who has exhausted administrative remedies to file an action for judicial review within 30 days after the SBEC decision becomes final and appealable.

**CROSS REFERENCE TO STATUTE.** The proposed amendments implement the TEC, §§21.006(c), as amended by HB 1783, 84th Texas Legislature, Regular Session, 2015, and (g); 21.007; 21.031(a); 21.035, as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015; 21.040(6) and (7); 21.041(a) and (b)(1), (4), (7), and (8); 21.044(a); 21.058; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; 22.0831; 22.085; 22.087, as amended by HB 1783, 84th Texas Legislature, Regular Session, 2015; and 57.491(g); the Texas Government Code, §§411.087, as amended by SB 1902, 84th Texas Legislature, Regular Session, 2015; 411.090; and 2001.058(e); the Texas Family Code, §261.308(d) and (e) and §261.406(a) and (b), as amended by SB 206, 84th Texas Legislature, Regular Session, 2015; and the Texas Occupations Code, §§53.021(a), as amended by HB 2299, 84th Texas Legislature, Regular Session, 2015, effective January 1, 2017; 53.022-53.025; 53.051; and 53.052.

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

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

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

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

- (1) the person has conducted school or education activities in violation of law;
- (2) the person is unworthy to instruct or to supervise the youth of this state;
- (3) the person has violated a provision of the Educators' Code of Ethics;

(4) the person has failed to report or has hindered the reporting of child abuse pursuant to the Texas Family Code, §261.001, or has failed to notify the SBEC under the circumstances and in the manner required by the Texas Education Code (TEC), §21.006, and §249.14(d) and (e) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition);

(5) the person has abandoned a contract in violation of the TEC, §§21.105(c), 21.160(c), or 21.210(c);

(6) the person has failed to cooperate with the Texas Education Agency (TEA) in an investigation;

(7) the person has failed to provide information required to be provided by §229.3 of this title (relating to Required Submissions of Information, Surveys, and Other Data);

(8) the person has violated the security or integrity of any assessment required by the TEC, Chapter 39, Subchapter B, as described in subsection (g) of this section or has committed an act that is a departure from the test administration procedures established by the commissioner of education in Chapter 101 of this title (relating to Assessment);

(9) the person has committed an act described in §249.14(h)(1) of this title, which constitutes sanctionable Priority 1 conduct, as follows:

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

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

- (A) offenses involving moral turpitude;
- (B) offenses involving any form of sexual or physical abuse or neglect of a student or minor or other illegal conduct with a student or minor;

(C) offenses involving any felony possession or conspiracy to possess, or any misdemeanor or felony transfer, sale, distribution, or conspiracy to transfer, sell, or distribute any controlled substance defined in the Texas Health and Safety Code, Chapter 481;

(D) offenses involving school property or funds;

(E) offenses involving any attempt by fraudulent or unauthorized means to obtain or alter any certificate or permit that would entitle any person to hold or obtain a position as an educator;

(F) offenses occurring wholly or in part on school property or at a school-sponsored activity; or

(G) felony offenses involving driving while intoxicated (DWT);

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

(12) the person has failed to discharge an employee or to refuse to hire an applicant when the person knew or should have known through a criminal history record information review that the employee or applicant had been convicted of an offense in accordance with the TEC, §22.085; [or]

(13) the person is a superintendent of a school district or the chief operating officer of an open-enrollment charter school who falsely or inaccurately certified to the commissioner of education that the district or charter school had complied with the TEC, §22.085; or[-]

(14) the person has failed to comply with an order or decision of the SBEC.

(c) The TEA staff may commence a contested case to take any of the actions listed in subsection (a) of this section by serving a petition to the certificate holder in accordance with this chapter describing the SBEC's intent to issue a sanction and specifying the legal and factual reasons for the sanction. The certificate holder shall have 30 calendar days to file an answer as provided in §249.27 of this title (relating to Answer).

(d) Upon the failure of the certificate holder to file a written answer as required by this chapter, the TEA staff may file a request for the issuance of a default judgment from the SBEC imposing the proposed sanction in accordance with §249.35 of this title (relating to Disposition Prior to Hearing; Default).

(e) If the certificate holder files a timely answer as provided in this section, the case will be referred to the State Office of Administrative Hearings (SOAH) for hearing in accordance with the SOAH rules; the Texas Government Code, Chapter 2001; and this chapter.

(f) The provisions of this section are not exclusive and do not preclude consideration of other grounds or measures available by law to the SBEC or the TEA staff, including student loan default or child support arrears. The SBEC may request the Office of the Attorney General to pursue available civil, equitable, or other legal remedies to enforce an order or decision of the SBEC under this chapter.

(g) The statewide assessment program as defined by the TEC, Chapter 39, Subchapter B, is a secure testing program.

(1) Procedures for maintaining security shall be specified in the appropriate test administration materials.

(2) Secure test materials must be accounted for before, during, and after each test administration. Only authorized personnel may have access to secure test materials.

(3) The contents of each test booklet and answer document are confidential in accordance with the Texas Government Code, Chapter 551, and the Family Educational Rights and Privacy Act of 1974. Individual student performance results are confidential as specified under the TEC, §39.030(b).

(4) Violation of security or confidential integrity of any test required by the TEC, Chapter 39, Subchapter B, shall be prohibited. A person who engages in conduct prohibited by this section may be subject to sanction of credentials, including any of the sanctions provided by subsection (a) of this section.

(5) Charter school test administrators are not required to be certified; however, any irregularity in the administration of any test required by the TEC, Chapter 39, Subchapter B, would cause the charter itself to come under review by the commissioner of education for possible sanctions or revocation, as provided under the TEC, §12.115(a)(4).

(6) Conduct that violates the security and confidential integrity of a test is evidenced by any departure from the test administration procedures established by the commissioner of education. Conduct of this nature may include, but is not limited to, the following acts and omissions:

(A) viewing a test before, during, or after an assessment unless specifically authorized to do so;

(B) duplicating secure examination materials;

(C) disclosing the contents of any portion of a secure test;

(D) providing, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;

(E) changing or altering a response or answer of an examinee to a secure test item or prompt;

(F) aiding or assisting an examinee with a response or answer to a secure test item or prompt;

(G) fraudulently exempting or preventing a student from the administration of a required state assessment;

(H) encouraging or assisting an individual to engage in the conduct described in paragraphs (1)-(7) of this subsection; or

(I) failing to report to an appropriate authority that an individual has engaged in conduct outlined in paragraphs (1)-(8) of this subsection.

(7) Any irregularities in test security or confidential integrity may also result in the invalidation of student results.

(8) The superintendent and campus principal of each school district and chief administrative officer of each charter school and any private school administering the tests as allowed under the TEC, §39.033, shall develop procedures to ensure the security and confidential integrity of the tests specified in the TEC, Chapter 39, Subchapter B, and shall be responsible for notifying the TEA in writing of conduct that violates the security or confidential integrity of a test administered under the TEC, Chapter 39, Subchapter B. A person who fails to report such conduct as required by this subsection may be subject to any of the sanctions provided by subsection (a) of this section.

#### §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) [(5)] whether the sanction will deter future violations; and
- (10) [(6)] 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 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 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.

(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) [(d)] Mandatory permanent [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, 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; or
- (7) committed any offense described in the TEC, §21.058.

(i) [(e)] 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.

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Cristina De La Fuente-Valadez  
Director, Rulemaking, Texas Education Agency  
State Board for Educator Certification  
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For further information, please call: (512) 475-1497



## SUBCHAPTER D. HEARING PROCEDURES

### 19 TAC §249.35

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regu-

late and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.035, as amended by House Bill (HB) 2205, 84th Texas Legislature, Regular Session, 2015, which allows the SBEC to delegate authority to the Commissioner of Education or Texas Education Agency (TEA) staff to settle contested cases involving educator certification and directs the TEA to provide the administrative functions and services of the SBEC; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.040(7), which requires the SBEC to execute contracts as necessary for the performance of its administrative functions; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by the Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; and the Texas Government Code, §2001.058(d-1), as added by HB 2154, 84th Texas Legislature, Regular Session, 2015, which allows an administrative law judge at the State Office of Administrative Hearings to dismiss a case and remand it to the referring agency if a party defaults, and allows the agency to then informally dispose of the case; and §2001.058(e), which allows the SBEC to vacate or modify an order issued by an administrative law judge, or change a finding of fact or conclusion of law made by an administrative law judge, only when the SBEC determines that the administrative law judge did not properly apply or interpret law, rules, written policies or a prior administrative decision; that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or made a technical error in a finding of fact.

CROSS REFERENCE TO STATUTE. The proposed amendment implements the TEC, §§21.031(a); 21.035, as amended by HB 2205, 84th Texas Legislature, Regular Session, 2015; 21.040(6) and (7); and 21.041(a) and (b)(1), (4), (7), and (8); and the Texas Government Code, §2001.058(d-1), as added by HB 2154, 84th Texas Legislature, Regular Session, 2015, and (e).

§249.35. *Disposition Prior to Hearing; Default.*

(a) This chapter and 1 Texas Administrative Code (TAC), Part 7, Chapter 155 (relating to Rules of Procedure) shall govern disposition prior to hearing, default, and attendant relief.

(b) The Texas Education Agency (TEA) staff or the commissioner of education may issue and sign orders on behalf of the State Board for Educator Certification (SBEC) resolving a case, prior to the issuance of a proposal for decision by the presiding administrative law judge (ALJ) at the State Office of Administrative Hearings (SOAH), by waiver, stipulation, compromise, agreed settlement, consent order, agreed statement of facts, or any other informal or alternative resolution agreed to by the parties and not precluded by law.

(c) The SBEC or the SOAH [State Office of Administrative Hearings (SOAH)] may dispose of a case through dismissal, partial or final summary disposition, or any other procedure authorized by SOAH rules of procedure prior to a contested case hearing on the merits on the

following grounds: unnecessary duplication of proceedings; res judicata; withdrawal; mootness; lack of jurisdiction; failure of a party requesting relief to timely file or file in proper form a pleading that would support an order or decision in that party's favor; failure to comply with an applicable order, deadline, rule, or other requirement issued by the SBEC, the TEA staff, or the presiding ALJ [administrative law judge (ALJ)]; failure to state a claim for which relief can be granted; or failure to prosecute.

(d) In any contested case hearing conducted pursuant to this chapter, the findings made by a hearing examiner in a proceeding arising under the Texas Education Code, Chapter 21, Subchapter F, shall not be conclusive but, the record of such proceeding, including all testimony and evidence admitted in the hearing, as well as the findings of the hearing examiner, shall be deemed admissible in a proceeding brought pursuant to this chapter and shall be considered by the ALJ and the SBEC in issuing a proposed or final decision.

(e) For purposes of this chapter, the following shall constitute a default in a contested case:

(1) the failure of the respondent to timely file a written answer in proper form as required by this chapter;

(2) the failure of the petitioner in an administrative denial case to timely file a petition in proper form as required by this chapter; or

(3) the failure of the certificate holder or applicant to appear in person or by authorized representative on the day and at the time set for hearing in a contested case, regardless of whether a written answer or petition has been filed.

(f) Upon the occurrence of an event of default as defined in this section, the SBEC may enter a default judgment, as authorized by the Texas Government Code, §2001.056, and 1 TAC, Part 7, §155.501 (relating to Default Proceedings); ~~whether or not the case has been referred to the SOAH, upon 30 calendar days' notice. It is a rebuttable presumption that the notice was served on the certificate holder or applicant no later than five calendar days after mailing. The notice shall specify the factual and legal basis for imposing the proposed sanction. Prior to issuance of a default decision or order, the certificate holder may contest the issuance of a default judgment by written notice filed with the TEA staff or by written request to appear before the SBEC at an SBEC meeting to show good cause for failure to file an answer or appear at the contested case proceeding.~~

(1) If a respondent has failed to timely file a written answer or a petitioner in an administrative denial case has failed to timely file a petition, TEA staff will provide the certificate holder or applicant with a notice of default specifying the factual and legal basis for imposing the proposed sanction at least 30 calendar days prior to presenting a motion for default to the SBEC. It is a rebuttable presumption that the notice was served on the certificate holder or applicant no later than five calendar days after mailing.

(2) If the case is dismissed and remanded to the SBEC by the SOAH after a certificate holder or applicant failed to appear in person or by authorized representative on the day and at the time set for hearing in a contested case, the TEA staff attorney shall present to the SBEC a motion for default. After consideration of the petition and the motion for default, the SBEC may then issue a default order deeming the allegations in the petition as true.

(3) Prior to issuance of a default decision or order, the certificate holder may contest the issuance of a default judgment by written notice filed with TEA staff or by written request to appear before the SBEC at an SBEC meeting to show good cause for failure to file an answer or appear at the contested case proceeding.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking, Texas Education Agency

State Board for Educator Certification

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



## TITLE 22. EXAMINING BOARDS

### PART 14. TEXAS OPTOMETRY BOARD

#### CHAPTER 273. GENERAL RULES

##### 22 TAC §273.14

The Texas Optometry Board proposes amendments to §273.14, to comply with provisions of Senate Bills 807, 1296 and 1307, 84th Legislature, Regular Session. The amendments enlarge the eligibility for the alternate licensing procedure to include applicants currently on active duty in the military and veterans of active duty. The amendments include an exemption from the application fees for military service member, military veteran and military spouse applicants currently licensed in another state.

Chris Kloeris, executive director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for local government as a result of enforcing or administering the amendments. Using data from the Texas Workforce Investment Council and current licensee data, it is estimated that nine percent of applicants will qualify for the fee exemption in Senate Bill 807. This will be a reduction in revenue of \$13,500 over the five year period.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated is that military service members and military veterans will now have be able to use the same alternate and more timely process to obtain a license that is now available to military spouses.

It is anticipated that there will be no economic costs for these applicants, the persons required to comply with the rule.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

The agency licenses approximately 4,000 optometrists and therapeutic optometrists. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro business. The agency does not license these practices. There are no anticipated costs because of the amendments for those persons required to comply with the rule.

#### ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code

§2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.152, 351.252, and 351.254, and Senate Bills 807, 1296 and 1307, 84th Legislature. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession and §351.151 as authorizing fees. The agency interprets §351.252 and §351.254 as setting the requirements for license, and Senate Bills 807, 1296 and 1307, 84th Legislature, Regular Session, as authorizing the application fee exemption and alternate licensing procedure to military service member, military veteran or military spouse applicants.

§273.14. License Applications [Licenses] for Military Service Member, Military Veteran, and Military Spouse.

(a) Definitions.

(1) "Military service member" means a person who is on active duty [~~currently serving in the armed forces of the United States, in a reserve component of the armed forces of the United States, including the National Guard, or in the state military service of any state~~].

(2) "Military spouse" means a person who is married to a military service member [~~who is currently on active duty~~].

(3) "Military veteran" means a person who has served on active duty, who was discharged or released from active duty, and who was not dishonorably discharged [~~in the army, navy, air force, marine corps, or coast guard of the United States, or in an auxiliary service of one of those branches of the armed forces~~].

(4) "Active duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state.

(5) "Armed forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(b) License eligibility requirements for applicants with military experience.

(1) Verified military service, training, or education will be credited toward the licensing requirements, other than an examination requirement, of an applicant who is a military service member or military veteran.

(2) This subsection does not apply if the applicant holds a restricted license issued by another jurisdiction or has an unacceptable criminal history.

(c) Alternate licensing procedure authorized by Texas Occupations Code §55.004 and §55.005. [~~The Texas Occupations Code,~~

~~§55.004 and §55.004, provides different methods of licensure for military spouses.]~~

(1) Applicants currently licensed in another state [Applications Under Texas Occupations Code §55.005, Expedited Licensing Procedure].

(A) Application.

(i) The military service member, military veteran or military spouse applicant must be licensed in good standing as a therapeutic optometrist or the equivalent in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Texas Optometry Act.

(ii) The military service member, military veteran or military spouse applicant shall submit a completed Military [Licensure without Examination] application, including the submission of a completed Federal Bureau of Investigation fingerprint card provided by the Board, official license verifications from each state in which the applicant is or was licensed, a certified copy of the applicant's birth certificate, a certified copy of the optometry school transcript granting the applicant a doctor of optometry degree, and proof of the applicant's status as a military service member, military veteran or military spouse.

(iii) A military service member, military veteran, or military spouse licensed in another state is exempt from the application fee in §273.4 of this title. Such an applicant is not exempt from exam fees charged for an exam administered by an organization or person other than the Board. [An application fee in the same amount as the application fee set out in §273.4 of this title must be submitted with the application.]

(iv) A license issued under this subsection shall be a license to practice therapeutic optometry with the same obligations and duties required of a licensed therapeutic optometrist and subject to the same disciplinary requirements for that license.

(B) License Renewal.

(i) A license issued under this subsection shall expire [on the first day of the calendar year at least] twelve months subsequent to the date the license is issued. If the license is timely renewed, the licensee may thereafter renew the license by paying the renewal fee not later than January 1 of each year.

(ii) Prior to renewing the license for the first time, the military service member, military veteran or military spouse licensee shall take and pass the Texas Jurisprudence Examination.

(iii) With the exception of clause (ii) of this subparagraph, the requirements for renewing the license are the same as the requirements for renewing an active license.

~~[(2) Applications Under Texas Occupations Code §55.004, Alternative Licensing Procedure.]~~

~~[(A) Requirements for license for military spouse applicant currently licensed in another state.]~~

~~[(i) The military spouse applicant must be licensed in good standing as a therapeutic optometrist or the equivalent in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Texas Optometry Act.]~~

~~[(ii) The military spouse applicant shall submit a completed Licensure without Examination application, including the submission of a completed Federal Bureau of Investigation fingerprint card provided by the Board, official license verifications from each~~

state in which the applicant is or was licensed; a certified copy of the applicant's birth certificate, a certified copy of the optometry school transcript granting the applicant a doctor of optometry degree, and proof of the applicant's status as a military spouse.]

{(iii)} An application fee in the same amount as the application fee set out in §273.4 of this title must be submitted with the application.]

{(iv)} Within six months of receiving a license under this subsection, the military spouse licensee shall take and pass the Texas Jurisprudence Examination.]

(2) [(B)] Requirements for license for military service member, military veteran or military spouse applicant not currently licensed to practice optometry who was licensed in Texas within five years of the application submission.

(A) Application.

{(i)} The military spouse applicant's Texas license must have expired while the applicant lived in another state for at least six months.]

(i) [(ii)] The military service member, military veteran or military spouse applicant shall submit a completed Military [License without Examination] application, including the submission of a completed Federal Bureau of Investigation fingerprint card provided by the Board, official license verifications from each state in which the applicant is or was licensed, a certified copy of the applicant's birth certificate, a certified copy of the optometry school transcript granting the applicant a doctor of optometry degree, and proof of the applicant's status as a military service member, military veteran or military spouse.

(ii) [(iii)] An application fee in the same amount as the application fee set out in §273.4 of this title must be submitted with the application.

(iii) A license issued under this subsection shall be a license to practice therapeutic optometry with the same obligations and duties required of a licensed therapeutic optometrist and subject to the same disciplinary requirements for that license.

{(iv)} Within six months of receiving a license under this subsection, the military spouse licensee shall take and pass the Texas Jurisprudence Examination.]

{(v)} The Board may allow a military spouse applicant under this subparagraph to demonstrate competency by alternative methods which may include any combination of the following as determined by the Board: education, continuing education, examinations (written and/or practical), work experience or other methods required by the Executive Director.]

(B) License Renewal

(i) A license issued under this subsection shall expire twelve months subsequent to the date the license is issued. If the license is timely renewed, the licensee may thereafter renew the license by paying the renewal fee not later than January 1 of each year.

(ii) Prior to renewing the license for the first time, the military service member, military veteran or military spouse licensee shall take and pass the Texas Jurisprudence Examination.

(iii) With the exception of clause (ii) of this subparagraph, the requirements for renewing the license are the same as the requirements for renewing an active license.

[(C)] A license issued under this subsection shall be a license to practice therapeutic optometry with the same obligations and

duties required of a licensed therapeutic optometrist and subject to the same disciplinary requirements for that license. The license expires on January 1, following the date a license is issued.]

[(D)] Renewal of license. The requirements for renewing the license are the same as the requirements for renewing an active license.]

(d) Alternative method to demonstrate competency. To protect the health and safety of the citizens of this state, a license to practice optometry requires the licensee to obtain a doctorate degree in optometry and passing scores on lengthy and complex nationally accepted examinations. An alternative method to demonstrate competency is not available at this time.

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

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TRD-201505700

Chris Kloeris  
Executive Director  
Texas Optometry Board

Earliest possible date of adoption: January 31, 2016

For further information, please call: (512) 305-8500



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 21. RIGHT OF WAY

The Texas Department of Transportation (department) proposes amendments to §21.31, §21.33, and §21.41, and new §21.57, concerning Utility Accommodation, and amendments to §21.962 and §21.963, concerning Leasing of Right of Way to Saltwater Pipeline Operators.

#### EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTION

House Bill 497, 84th Legislature, Regular Session, 2015, amended §91.901, Natural Resources Code, to expand the definition of "saltwater pipeline facility" to include saltwater intended to be used in drilling or operating an oil or gas well. The goal of HB 497 is to facilitate the use of state right of way and the construction of saltwater pipelines as a mechanism of transporting saltwater needed for exploration and production to and from drill sites, to disposal and other types of wells. Those statutory changes necessitate changes to 43 TAC Chapter 21, Subchapters C and R.

Amendments to §21.31, Definitions, modify the definition of "saltwater" to include water intended to be used in the exploration of oil or gas. The amendments also add the definition of "temporary pipeline facility."

Amendments to §21.33, Applicability, clarify that a temporary saltwater pipeline facility is exempt from conformance with the provisions for high-pressure pipelines.

Amendments to §21.41, Overhead Electric and Communication Lines, repeal existing Figure §21.41(c): Horizontal Clearances, and substitutes a new Horizontal Clearances table, which updates the existing table to reflect current standards used for the state highway system's right of ways.

New §21.57, Temporary Saltwater Pipeline, authorizes the installation of a temporary saltwater pipeline on highway right of way for a term not to exceed 180 days. The section limits the size of the pipe to 12 inches or less and operation pressure to 60 pounds per inch or less.

Amendments to §21.962, Definitions, modify and expand the definition for "saltwater pipeline facility" to include facilities that conduct saltwater intended to be used in the exploration for or production of oil or gas.

Amendments to §21.963, Lease of Right of Way for a Saltwater Pipeline Facility, add that the lease term for above-ground saltwater facilities may not exceed 180 days.

#### FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the amendments and new section as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments and new section.

Mr. Gus Cannon, Interim Director, Right of Way Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new section.

#### PUBLIC BENEFIT AND COST

Mr. Cannon has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new section will be reduced highway congestion and improved air quality resulting from the alternative method of transporting saltwater. There are no anticipated economic costs for persons required to comply with the sections as proposed. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

#### SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §21.31, §21.33 §21.41, and §§21.962 - 21.963, and new §21.57, may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to [RuleComments@txdot.gov](mailto:RuleComments@txdot.gov) with the subject line "Chapter 21 Rules." The deadline for receipt of comments is 5:00 p.m. on February 1, 2016. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

### SUBCHAPTER C. UTILITY ACCOMMODATION

#### 43 TAC §§21.31, 21.33, 21.41, 21.57

#### STATUTORY AUTHORITY

The amendments and new section are proposed under Transportation Code, §201.101, which provides the Texas Transporta-

tion Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §202.052 and §202.053, which authorize the department to lease a highway right of way and Natural Resources Code, §91.902, which authorizes the Texas Transportation Commission to adopt rules to implement Natural Resources Code, Chapter 91, Subchapter T.

#### CROSS REFERENCE TO STATUTE

Natural Resources Code, Chapter 91, Subchapter T and Transportation Code, Chapter 202, Subchapter C.

#### §21.31. Definitions.

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

(1) AASHTO--American Association of State Highway and Transportation Officials.

(2) Abandoned utility--A utility facility that no longer carries a product or performs a function and for which the owner:

- (A) does not plan to use in future operations; or
- (B) is unknown or cannot be located.

(3) Access denial line--A line concurrent with the common property line across which access to the highway facility from the adjoining property is not permitted.

(4) As-Built plans--Drawings showing the actual locations of installed or relocated utility facilities.

(5) Border width--The area between the edge of pavement structure or back of curb to the right of way line.

(6) Bridge abutment joint--The joint between the approach slab and bridge structure.

(7) Center median--The area between opposite directions of travel on a divided highway.

(8) Certified as-installed construction plans--The construction plans for the installation of a utility facility, accompanied by an affidavit certifying that the facility was installed in accordance with the plans.

(9) Commission--The Texas Transportation Commission.

(10) Common carrier--As defined in the Natural Resources Code, §111.002.

(11) Conduit--A pipe or other opening, buried or above ground, for conveying fluids or gases, or serving as an envelope containing pipelines, cables, or other utility facilities.

(12) Controlled access highway--A highway so designated by the commission on which owners or occupants of abutting lands and other persons are denied access to or from the highway mainlanes.

(13) Department--The Texas Department of Transportation.

(14) Depth of cover--The minimum depth as measured from the top of the utility line to the ground line or top of pavement.

(15) Design vehicle load (HS-20)--A design load designation used for bridge design analysis representing a three-axle truck loaded with four tons on the front axle and 16 tons on each of the other two axles. The HS-20 designation is one of many established by AASHTO for use in the structural design and analysis of bridges.

(16) Director--The chief administrative officer in charge of either the Maintenance Division or the Right of Way Division, or a successor division of either the Maintenance Division or the Right of Way Division.

(17) Distribution line--That part of a utility system connecting a transmission line to a service line.

(18) District--One of the 25 geographical districts into which the department is divided.

(19) District engineer--The chief administrative officer in charge of a district, or his or her designee.

(20) Duct--A pipe or other opening, buried or above ground, containing multiple conduits.

(21) Engineer--A person licensed to practice engineering in the state of Texas.

(22) Engineering study--An appropriate level of analysis as determined by the department, which may include a traffic impact analysis, that determines the expected impact that permitting access will have on mobility, safety, and the efficient operation of the state highway system.

(23) Executive director--The chief administrative officer of the department, or that officer's designee not below the level of assistant executive director.

(24) Freeway--A divided highway with frontage roads or full control of access.

(25) Frontage road--A street or road auxiliary to, and located alongside, a controlled access highway or freeway that separates local traffic from high-speed through traffic and provides service to abutting property.

(26) Gathering line--A line that delivers a raw utility product from various sites to a central distribution or feed line for the purposes of refining, collecting, or storing the product.

(27) Hazardous material--Any gas, material, substance, or waste that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local authority to pose a present or potential hazard to human health or safety or to the environment. The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (49 CFR §172.101), and materials that meet the defining criteria for hazard classes and divisions in 49 CFR Part 173 (49 CFR §171.8).

(28) High-pressure pipeline--A pipeline that is operated, or may reasonably be expected to operate in the future, at a pressure of over 60 pounds per square inch.

(29) Horizontal clearance--The areas of highway roadsides designed, constructed, and maintained to increase safety, improve traffic operation, and enhance the appearance of highways.

(30) Idled facility--A utility conduit or line which temporarily does not carry a product, or does not perform a function and whose owner has not provided a date for its return to operation.

(31) Inclement weather--Weather conditions that are hazardous to the safety of the traveling public, highway or utility workers, or the preservation of the highway.

(32) Joint use agreement--A use and occupancy agreement that describes the obligations, responsibilities, rights, and privileges vested in the department and retained by the utility, and used for situations in which the utility has a compensable interest in the land occu-

ped by its facilities and the land is to be jointly occupied and used for highway and utility purposes.

(33) Low-pressure pipeline--A pipeline that is operated at a pressure not exceeding 60 pounds per square inch.

(34) Mainlanes--The traveled way of a freeway or controlled access highway that carries through traffic.

(35) Maintenance Division--The administrative office of the department responsible for the maintenance and operation of the state highway system.

(36) Noncontrolled access highway--A highway on which owners or occupants of abutting lands or other persons have direct access to or from the mainlanes by department permit.

(37) Outer separation--The area between the mainlanes of a highway for through traffic and a frontage road.

(38) Pavement structure--The combination of the surface, base course, and subbase.

(39) Private utility--A person, firm, corporation, or other entity engaged in a utility business other than a public utility or saltwater pipeline operator. The term includes an individual who owns a service line.

(40) Public utility--A person, firm, corporation, river authority, municipality, or other political subdivision that is engaged in the business of transporting or distributing a utility product that directly or indirectly serves the public and that is authorized by state law to operate, construct, and maintain its facilities over, under, across, on, or along highways. The term includes a common carrier and a gas corporation. This term does not include a saltwater pipeline operator whose only right to occupy state right of way is by a lease under Natural Resources Code, §91.902.

(41) Ramp terminus--The entrance or exit portion of a controlled access highway ramp adjacent to the through traveled lanes.

(42) Right of Way Division (ROW)--The administrative office of the department responsible for the acquisition and management of the state right of way.

(43) Riprap--An appurtenance placed on the exposed surfaces of soils to prevent erosion, including a cast-in-place layer of concrete or stones placed together.

(44) Saltwater--Water that contains ~~[containing]~~ salt and other substances and that is intended to be used in the exploration for oil or gas or that is produced during the drilling or operation of an oil, gas, or other type of well.

(45) Saltwater pipeline--A pipeline that carries saltwater. The term includes a pipeline that carries water and water based solutions from an oil or gas well on which hydraulic fracturing treatment has been performed to a waste disposal well.

(46) Saltwater pipeline operator--A person, firm, corporation or other entity that owns, installs, manages, operates, leases, or controls a saltwater pipeline that is not a public utility.

(47) Service line--A utility facility that conveys electricity, gas, water, or telecommunication services from a main or conduit located in the right of way to a meter or other measuring device that services a customer or to the outside wall of a structure, whichever is applicable and nearer the right of way.

(48) Temporary Saltwater Pipeline--An above-ground saltwater pipeline that satisfies the requirements of §21.57 of this subchapter.

(49) [(48)] TMUTCD--The most recent edition of Texas Manual on Uniform Traffic Control Devices for Streets and Highways.

(50) [(49)] Traffic impact analysis--A traffic engineering study that determines the potential current and future traffic impacts of a proposed traffic generator and that is signed, sealed, and dated by an engineer licensed to practice in the state of Texas.

(51) [(50)] Transmission line--That part of a utility system connecting a main energy or material source with a distribution system.

(52) [(51)] Use and occupancy agreement--The written document, whether in the form of an agreement, acknowledgment, notice, or request, by which the department approves the use and occupancy of highway right of way by utility facilities.

(53) [(52)] Utility--Any entity owning a utility facility.

(54) [(53)] Utility appurtenances--Any attachments or integral parts of a utility facility, including fire hydrants, valves, communication controller boxes and pedestals, electric boxes, and gas regulators.

(55) [(54)] Utility facilities--All utility lines, pipelines, saltwater pipelines, conduits, cables, and their appurtenances within the highway right of way except those for highway-oriented needs, including underground, surface, or overhead facilities either singularly or in combination, which may be transmission, distribution, service, or gathering lines.

(56) [(55)] Utility product--The product, such as water, saltwater, steam, electricity, gas, oil, or crude resources or communications, cable television, or waste disposal services, carried by the utility facility.

(57) [(56)] Utility strip--The area of land established within a control of access highway, located longitudinally within the area between the outer traveled way and the right of way line, for the nonexclusive use, occupancy, and access by one or more authorized utilities.

(58) [(57)] Utility structure--A pole, bridge, tower, or other aboveground structure on which a conduit, line, pipeline, or other utility facility is attached.

### §21.33. *Applicability.*

(a) For highways under department jurisdiction, the provisions of this subchapter concerning utility accommodation apply to:

- (1) new utility facility installations;
- (2) additions to or maintenance of existing utility facility installations;
- (3) adjustments or relocations of utility facilities; and
- (4) existing utility facilities retained within the right of way.

(b) The provisions of this subchapter concerning utility accommodation do not apply to utility facilities located within the rights of way of completed highways for which agreements with the department were entered into before the effective date of this subchapter.

(c) This subchapter applies to utility facilities not specifically mentioned in accordance with the nature of the utility facility. All pipelines carrying corrosive, caustic, flammable, explosive, or otherwise hazardous materials and saltwater pipelines, other than a temporary saltwater pipeline approved under §21.57 of this subchapter, shall conform to the provisions for high-pressure pipelines.

(d) The district engineer may prescribe special district supplemental accommodation requirements on a specific installation or adjustment based on the specific soil, terrain, climate, vegetation, traf-

fic characteristics, type of utility facility, or other factors unique to the area. If the district supplemental accommodation requirements are more strict than the minimum requirements of this subchapter, the supplemental accommodation requirements must be detailed in writing.

### §21.41. *Overhead Electric and Communication Lines.*

(a) Type of construction. Longitudinal lines on the right of way shall be limited to single pole construction. Where an existing or proposed utility is supported by "H" frames, the same type structures may be utilized for the crossing provided all other requirements of this subchapter are met.

(b) Vertical clearance. The minimum vertical clearance above the highway shall be 22 feet for electric lines, and 18 feet for communication and cable television lines. These clearances may be greater, as required by the National Electric Safety Code and governing laws.

(c) Horizontal clearances. The following table indicates the design values for horizontal clearances:

Figure: 43 TAC §21.41(c)

(d) Location.

(1) Poles supporting longitudinal lines shall be located within three feet of the right of way line, except that, at the option of the department, this distance may be varied at short breaks in the right of way line. Poles with bases greater than 36 inches in diameter shall not be placed within the right of way. Guy wires placed within the right of way shall be held to a minimum and be in line with the pole line. Other locations may be allowed, but in no case shall the guy wires or poles be located closer than the minimum allowed by the department's horizontal clearance policy, as shown in subsection (c) of this section.

(2) Poles shall not be placed in the center median of any highway. At the department's discretion, poles may be placed in the outer separations or more than three feet inside the right of way where the right of way is greater than 300 feet and where poles can be located in accordance with the department's horizontal clearance policy, as shown in subsection (c) of this section.

(3) Overhead electric, communication, and cable television line crossings at bridges or grade separation structures are prohibited. Overhead lines shall not be located below any bridge structure. If rerouting the line completely around the structure and approaches is not feasible, a minimum horizontal distance of 150 feet from the bridge abutment joint and a minimum vertical clearance of 30 feet above the point of crossing the bridge pavement and retaining walls is required to ensure adequate safety for construction and maintenance operations.

(e) Markers. Utility poles must bear readily identifiable plaques or other approved markers denoting ownership and use, at a distance of approximately one pole per 1,320 feet, as equally spaced as practicable, and at every crossing, in a format acceptable to the department. Each company connecting to a pole shall appropriately identify its use of the pole. There shall be a beginning and end marker for each user of the pole line.

### §21.57. *Temporary Saltwater Pipeline.*

(a) A temporary saltwater pipeline may be installed on highway right of way pursuant to a lease from the department. Before a temporary saltwater pipeline may be installed, the installation must be approved by the department.

(b) The outer diameter of a pipe used for a temporary saltwater pipeline may not exceed 12 inches.

(c) A temporary saltwater pipeline may not operate at a pressure of over 60 pounds per inch.

(d) A temporary saltwater pipeline may not be in place on highway right of way for a period that exceeds 180 days.

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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For further information, please call: (512) 463-8630



## SUBCHAPTER R. LEASING OF RIGHT OF WAY TO SALTWATER PIPELINE OPERATORS

### 43 TAC §21.962, §21.963

#### STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §202.052 and §202.053, which authorize the department to lease a highway right of way and Natural Resources Code, §91.902, which authorizes the Texas Transportation Commission to adopt rules to implement Natural Resources Code, Chapter 91, Subchapter T.

#### CROSS REFERENCE TO STATUTE

Natural Resources Code, Chapter 91, Subchapter T and Transportation Code, Chapter 202, Subchapter C.

#### §21.962. Definitions.

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

- (1) Commission--The Texas Transportation Commission.
- (2) Department--The Texas Department of Transportation.
- (3) Director--The director of the right of way division of the department or the director's designee.
- (4) District--One of the 25 geographical district offices of the department.
- (5) District administrator--The chief executive officer in charge of a District.
- (6) Executive director--The executive director of the department or the executive director's designee not below the level of deputy executive director.
- (7) Premises--The area within a right of way being leased by a saltwater pipeline operator for the installation, operation and maintenance of a saltwater pipeline facility.

(8) Right of way--An interest in real property that is held or controlled by the department for a highway purpose.

(9) Saltwater pipeline facility--A pipeline facility that conducts water that contains ~~eontaining~~ salt and other substances and that is intended to be used in drilling or operating a well used in the exploration for or production of oil or gas, including an injection well used for enhanced recovery operations, or that is produced during drilling or operating an oil, gas, or other type of well. The term includes a pipeline facility that conducts flowback and produced water from an oil or gas well on which a hydraulic fracturing treatment has been performed to an oil and gas waste disposal well for disposal.

(10) Saltwater pipeline operator--A person, who owns, installs, manages, operates, leases, or controls a saltwater pipeline facility.

#### §21.963. Lease of Right of Way for a Saltwater Pipeline Facility.

(a) The director may execute the lease of the premises for the installation, operation, and maintenance of a saltwater pipeline facility if the director finds that:

- (1) there is sufficient area within the right of way to accommodate the saltwater pipeline facility;
- (2) the area proposed as the premises will not be needed for highway purposes during the term of the lease; and
- (3) the lessee's use of the right of way will be consistent with safety, maintenance, operation, and beautification of the state highway system.

(b) The lessee is required to pay to the department an amount determined by the department that is not less than fair market value for the lease of the premises. The department may consider its costs of administering the lease in establishing the amount charged.

(c) Except as provided by subsection (d) of this section, the ~~The~~ term of the lease may not exceed 10 years, unless the lease contains a cancellation clause by which the department, in its sole discretion, may terminate the lease after 10 years with not more than 12 months' notice.

(d) The term of a lease for the installation of an above-ground saltwater pipeline facility may not exceed 180 days.

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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