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ATTORNEY GENERAL
Requests for Opinions .............................................................. 4365
Requests for Opinions .............................................................. 4365

PROPOSED RULES
OFFICE OF THE SECRETARY OF STATE
ELECTIONS
1 TAC §§81.101, 81.102, 81.106, 81.107, 81.109, 81.112 - 81.114, 81.118, 81.119, 81.122, 81.123, 81.125 - 81.131, 81.135, 81.136 4368
1 TAC §81.155 ............................................................................... 4375

TEXAS HEALTH AND HUMAN SERVICES COMMISSION
MEDICAID HEALTH SERVICES
1 TAC §354.1121 ............................................................................. 4376
1 TAC §354.1221 ............................................................................. 4378

FINANCE COMMISSION OF TEXAS
CREDIT CARD SURCHARGE APPEAL PROCEDURES
7 TAC §§4.101 - 4.106 ..................................................................... 4379

OFFICE OF CONSUMER CREDIT COMMISSIONER
PROPERTY TAX LENDERS
7 TAC §89.102 ............................................................................. 4385
7 TAC §89.207, §89.208 .................................................................... 4385
7 TAC §§89.301 - 89.304, 89.306, 89.310 .............................................. 4386
7 TAC §89.303 ............................................................................. 4389
7 TAC §§89.403 - 89.405 .................................................................. 4389
7 TAC §89.405, §89.406 .................................................................... 4391
7 TAC §§89.502 - 89.504, 89.506, 89.507 .............................................. 4391
7 TAC §89.601 ............................................................................. 4395
7 TAC §89.702 ............................................................................. 4395

STATE SECURITIES BOARD
EXEMPTIONS BY RULE OR ORDER
7 TAC §139.25 ............................................................................. 4396

RAILROAD COMMISSION OF TEXAS
PIPELINE SAFETY REGULATIONS
16 TAC §8.1 .................................................................................. 4397

TEXAS EDUCATION AGENCY
SCHOOL DISTRICTS
19 TAC §61.1034 ............................................................................. 4398
SCHOOL DISTRICT PERSONNEL
19 TAC §153.1117 ............................................................................. 4401

STATE BOARD FOR EDUCATOR CERTIFICATION
REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS
19 TAC §231.79 ............................................................................. 4403
19 TAC §231.271 ............................................................................. 4403
19 TAC §§231.281, 231.283, 231.287, 231.289, 231.291 .................. 4404
19 TAC §§231.301, 231.303, 231.305, 231.307, 231.309, 231.313 ............ 4405
19 TAC §§231.331, 231.333, 231.335, 231.337, 231.339, 231.341, 231.343 .................. 4407
19 TAC §§231.361, 231.363, 231.365 ................................................. 4410
19 TAC §231.381 ............................................................................. 4410
19 TAC §§231.393 - 231.395, 231.397 .............................................. 4411
19 TAC §231.401, §231.403 ............................................................. 4412
19 TAC §§231.421, 231.423, 231.425, 231.427 ................................. 4413
19 TAC §§231.441, 231.443, 231.445 ................................................. 4414
19 TAC §231.461, §231.469 ............................................................. 4415
19 TAC §§231.481, 231.483, 231.485, 231.487, 231.489 ..................... 4416
19 TAC §231.501, §231.503 ............................................................. 4417
19 TAC §§231.521, 231.523, 231.525 ................................................. 4418
19 TAC §231.541, §231.543 ............................................................. 4419
19 TAC §231.549 ............................................................................. 4420
19 TAC §231.591, §231.595 ............................................................. 4424
19 TAC §231.593 ............................................................................. 4425

GENERAL CERTIFICATION PROVISIONS
19 TAC §232.11 ............................................................................. 4425

MILITARY SERVICE MEMBERS, MILITARY SPOUSES, AND MILITARY VETERANS
19 TAC §234.5, §234.7 ..................................................................... 4428

STUDENT SERVICES CERTIFICATES
19 TAC §§239.1, 239.10, 239.15, 239.20, 239.25, 239.30 .................. 4433
19 TAC §239.30 ............................................................................. 4437
19 TAC §§239.80, 239.82 - 239.86 .................................................... 4437
19 TAC §239.86 ............................................................................. 4441

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD
RULES RELATING TO PRACTICE AND PROCEDURE
22 TAC §157.7 ............................................................................. 4441
22 TAC §157.9 ............................................................................. 4442
22 TAC §157.12 ................................................................. 4443
22 TAC §157.15 ................................................................. 4443
22 TAC §157.17 ................................................................. 4444

RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT
22 TAC §159.1 ................................................................. 4445
22 TAC §159.4 ................................................................. 4445
22 TAC §159.52 ............................................................... 4446
22 TAC §159.102 ............................................................. 4447
22 TAC §159.104 ............................................................. 4447
22 TAC §159.105 ............................................................. 4448
22 TAC §159.154 ............................................................. 4449
22 TAC §159.155 ............................................................. 4450
22 TAC §159.156 ............................................................. 4451
22 TAC §159.201 ............................................................. 4451
22 TAC §159.205 ............................................................. 4452

CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS
GRANTS FOR CANCER PREVENTION AND RESEARCH
25 TAC §703.13, §703.26 .................................................. 4453

WITHDRAWN RULES
TEXAS HEALTH AND HUMAN SERVICES COMMISSION
REIMBURSEMENT RATES
1 TAC §355.8201 .............................................................. 4457

STATE SECURITIES BOARD
EXEMPTIONS BY RULE OR ORDER
7 TAC §139.25 ................................................................. 4457

TEXAS HIGHER EDUCATION COORDINATING BOARD
STUDENT SERVICES
19 TAC §21.10 ................................................................. 4457

ADOPTED RULES
FINANCE COMMISSION OF TEXAS
TEXAS FINANCIAL EDUCATION ENDOWMENT FUND
7 TAC §§7.101 - 7.105 ....................................................... 4459

RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS, APPEALS, AND RULEMAKINGS
7 TAC §9.1 ................................................................. 4461
7 TAC §9.12 ................................................................. 4461

OFFICE OF CONSUMER CREDIT COMMISSIONER
MOTOR VEHICLE INSTALLMENT SALES
7 TAC §§84.203 - 84.205 .................................................. 4464
7 TAC §§84.302, 84.308, 84.309 ....................................... 4464
7 TAC §§84.707 - 84.709 .................................................. 4464
7 TAC §84.804, §84.808 .................................................... 4465
RETAIL CREDITORS
7 TAC §86.202 ................................................................. 4465

TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD
RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT
22 TAC §153.16 ................................................................. 4466

TEXAS STATE BOARD OF PHARMACY
PHARMACIES
22 TAC §291.32 - 291.34 .................................................. 4466
22 TAC §291.76, §291.77 .................................................. 4467
22 TAC §291.93 ............................................................... 4467

CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS
GRANTS FOR CANCER PREVENTION AND RESEARCH
25 TAC §703.24 ............................................................... 4467

DEPARTMENT OF AGING AND DISABILITY SERVICES
NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION
40 TAC §19.101 ................................................................. 4470
40 TAC §19.1303 ............................................................... 4477
40 TAC §19.2701, §19.2703 .................................................. 4477
40 TAC §§19.2704, 19.2706, 19.2709 ..................................... 4477
40 TAC §§19.2750 - 19.2756 ............................................. 4479

RULE REVIEW
Proposed Rule Reviews
State Board for Educator Certification ................................... 4481
Adopted Rule Reviews
Office of Consumer Credit Commissioner ............................ 4481

TABLES AND GRAPHICS
IN ADDITION

Texas Department of Agriculture
2018 Young Farmer Grant Program Request for Application ...............................................4491

Comptroller of Public Accounts
Notice of Contract Amendments .........................................................................................................4491
Notice of Contract Amendments .........................................................................................................4492
Notice of Contract Awards.....................................................................................................................4492

Office of Consumer Credit Commissioner
Notice of Rate Ceilings ..........................................................................................................................4493

Texas Education Agency
Request for Applications Concerning Generation Twenty-Three Open-Enrollment Charter Application (RFA #701-17-104) .................................................................4493
Request for Applications Concerning Public College or University Open-Enrollment Charter Guidelines and Application (RFA #701-17-105) ..................................................................................................................4494

Texas Board of Professional Engineers
Criminal History Policy for Applications ...............................................................................................4495

Texas Commission on Environmental Quality
Agreed Orders ...........................................................................................................................................4496
Enforcement Orders .................................................................................................................................4499
Notice of District Petition ..........................................................................................................................4502
Notice of Hearing .....................................................................................................................................4502
Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Major Amendment Proposed Permit Number 956e 4503
Notice of Water Quality Application ........................................................................................................4504
Notice of Water Rights Application .........................................................................................................4505

Department of State Health Services
Notice of Public Hearing for Proposed Rule - Recognition of Emergency Medical Services Personnel Licensure Interstate Compact 4505

Texas Department of Licensing and Regulation
Public Notice - Enforcement Plan ...........................................................................................................4505
Public Notice - Enforcement Plan ...........................................................................................................4513

Texas Lottery Commission
Scratch Ticket Game Number 2001 "Deuces Wild" .................................................................4522

Public Utility Commission of Texas
Notice of Application for Recovery of Universal Service Funding 4527
Notice of Application for Sale, Transfer, or Merger .................................................................4527
Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line ..................................................................................................................4528
Notice of Application to Amend a Water Certificate of Convenience and Necessity ..................................................4528
Notice of Generic Proceeding for Declaratory Order ..............................................................................4528
Notice of Petition for Amendment to a Water Certificate of Convenience and Necessity by Expedited Release .............................................................................................................................4529
Notice of Petition for Approval of Revisions to Rate Schedule SQF ..........................................................4529
Notice of Petition to Determine Requirements for Smart Meter Texas ..........................................................4529
Public Notice of Workshop .....................................................................................................................4529
Public Notice of Workshop and Request for Comments ............................................................................4530
Request for Comments on CCN Obtain or Amend Form for Water and Sewer Utilities ...............................................................4530
Request for Comments on Sale/Transfer/Merger Form for Water and Sewer Utilities ...............................................................4530

Sam Houston State University
Request for Proposal - Human Resources Management Consulting Services .......................................4530
Request for Proposal - Market Segmentation Study ..............................................................................4531

Texas Department of Transportation
Notice of Award ........................................................................................................................................4532
Public Notice - Aviation ..........................................................................................................................4532

Texas Water Development Board
Applications for August 2017 ...............................................................................................................4532

Workforce Solutions Brazos Valley Board
Public Notice: Targeted Occupation List Update Fiscal Year 2017 4532

TABLE OF CONTENTS  42 TexReg 4363
Open Meetings

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

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

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

For items not available here, contact the agency directly. Items not found here:
- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the Open Meetings Act Handbook, and Open Meetings Opinions. http://texasattorneygeneral.gov/og/open-government

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

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

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.
Requests for Opinions
RQ-0173-KP
Requestor:
The Honorable James Caleb Henson
Leon County Attorney
Post Office Box 429
Centerville, Texas 75833
Re: Whether a county commissioners court may deny a county judge longevity pay due to receipt of a state salary supplement pursuant to section 26.006 of the Government Code (RQ-0173-KP)
Briefs requested by September 19, 2017

RQ-0174-KP
Requestor:
The Honorable James M. Tirey
Hale County Attorney
500 Broadway, Suite 340
Plainview, Texas 79072
Re: Authority under article III, section 52(a) of the Texas Constitution of a Type A general-law municipality to expend funds on various tasks related to events sponsored by the area chamber of commerce, such as Christmas on the Plaza and Petersburg Days (RQ-0174-KP)
Briefs requested by September 19, 2017

Requests for Opinions
RQ-0175-KP
Requestor:
The Honorable J. Bryan Clayton
Concho County Attorney
Post Office Box 236
Paint Rock, Texas 76866
Re: Whether a county may transfer funds from the road and bridge account to a general account to pay all or a portion of a commissioner's salary when the commissioner spends a substantial portion of time performing road and bridge maintenance (RQ-0175-KP)
Briefs requested by September 20, 2017

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.
TRD-201703276
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: August 23, 2017

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.
TRD-201703225
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 struck-through text 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 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

The Office of the Secretary of State ("SOS") proposes to revise Subchapters F and G concerning primary election funding by amending Subchapter F, Primary Elections, §§81.101, 81.102, 81.106, 81.107, 81.109, 81.112 - 81.114, 81.118, 81.119, 81.122, 81.123, 81.125 - 81.131, 81.135 and adding new §81.136; and amending Subchapter G, Joint Primary Elections, §81.155. The proposed new and amended sections concern the financing of the 2018 primary elections with state funds, including the determination of necessary and proper expenses relating to the proper conduct of primary elections by party officials and the procedures for requesting reimbursement by the parties for such expenses. In addition, these changes incorporate changes mandated by the 85th Texas Legislature.

The proposed amendments to §81.101 reflect certain changes made by HB 1735, 85th Texas Legislature. Specifically, the proposed amendments require expense reporting by voting system vendors, county chairs, and county elections officers and require direct payment from the SOS to the aforementioned entities. The proposed amendments also describe the reporting payment procedures.

The proposed amendments to §81.107 reflect certain other changes made by HB 1735, 85th Texas Legislature, by extending the deadline to August 31, 2018, for final cost reports and the return of surplus primary funds to the SOS. The proposed amendments also make other stylistic and clarifying changes.

The proposed amendments to §81.109 clarify that no charge may be made for a public building used as a polling place or central counting station if the building is normally open the day of the election, including a charge for personnel, utilities, or other expenses incurred before or after regular business hours. This mimics the language in §43.033, Texas Election Code. The rule also clarifies that the county may not charge for county-owned equipment without statutory authority. Lastly, the rule is being amended to reflect language in HB 1735, 85th Texas Legislature, which prohibits signs indicating the location of a primary election or primary runoff election, with certain content, sizes, and formats.

The proposed amendments to §81.112 reflect certain changes made by HB 1735, 85th Texas Legislature, by requiring county chairs to notify the state chair of replacement nominees for a place on the general election ballot in accordance with §145.036 or §202.006, Texas Election Code. The rule also allows the state chair to comply with the electronic submission requirements of §172.029 of the Texas Election Code on behalf of the county chair in instances where the county chair is unable or unwilling to comply with those requirements. In addition to minor stylistic changes, the proposed amendments to §81.112 also specify procedures for the submission of the electronic affidavit associated with the final list of candidates and results in §§172.029, 172.117, and 172.122 of the Texas Election Code.

The proposed amendment to §81.114 clarifies that a discounted expenditure, such as a reduced rate for leasing space, does not exempt the cost from the conflict of interest rule.

The proposed amendments to §81.119 clarify what costs are attributable to the county chair's compensation authorized under §173.004, Texas Election Code and the county election officer's not-to-exceed ten (10) percent, but no less than $75.00, "general supervision fee" authorized under §31.100, Texas Election Code.

The proposed amendments to §81.122, in addition to a minor stylistic change, clarify that the county chair is responsible for following all applicable federal and state tax laws for all workers paid with primary funds, including election judges and clerks.

The proposed amendment to §81.123 removes election law books and miscellaneous expenses as categories under administrative costs. The proposed repeal to subsection (i) ensures primary funds are maximized for costs directly related to the election rather than administrative costs.

The proposed amendment to §81.126 codifies the standing practice of not reimbursing for meals at the county chair election law seminar hosted by the SOS.

The proposed amendment to §81.128 clarifies that personal landlines and personal cellular phone charges are not reimbursable with primary funds.

The proposed amendments to §81.129 clarify that discounted office space does not exempt the expense from the conflict of interest rule (§81.114, Conflicts of Interest). The proposed amendments also clarify that utilities are subject to a 30% maximum reimbursement if the party maintains the lease unrelated to the conduct of the primary. In addition, the proposed amendments provide that if the party maintains a lease unrelated to the primary, the SOS will not reimburse the party for a second lease without prior approval from the SOS.

The proposed amendments to §81.131 reflect, in part, certain changes made by HB 1735, 85th Texas Legislature. Specifically, the proposed amendments require expense reporting to the SOS by the county election officer pursuant to a primary election service contract who will then receive direct payment from the SOS. They also stipulate that the not-to-exceed ten (10) percent, but no less than $75.00, "general supervision fee" authorized under §31.100, Texas Election Code, will be applied to those costs. 

PROPOSED RULES September 1, 2017 42 TexReg 4367
except in instances in which the county election officer subcontracts with a third party vendor that assesses a surcharge or administrative fee. The proposed amendments also clarify that the county election officer may not charge a flat fee for a service unless authorized by statute; however, charges may be set at a rate of up to ten (10) percent of the annual license and maintenance fees for the software used to create the ballot style and program the electronic voting equipment.

In addition to minor clarifying changes, the proposed amendments to §81.135 reflect changes made by HB 1735, 85th Texas Legislature, to allow a state party to contract with the county election officer in certain circumstances to conduct a primary election that is required for the nomination of a political party for a multi-county district office (this is also already permitted for statewide and presidential primary elections).

Proposed new §81.136 reflects changes made by HB 1735, 85th Texas Legislature. Specifically, it allows the state chair to fulfill certain administrative duties on behalf of the county chair, including accepting funds, submitting reports, and conducting the ballot drawing in certain circumstances.

The proposed amendments to §81.155 reflect the August 31 submission deadline imposed by HB 1735, 85th Texas Legislature, and modify the language such that it is not limited to the county chair, and thus may also apply to the county election officer.

The proposed amendments to §§81.102, 81.106, 81.113, 81.118, 81.125, 81.127, and 81.130 make stylistic or minor clarifying changes.

The proposed new and amended sections are necessary for the proper and efficient conduct of the 2018 primary elections. It is in the public interest to establish adequate procedures to ensure most efficient use of state funding.

Keith Ingram, Director of Elections, has determined that, for the first five-year period the new section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

Keith Ingram has also determined that, for each year of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the sections will be the proper conduct of the 2018 primary elections by party officials with the aid of state money appropriated for that purpose. There will be no effect on small or micro-businesses or rural communities. There will be no anticipated economic cost to the state or the county chairs of the Democratic and Republican parties, and, accordingly, no costs are imposed on any regulated persons by the changes.

Written comments of the proposal may be submitted to the Office of the Secretary of State, Keith Ingram, Director of Elections, P.O. Box 12060, Austin, Texas 78711. Comments may also be sent via E-mail to: elections@sos.texas.gov. For comments submitted electronically, please include "Proposed 2018 Primary Rules" in the subject line. Comments must be received no later than twenty (20) days from the date of publication of the proposal in the Texas Register. Comments should be organized in a manner consistent with the organization of the proposed rule. Questions concerning the proposed rule may be directed to Elections Division, Office of the Texas Secretary of State, at (512) 463-5650.

SUBCHAPTER F. PRIMARY ELECTIONS

1 TAC §§81.101, 81.102, 81.106, 81.107, 81.109, 81.112 - 81.114, 81.118, 81.119, 81.122, 81.123, 81.125 - 81.131, 81.135, 81.136

The amendments and new rule are proposed under the Texas Election Code, §31.003, which provides the SOS with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws. It also allows the SOS in performing such duties to prepare detailed and comprehensive written directives and instructions based on such laws. The rule changes are also proposed under Texas Election Code, §173.006, which authorizes the SOS to adopt rules consistent with the Texas Election Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose. §§172.117, 172.122, 172.127, 172.128, 172.130, and 173.0833 (where relevant, as amended by HB 1735, 85th Texas Legislature) of the Texas Election Code, also provide the SOS with rulemaking authority by their terms.

No other sections are affected by the proposed rules.

§81.101. Primary and Runoff Election Cost Reporting [Estimate]; Receipt of State Funds.

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

(1) SOS--Office of the Secretary of State.

(2) Primary--An election held by a political party under Chapter 172 of the Texas Election Code to select its nominees for public office, and, unless the context indicates otherwise, the term includes a presidential primary election.

(3) Runoff--An election held to determine the nomination if no candidate for nomination to a particular office receives the vote required for nomination in the general primary election.

(4) County election officer--County election administrator, county clerk, or county tax assessor-collector, depending on the county, responsible for election duties in the county.

(5) Vendor--Any company with a voting system certified for use in Texas by the SOS.

(b) [1a] This subchapter applies to the use and management of all primary funds.

(c) [1b] Approval by the Secretary of State ("SOS") of a primary cost estimate does not relieve the recipient of primary funds including, but not limited to, the state chair of a political party, the county chair of a political party, any employee paid from the primary fund, or the county election officer, or a voting system vendor, of their responsibility to comply with administrative rules issued by the SOS, or with any statute governing the use of primary funds.

(d) [1e] The SOS shall provide a primary cost estimate for each county political party broken into three categories, as applicable:

(1) The SOS will provide an estimate for [to] each expense incurred by the county chair based on 75% of the final approved "non-contracted" costs less non-state appropriated financing sources (e.g., filing fees) for the most recent comparable election for which data is available as determined by the SOS. In order to receive the primary estimate payment, the chair must submit to the SOS a primary cost estimate via the [SOS] online primary finance system prescribed by the SOS. If data is not available to create a pre-populated cost estimate or
if the chair wishes to amend the pre-populated estimate, the chair may enter the appropriate data in the SOS online primary finance system.

(2) The SOS will provide an estimate for each expense incurred by the county election officer based on 75% of the final approved "contracted" costs for the most recent comparable election for which data is available as determined by the SOS. In order to receive the primary estimate payment, the county election officer must submit to the SOS a primary cost estimate via the online primary finance system prescribed by the SOS. If the data is not available to create a pre-populated cost estimate or if the county election officer wishes to amend the pre-populated estimate, the county election officer may enter the appropriate data in the SOS online primary finance system.

(3) Pursuant to §173.0833 of the Texas Election Code, vendors that provide services and materials for use in a primary election shall invoice the SOS directly. That data will be imported by the SOS into the appropriate county party primary cost estimate. The spreadsheet shall comply with the following requirements:

(A) In October preceding the March primary election, vendors shall submit a single, comprehensive spreadsheet in the format prescribed by the SOS that includes data for each county primary election for which the vendor is providing services or materials.

(B) Only expenses that are billable to the primary fund may be included. Expenses including, but not limited to, early voting kits and supplies, "I Voted Stickers", and party convention supplies, must appear on a separate invoice billed to the county election officer or the party, as appropriate.

(C) If a cost is to be split between both parties, the split costs must appear separately on the spreadsheet.

(D) The vendor must identify whether the county chair or the county election officer is ordering the service. The county chair earns five (5) percent calculated against the cost of the services ordered by the chair, which is paid out by the SOS to the county chair as part of the final cost report, and the county election officer earns ten (10) percent of the cost of the services ordered by the county election officer, which is included in the estimate and final payments issued by the SOS.

(E) The SOS will not make estimates available to the county chairs or the county election officers until the SOS receives the vendor spreadsheet described in this section.

(f) If a state-wide runoff election is conducted, the estimate payments will be calculated and paid following the same process prescribed in subsection (d) of this section with the following exceptions:

(1) Filing fees are not factored into the calculation.

(2) The vendor must provide SOS with a comprehensive spreadsheet of the estimated runoff costs within five (5) days after the date of the canvass of the primary election results. The SOS shall provide a runoff cost estimate to each county chair based on 75% of the final approved costs for the most recent comparable election for which data is available as determined by the SOS. In order to receive the runoff estimate payment, the chair must submit to the SOS a runoff cost estimate via the SOS online primary finance system.

(g) A payment may not be made directly to the county unless the county chair submits the necessary data to the SOS through a primary or runoff election cost estimate or a final primary election cost report.

(h) For purposes of Subchapters E and G of this chapter of the Texas Administrative Code, "county election officer" refers to the county clerk, county election administrator, or county tax assessor-collector, depending on the county.

§81.102. Primary Funds Defined.

(a) Pursuant to §173.031 and §173.032 of the Texas Election Code, a [county] primary fund is created for each [county] executive committee of a political party holding a primary election. The primary fund consists of:

(1) all filing fees accompanying an application for a place on the ballot filed with the [county] chair [and filing fees for a district office distributed by the state chair to the county chair in a county that is wholly or partly in that district];

(2) state funds paid to the [county] chair;
§81.106. Deposits.

(a) The county chair, or an authorized agent of the county chair, shall:

(1) deposit all filing fees, contributions, and miscellaneous receipts into the primary fund; and

(2) maintain an itemized list detailing the source of all funds deposited into the primary fund including, but not limited to, all candidate filings.

(b) The SOS will verify the itemized list of candidate filings against the data reported pursuant to §172.029 of the Texas Election Code [House Bill 3102, 83rd Legislature, 2013] and §81.112 of this chapter (relating to List of Candidates and Filing Fees).

§81.107. Primary-Fund Records.

(a) The county chair shall preserve all records relating to primary-election expenses until the later of:

(1) 22 months following the primary elections; or

(2) the conclusion of any relevant litigation or official investigation.

(b) In order to receive approval of a final cost report, the county chair shall maintain copies of receipts, bills, invoices, contracts, competitive bids, petty-cash receipts for items and services and copies of all monthly bank statements, electronic bookkeeping records (i.e., Quicken or Quickbooks) or check register, and any other related materials documenting primary-fund expenditures. Purchase requisitions are not considered receipts and may not be remitted as such. The SOS reserves the right to request all receipts and related documentation.

(c) Unless otherwise provided by the SOS, not later than August 31 [July 4] of the year in which the primary elections occur, the county chair shall:

(1) comply with all final cost reporting requirements;

(2) return all unexpended and uncommitted primary funds upon SOS approval of the final cost report.

(d) If the chair does not file a final cost report, the matter may [will] be reported to the Attorney General's Office for misappropriation of funds in accordance with §81.113 of this chapter (relating to Misuse of State Funds).

§81.109. [Political-Party] Costs not Payable with Primary Funds.

(a) Pursuant to §173.001 of the Texas Election Code, only expenses necessary for and directly related to the conduct of primary elections are payable from primary funds.

(b) Political expenses and expenses for any activity forbidden by statute or rule are not payable from the primary fund. Examples of non-payable expenses include, but are not limited to, the following:

(1) expenses incurred in connection with a convention of a political party;

(2) any food or drink items;

(3) stationery not related to the conduct of the primary election;

(4) costs associated with voter-registration drives or get-out-the-vote campaigns;

(5) election notices, except for public testing announcements;

(6) early voting costs, except for ballots and early voting ballot board costs;

(7) a public building used as a polling place or central counting station if the building is normally open the day of the election, including a charge for personnel, utilities, or other expenses incurred before or after regular business hours [for business during the time of use];

(8) election worker compensation to attend training;

(9) costs for training material available through the SOS;

(10) duties a county election officer is statutorily required to perform as well as salaries of county personnel during regular business hours;

(11) voting by mail kits and postage related to mail ballots;

(12) purchases of MBBS/PEBs or other voting system items transferable to other elections;

(13) voting booths and ballot boxes owned by the county and other county-owned equipment where there is no statutory authority to charge for said equipment including, but not limited to, electronic poll books, removable voting system components, vehicles, etc.;

(14) a sign that is used to indicate a location of a polling place for a primary election or primary runoff election that violates any of the following criteria:

(A) a sign that refers to a candidate or measure on the ballot;

(B) a sign in which the size and format is not coordinated between the political parties holding a primary election or primary runoff election in the same county.

§81.112. List of Candidates and Filing Fees.

(a) Submission of information.

(1) Submission of filed application. Pursuant to §§172.029, 172.117, and 172.122 of the Texas Election Code [the "Code"], for each general primary election, all state and county chairs shall electronically submit information about each candidate who files with the chair an application for a place on the ballot, including an application for the office of a political party, and shall certify the returns and the final list of candidates by electronic affidavit through the electronic submission service prescribed by SOS referenced in paragraph (2) of this subsection.

(2) Method of submission. The chair shall submit candidate information through an electronic submission service prescribed by the SOS. The SOS shall maintain the submitted information in an online database, in accordance with §172.029(b) of the Texas Election Code. The SOS is not responsible for the accuracy of the information submitted by the chair; the SOS is responsible only for providing the electronic submission service, displaying the information publicly on its website, and maintaining the online database.

(3) Information required for submission. The electronic submission service will note the types of information that must be inputted for a complete submission of candidate information. However, the chair must submit any and all information on the candidate's application for which there is an applicable entry field on the electronic submission service.
§172.029. Submission deadline. A chair shall submit a candidate's information and a notation of each candidate's status not later than 24 hours after the chair completes the review of the candidate's application, in accordance with §172.029 of the Texas Election Code. By not later than the 8th day after the regular filing deadline, the chair shall submit a candidate's information and a notation concerning the candidate's status for all candidates who filed, in accordance with §172.029 of the Texas Election Code. The county chair will not be able to make modifications to the submitted information or notations on or after the 9th day after the regular filing deadline. If modifications to a candidate's information or notation are required on or after the 9th day after the regular filing deadline, such changes must be made by the state chair.

(5) Submission of nominee by executive committee. If a candidate is nominated by the appropriate executive committee for a place on the general election ballot in accordance with §145.036 or §202.006 of the Texas Election Code, the appropriate chair shall notify the state chair who shall submit the candidate's information and notification through the electronic submission service prescribed by the SOS, in accordance with §172.029 of the Texas Election Code. The submission of the candidate's information and notification shall be completed not later than 5 p.m. on the 71st day before general election day to allow for the preparation of the general election ballot by the authority printing the ballots.

(6) Time for notations. The county chair will be able to update notations to describe the status of each candidate beginning the first day after the day of the primary election. If modification to the notation is needed, the appropriate chair will update the candidate information to reflect the candidate's status from the list of notations available. The notations must be complete and accurate not later than 5 p.m. on the 71st day before general election day to allow for the preparation of the general election ballot by the authority printing the ballots.

(b) Notification of filing.

(1) County chair: delivery of candidate list. Upon submission of information for all candidates who filed and whose applications have been reviewed and accepted for a place on the ballot, the county chair shall notify the applicable county election officer [clerk] that candidate information has been submitted for all candidates, in accordance with §172.029 of the Texas Election Code. Notification may be sent by email, regular mail, or personal delivery, so long as it is delivered by no later than the 9th day after the regular filing deadline.

(2) State chair: notification of submission. Upon submission of information for all candidates who filed and whose applications have been reviewed and accepted for a place on the ballot, the state chair shall notify the applicable county chairs that candidate information has been submitted for all candidates, in accordance with §172.028 and §172.029 of the Texas Election Code. Notification may be sent by email, regular mail, or personal delivery, so long as it is delivered by no later than the 9th day after the regular filing deadline.

(3) Notification. Pursuant to §172.056(b) of the Texas Election Code, the chair shall notify the county chairs, the county election officer [clerk], or the state chair, as applicable, that a candidate filed an application that complied with the applicable requirements during the extended filing period. Notification shall be made by email, regular mail, or personal delivery.

(4) Court order. If a court orders a candidate's name to be placed on the ballot or removed from the ballot, the chair shall immediately notify the state chair [SOS].

(c) Public display and failure to submit.

§81.113. Misuse of State Funds. The SOS shall refer any misuse or misappropriation of primary funds to the appropriate prosecuting authority for the enforcement of all civil and/or criminal penalties. Prosecuting authority includes but is not limited to Office of the Attorney General. Misuse of funds includes not complying with reporting requirements prescribed by the Texas Election Code or this title.

§81.114. Conflicts of Interest.

(a) No disbursements may be made from the primary fund to the county chair personally, or to an entity or business in which the party, the county chair, the county chair's spouse, or the county chair's family has a financial interest, except for payments for:

(1) election day workers;

(2) incidental administrative costs; or

(3) the county chair's compensation.

(b) For the purposes of this section, "family" is defined as individuals related within the third degree of consanguinity (blood) or the second degree of affinity (marriage).

Figure: 1 TAC §81.114(b) (No change.)

(c) Discounted expenditures, such as a reduced rate for leasing space, does not exempt the cost from this section.

§81.118. Flex Scheduling of Precinct Workers.

[(a)] The county chair may hire more than two clerks if the formula provided under §81.117 of this title (relating to Number of Election Workers per Polling Place) indicates that more than two clerks are necessary.

[(b)] The ([If the formula in §81.117 of this title indicates that additional election workers are necessary, the]) presiding judge may hire individuals to work in shifts. The county chair may assign clerks to work in shifts that end before the examination or counting of the ballots begins.

§81.119. County Chair's Compensation.

(a) Pursuant to §173.004 of the Texas Election Code, a county chair may receive compensation for administering primary elections.
§81.122. Personnel Payroll Taxes and Benefits.

(a) The county chair shall follow all applicable federal and state laws with respect to payroll taxes, including election day judges and clerks. [The County Chairs Bookkeeping Guide provides a table that sets out payroll taxes as they apply to election day workers.]

(b) The county chair may not use primary funds to pay penalties or interest resulting from a failure to file required tax returns or from failure to pay the employer’s portion of employment taxes.

(c) The county chair shall maintain copies of all federal and state payroll tax returns and forms, and keep such copies with the county primary records. [The county chair shall also transmit copies of these records to the SOS at the SOS’s request.]

(d) The county chair may not pay for group medical, dental, life insurance or retirement benefits with primary funds.

§81.123. Administrative Personnel and Overall Administrative Costs Limited.

(a) "Administrative Personnel" means a non-election-day worker.

(b) The employment of administrative personnel is not required for the conduct of the primary elections.

(c) Pursuant to §81.114 of this chapter (relating to Conflicts of Interest), no member of the county chair’s family may be paid an administrative salary from primary funds.

(d) If administrative personnel are utilized, salaries or wages for such personnel are payable from the primary fund for a period beginning no earlier than November 1 immediately preceding the primary election and ending no later than the last day of the month in which the primary election or runoff primary election, if applicable, is held.

(e) If the county chair contracts with third parties or the county election officer for election services, the overall administrative personnel costs to be submitted to the SOS for reimbursement cannot include administrative expenses provided by third parties or a county election officer. [Administrative personnel costs include, but are not limited to, polling location services, ballot ordering, and secretarial services.]

(f) The SOS may disallow full payment for administrative personnel if it is determined that the contracting county election officer substantially performed the conduct of the election.

(g) Other administrative costs chargeable to the primary fund include office rental, telephone and utilities, office furniture and equipment rental, computer purchase, office supplies, and bank fees; election law books, and other miscellaneous expenses.

(h) In addition to the limitations set forth in the Texas statutes and Subchapters F and G of this chapter of the Texas Administrative Code, including but not limited to §§81.127, 81.128, and 81.129 of this chapter (relating to Office Equipment and Supplies, Telephone and Postage Charges, and Office Rental), the funding caps illustrated in Figure: 1 TAC §81.123(h) apply to the total administrative expenses a county chair may charge to the primary fund.

Figure: 1 TAC §81.123(h) (No change.)

§81.125. Number of Direct Record Electronic (DRE) Units or Precinct ballot Counters per Voting Precinct.

(a) The county chair shall use the table set out in the following figure to determine the number of precinct ballot counters and DRE units allowable for each precinct.

Figure: 1 TAC §81.125(a) (No change.)

(b) If a county chair determines that the number of precinct ballot counters and/or DRE units authorized under the formula is inadequate, he or she must acquire permission from the SOS to obtain additional machines, counters, or devices.

(c) Pursuant to federal and state law, there must be at least one accessible voting unit in each precinct. If the county has insufficient accessible voting units to allow each party to conduct a separate primary in all county election precincts, then each party will need to consolidate county election precincts in accordance with §42.009 of the Texas Election Code in order to accommodate the number of accessible voting units that can be allocated to each party by the county election officer in accordance with §51.035 of the Texas Election Code. Alternatively, the parties, with the agreement of a majority of the full membership of county commissioners court and the county election officer, may conduct a joint primary under §172.126 of the Texas Election Code.

(d) In precincts that are conducting a limited joint election for purposes of sharing a polling place and an accessible voting unit, the presiding election judge from the party whose candidate for governor received the highest number of votes in the precinct or consolidated precinct in the most recent gubernatorial general election shall deliver the device(s) containing the vote totals to the general custodian. The presiding judge of the party whose candidate for governor received the highest number of votes in the precinct or consolidated precinct in the most recent gubernatorial general election may designate the presiding judge or clerk of the other party to deliver the device(s) containing the vote totals to the general custodian.

§81.126. Training Reimbursement to Attend County Chairs Election Law Seminar.

(a) Except as provided by this section, the SOS shall reimburse from the state primary fund, the actual travel expenses for the county chair or the county chair’s designee who will be responsible for the primary finance bookkeeping to attend the SOS Election Law Seminar.
for County Chairs. (The SOS shall provide travel reimbursement forms at the seminar.)

(b) The SOS shall reimburse the county chair or the county chair’s designee for:

1. mileage (if driving personal vehicle);
2. airfare (coach only);
3. airport transfers;
4. airport parking;
5. lodging; and
6. any other reasonable expenses related to an individual’s attendance at the Election Law Seminar for County Chairs.

(c) The SOS shall use an electronic mapping tool available on the internet (including, but not limited to, Mapquest, Google Maps, or Bing Maps) to determine distances traveled to attend the Election Law Seminar for County Chairs. The SOS shall reimburse mileage claims from the county seat to and from Austin using the mileage rate approved by the State Comptroller at the time of the seminar.

(d) The SOS shall reimburse actual lodging expenses in an amount not to exceed the rates approved by the state, plus applicable taxes.

(e) As provided by the Texas General Appropriations Act, the SOS shall not make reimbursements for gratuities or tips. In addition, the SOS will not reimburse for meals.

(f) The county chair or the chair’s designee must submit actual receipts to the SOS in order to be reimbursed for airfare, lodging, parking, or airport transfers.

(g) The county chair shall submit request for reimbursement no later than 60 days after the seminar. If a request for reimbursement is submitted after this date, the SOS may deny the request.

(h) Overnight lodging for two nights is approved for counties that are more than 200 miles distance from Austin; otherwise, prior approval for more than one night of lodging must be obtained from SOS.

§81.127. Office Equipment and Supplies.

(a) Rental of office equipment is not required in order to conduct primary elections.

(b) The county chair may lease office equipment necessary for the administration of the primary elections for a period beginning November 1 immediately preceding the primary election and ending not later than the last day of the month in which the primary election or runoff election primary, if applicable, is held.

(c) The county party may not rent or lease equipment in which the party, the county chair, or a member of the county chair’s family has a financial interest. (See definition of "family" at §81.114(b) of this chapter (relating to Conflicts of Interest).)

(d) The county chair or party shall rent equipment from an entity that has been in business for at least 18 months and has at least three other bona fide clients and is on file with the corporation department of the SOS or locally.

(e) The purchase of office supplies must be reasonable and/or necessary for the administration of the primary election to be payable from the primary fund. ([This includes, but is not limited to, the purchase of two copies of the Texas Election Code.] )

(f) The county chair or party may be reimbursed for the cost of incidental supplies used in connection with the primary election. (Examples of reasonable incidental supplies include paper, toner, and staples.)

(g) The county chair may not use primary funds to purchase any single office-supply item or equipment valued at over $1,500. These items are not considered the property of the party chair, rather the property of the county party, and must be transferred to the incoming party chair when a new chair takes office [become a part of the Party Primary Office and are to be transferred to the next county chair].

(h) The county chair may not pay notary public expenses from the primary fund.

(i) Computer serial numbers must be reported to SOS to ensure the asset can be tracked from one election to the next.

(j) Any computer purchased with primary funds is to be used for primary related functions. It is not considered the property of the party chair, rather the property of the county party, and must be transferred to the incoming party chair when a new chair takes office.

(k) A computer purchased with primary funds shall be used for two primary election cycles before a new computer may be purchased using primary funds.

§81.128. Telephone and Postage Charges.

(a) The SOS shall reimburse necessary telephone and postage costs incurred with respect to the administration of the primary elections beginning no earlier than November 1 immediately preceding the primary election and ending no later than the last day of the month in which the primary election or runoff primary election, if applicable, is held.

(b) Personal landline and cellular phone charges will not be reimbursed with primary funds.

§81.129. Office Rental.

(a) The rental of office space is not required for the conduct of the primary elections.

(b) The SOS shall reimburse necessary office space rental expenses incurred with respect to the administration of the primary elections for a period beginning no earlier than November immediately preceding the primary election and ending not later than the last day of the month in which the primary election or runoff primary election, if applicable, is held.

(c) If the rental of office space is necessary, the county party shall rent office space in a regularly rented commercial building. Office rent shall not exceed the fair market rate for comparable office space in the same area.

(d) Unless such services are required in accordance with the lease agreement, no payment may be made with primary funds for janitorial services, parking, or signage.

(e) The county party may not rent or lease office space in which the party, the county chair, the county chair’s spouse, or the county chair’s family has a financial interest. (See definition of “family” at §81.114(b) of this chapter (relating to Conflicts of Interest).) Discounted office space does not exempt the cost from §81.114 of this chapter, Conflicts of Interest.

(f) If the party leases space for the purpose of the primary only, the county chair shall transmit a copy of the three competitive bids obtained as well as the lease agreement to the SOS, along with a copy of the final cost report. [Note:]

(g) If the party maintains a lease, unrelated to the conduct of the primary, the cost of that lease will not be reimbursed in excess...
of 30% of the monthly rental cost by the state as a primary expense, including utilities. In addition, if the party maintains a lease unrelated to the primary, the SOS will not reimburse the party for a second lease without prior approval from the SOS.\[3\]

§81.130. Payment for Use of County-Owned Equipment.
(a) §123.033 of the Texas Election Code provides for the rental rate that a county may charge for the use of its equipment. (The rental rates are $5 for each unit of tabulating equipment and $5 for each unit of electronic voting system equipment installed at a polling location.) Removable components, such as a flash drive or accessibility component, may not be charged separately.

(b) In addition to subsection (a) of this section, the [county] primary fund may be used to pay the actual expenses incurred by the county in transporting, preparing, programming, and testing the necessary equipment, as well as for staffing the central counting station.

(c) The county chair shall submit all calculations for amounts charged for the use of county-owned and non-county-owned equipment to the SOS for review with the final cost report.

(d) The county chair shall not use primary funds to pay expenses related to the use of non-county-owned equipment, including, but not limited to, ballot boxes and voting booths pursuant to §51.035 of the Texas Election Code, without approval from the SOS.

(e) Pursuant to §51.035 of the Texas Election Code, counties may not charge the county parties for use of county-owned voting booths or ballot boxes and other county-owned equipment where there is no statutory authority to charge for said equipment; however, the primary fund may pay the actual expenses incurred by the county in transporting the equipment to and from the polling places if the county provides that service.

§81.131. Contracting with the County Election Officer.
(a) The SOS has prepared a Primary Election Services Contract and a Joint Primary Election Service Contract (the "Model Contract"). Copies of the appropriate Model Contract may be obtained from the SOS.

(b) The county chair may use the Model Contract when executing an agreement for election services between the county executive committee and the county elections officer. (Contractible election services are listed in Subchapter B of Chapter 31 of the Texas Election Code.)

(c) The Model Contract may be revised as necessary to accommodate the specific agreement between the county chair and county election officer; however, activities not required by law are not payable with primary funds. Accordingly, those activities should be identified in the contract, including a stipulation as to whether the county chair or the county election officer will be responsible for the cost. Each contracting entity shall report the costs for which it is responsible via the online primary finance system prescribed by SOS. The entity that reports said expense(s) will receive direct payment from SOS for those expenses. Costs reported by the county election officer qualify for the ten percent "general supervision fee" authorized under §31.100 of the Texas Code. Expenses reported by the county chair qualify for the county chair compensation (see §81.119 of this chapter (relating to County Chair's Compensation)).

(d) The [Before the county chair may make final payment, the] county election officer must submit to the county chair an accounting of the actual costs incurred in the performance of the election services contract. In addition, the county election officer shall report the primary-eligible expenses to SOS via the online primary finance system prescribed by SOS. [in a form prescribed by the SOS, which must be included with the final cost report.]

(e) The SOS may only pay actual costs incurred by the county and payable under provisions of the Texas Election Code, an election services contract, or these administrative rules. Costs prohibited by this chapter that appear in the election service contract are not reimbursable with primary funds and must be articulated as such in the contract. Counties may not charge a flat fee for services unless the county can produce a methodology that demonstrates the fee is equal to or less than the actual costs incurred by the county, except when authorized by statute. Charges may be set at a rate of up to ten (10) percent of the annual license and maintenance fees for the software used to create the ballot style and program the electronic voting equipment.

(f) Salaries of personnel regularly employed by the county may not be paid from or reimbursed to the county from the primary fund even if the employee used their vacation time to perform the duties.

(g) A county election officer may not contract for the performance of any duty or service that he or she is statutorily obligated to perform.

(h) Pursuant to §31.098 of the Texas Election Code, if authorized in the contract, county election officers who contract or conduct joint primaries must pay all bills for items they order on behalf of the parties, and seek reimbursements from the parties. Conversely, if a contract provides that the contracting authority (the county political party) is to pay the claims of third persons, then the county political party is responsible for payment directly to the claimant.

§81.135. Primary Procedure for Counties without County Party Leadership.
(a) The county election officer of a county where the county chair is vacant shall contract with the state chair of a political party under the following circumstances:

(1) There is an insufficient number of members serving on the county executive committee to fill a vacancy on the committee;

(2) The party is unable to establish a temporary executive committee under §171.027 of the Texas Election Code; and

(3) The election is required for the nomination of a political party to a statewide office, a multicounty district office, or a presidential primary election.

(b) The county election officer and the state chair shall enter into an election services contract consistent with §81.131 of this chapter (relating to Contracting with the County Election Officer), which, in accordance with §172.128 of the Texas Election Code, also provides that the county election officer shall be eligible to be reimbursed for primary election expenses in the same manner a county chair would be reimbursed under Subchapter D, Chapter 173.
(c) The state party shall report costs incurred consistent with this section to the SOS [Secretary of State] and receive funding consistent with this chapter.

§81.136. Primary Procedure Upon County Chair Request or Failure to Comply with Certain Duties.

(a) The state chair may, with the consent of the secretary of state and the county executive committee, if one exists for the county, accept money into the state primary fund on behalf of a county party. The state chair must keep records to track the money that is attributable to a county.

(b) The state chair of a party, or the state chair's designee, may submit cost reports prescribed under this chapter on behalf of a county chair if the county chair:

1. requests the state chair to submit the statement on the county chair's behalf; or

2. fails to submit the statement by the deadline.

(c) The state chair shall conduct the ballot drawing in accordance with §172.082 of the Texas Election Code if the county chair:

1. requests that the state chair conduct the drawing; or

2. fails to conduct the drawing by the deadline set in this section.

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

Filed with the Office of the Secretary of State on August 21, 2017.

TRD-201703259
Lindsey Aston
General Counsel
Office of the Secretary of State
Earliest possible date of adoption: October 1, 2017
For further information, please call: (512) 463-5650

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) proposes amendments to §354.1121, Definitions; and §354.1221, Authorized Dentists' Services.

BACKGROUND AND JUSTIFICATION

Current federal Medicaid rules allow Medicaid-enrolled physicians to arrange for a substitute Medicaid-enrolled physician to serve in the billing physician's practice on a short or long-term basis, known as a locum tenens arrangement. House Bill 1661, 84th Legislature, Regular Session, 2015, directed HHSC to adopt rules to allow this practice for dentists in Texas Medicaid, to the extent allowed by federal law.

HHSC staff consulted with the Centers for Medicare & Medicaid Services (CMS) staff on the federal guidance related to substitute arrangements for dentists. CMS informed HHSC that locum tenens arrangements are not allowed for dentists as they are for physicians because of the distinction drawn between "physician" and "dentist" in federal Medicaid law. Specifically, section 1902(a)(32)(C) of the Social Security Act permits a locum tenens arrangement in the case of services provided by a physician, and the definition of "physicians' services" in 42 C.F.R. §440.50 does not include services provided by a dentist.

The proposed rule amendments offer an alternate billing arrangement option to Texas Medicaid dentists. Under the billing arrangement, the substitute dentist is required to be enrolled in Medicaid. The arrangement is time limited unless the reason for the billing agent dentist's absence is active duty as a member of a reserve component in the U.S. Armed Forces.

SUBCHAPTER G. JOINT PRIMARY ELECTIONS

1 TAC §81.155

The amendments are proposed under the Texas Election Code, §31.003, which provides the SOS with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws. It also allows the SOS in performing such duties to prepare detailed and comprehensive written directives and instructions based on such laws. The rule changes are also proposed under Texas Election Code, §173.006, which authorizes the SOS to adopt rules consistent with the Texas Election Code that reduce the cost of the primary elections or facilitate the holding of the elections within the amount appropriated by the legislature for that purpose. §§172.117, 172.122, 172.127, 172.128, 172.130, and 173.0833 (where relevant, as amended by HB 1735, 85th Texas Legislature) of the Texas Election Code, also provide the SOS with rulemaking authority by their terms.

No other sections are affected by the proposed rules.

§81.155. Returning Surplus Funds.

Following [immediately following] final payment of necessary expenses for conducting the joint primary elections, not later than August 31 of the year in which the primary elections occur, and upon the SOS approval of all final costs, [but no later than July 1, the county chair shall remit any], surplus [in the] primary funds shall be remitted [fund account] to the SOS. [The county chair shall remit the surplus regardless of whether state funds were requested by the chair.] If [the chair does not file] a final cost report is not filed with the SOS, the matter may [will] be reported to the Attorney General's Office in accordance with §81.113 of this chapter (relating to Misuse of State Funds).[1]

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

Filed with the Office of the Secretary of State on August 21, 2017.

TRD-201703259
Lindsey Aston
General Counsel
Office of the Secretary of State
Earliest possible date of adoption: October 1, 2017
For further information, please call: (512) 463-5650

PROPOSED RULES  September 1, 2017  42 TexReg 4375
Since the proposed rule amendments offer dentists the option of using a substitute provider during a temporary absence, the proposed changes could benefit both Medicaid dentists and Medicaid recipients.

SECTION-BY-SECTION SUMMARY

Proposed §354.1121 adds a definition for "billing agent," "HHSC," and "substitute dentist."

Proposed §354.1221 adds the option and accompanying requirements for a dentist to bill for services performed by a substitute dentist under a temporary billing arrangement. Other nonsubstantive updates are also proposed in this rule.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rules are in effect, there will be no impact to costs or revenues of state or local government.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Rymal has also determined that there will be no adverse impact on small businesses or micro-businesses to comply with the amended rules, as they will not be required to alter their business practices as a result of the proposed amendments.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

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

There is no anticipated negative impact on local employment.

PUBLIC BENEFIT AND COST

Jami Snyder, State Medicaid Director, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit will be that Medicaid-enrolled dentists will have the option of using a substitute dentist during a temporary absence from their practice, thereby having the ability to continue to serve Medicaid recipients during a temporary absence.

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 Kristie Kloss, Medical Benefits Manager, 4900 North Lamar Blvd., Mail Code H370, Austin, Texas 78751-2316; or by e-mail to kristie.kloss@hhsc.state.tx.us within 30 days of publication of this proposal in the Texas Register.

DIVISION 10. DEFINITIONS

1 TAC §354.1121

STATUTORY AUTHORITY

This amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

The proposed amendment relates to Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1121. Definitions.

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

(1) Advanced practice registered nurse—A registered nurse authorized by the Texas Board of Nursing to practice as an advanced practice registered nurse. The term includes a nurse practitioner, nurse-midwife, nurse anesthetist, and clinical nurse specialist.

(2) Ambulance service supplier—A person, firm, or institution approved for and participating in Medicare as an air, ground, or specialized ambulance service supplier or provider.

(3) Ambulatory surgical center—A distinct healthcare entity that operates exclusively for the purpose of providing certain surgical services to patients not requiring overnight inpatient hospital services. The center must meet the conditions for participation described in §354.1211 of this subchapter (relating to Conditions for Participation) and other applicable state and federal requirements.

(4) Approved laboratory—A laboratory that is independent of a hospital or physician’s office and that has been approved for and is participating in Medicare and only for the procedures certified to that laboratory under Medicare.

(5) Billing agent—A business agent as described in 42 CFR 447.10(f).

(6) [(5)] Claim—A request for payment for authorized benefits on the applicable approved form meeting the established itemization requirements.

(7) [(6)] Day—With respect to inpatient hospital services, the time period of a day is counted for:

(A) hospital bed occupancy each midnight while under registration in a hospital as an inpatient;

(B) each hospital bed occupancy where admission and discharge occur on the same calendar day while under registration in a hospital as an inpatient.

(8) [(7)] Doctor—Doctor of chiropractic (chiropractor), doctor of optometry (optometrist), doctor of podiatry (podiatrist), or doctor of dentistry (doctor of dental surgery (DDS), doctor of medical dentistry (DMD), and doctor of dental medicine (DDM)).

(9) [(8)] Doctor of chiropractic, doctor of optometry, doctor of podiatry, and doctor of dentistry (DDS, DMD, or DDM)—A licensed doctor legally authorized to practice his specialty at the time and place the service is provided.

(10) [(9)] Eligible provider—An institution, facility, agency, person, partnership, corporation, or association approved for participation in the Texas Medicaid program in accordance with terms of this chapter. "Eligible provider" also includes any person, firm, or institution approved for and participating in Part B Medicare as a supplier or provider of medical services or supplies, who is not otherwise designated as an eligible Title XIX provider, and who meets the requirements stipulated in this definition, except that such eligible provider shall be an eligible Title XIX provider only for Part B Medicare services or supplies and for the Title XIX payment of the deductible and coinsurance liabilities.
(11) (410) Eyeglasses--Eyewear dispensed and delivered that is medically necessary and prescribed by a doctor of optometry or physician, is professionally adjudged to be necessary and appropriate for the lens, age, and sex of the eligible recipient, and significantly improves visual acuity or impedes progression of visual problems. The term "eyeglasses" does not include artificial eyes or any item of eyewear for which benefits are not provided in the rules of the Texas Health and Human Services Commission (HHSC) regarding the Medicaid eyeglass program.

(12) (414) Eyeglass supplier--A person, firm, or institution that has entered into a written agreement with HHSC or its designee as an eyeglass supplier on a form approved by HHSC; provided that the benefits shall be available for eyeglass supplies and supplies dispensed by an eyeglass supplier only if the fitting, adjustment, and repair of the eyewear involved is performed by a physician, doctor of optometry, or an optician; and provided that an eyeglass supplier is an eligible provider under this program. Such suppliers must accept the benefits paid as stipulated by HHSC as payment in full for the service and supplies involved, except as otherwise provided.

(13) (412) Family planning agency--A facility or institution that has been determined by HHSC or its designee to qualify as a family planning agency under standards of participation established by HHSC, including any amendment of such standards of participation authorized by HHSC. Family planning agencies shall accept as payment in full the amount paid in accordance with the benefits as stipulated by HHSC.

(14) (413) Health insuring agency--An organization legally operating within the state that pays for the cost of certain medical services available under the Title XIX state plan to eligible recipients in exchange for premiums paid by HHSC and which assumes an underwriting risk.

(15) HHSC--The Texas Health and Human Services Commission or its designee.

(16) (414) Hospital--Any institution licensed as a hospital by the appropriate licensing authority but which is not a mental institution, a health resort, nursing home, rest home, or any other institution primarily providing convalescent or custodial care or which is otherwise excluded under this chapter.

(17) (415) Illness--A bodily disorder, bodily injury, disease, or mental disease.

(18) (416) Inpatient--A person registered and assigned a medical record number by a hospital for bed occupancy in that hospital.

(19) (412a) Institution for mental diseases (IMD)--As defined in 25 TAC §419.453(17) (relating to Definitions).

(20) (413) Medicaid program--The Texas Medical Assistance Program, a joint federal and state program provided for in Chapter 32, Texas Human Resources Code, and subject to Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq.

(21) (419) Mental disease or disorder--Any condition classified as a neurosis, psychoneurosis, psychopathy, psychosis, or personality disorder.

(22) (419a) National provider identifier--The identification number required under §1128J(e) of the Social Security Act (42 U.S.C. §1320a-7(k)(e)).

(23) (214) Nonmedical public institution--An institution or facility that is either a unit of, or under the administrative control of a state, federal, or local government and that is not approved for participation in the Medicaid program.

(24) (223) Out-of-state hospital--A hospital located outside of the State of Texas that participates as a general, or acute care hospital or both under Medicare or Title XIX, or both. Examples of institutions that are excluded are institutions primarily for mental disease or pulmonary care, a health resort, a nursing home, a rest home, or any other institution primarily providing convalescent or custodial care or that is otherwise excluded under this chapter.

(25) (234) Outpatient--A person registered by a hospital for outpatient services but not as an inpatient.

(26) (244) Physician--A doctor of medicine or doctor of osteopathy (MD or DO) legally authorized to practice medicine or osteopathy at the time and place the service is provided.

(27) (254) Physical therapist--A graduate of a program of physical therapy approved by the Commission on Accreditation in Physical Therapy Education (or one of the previously recognized accreditation bodies), and licensed by the state in which the services are performed.

(28) (264) Physical therapist assistant--A person licensed by the appropriate state licensure board as a physical therapist assistant and who provides physical therapy under the direction of a licensed physical therapist.

(29) (274) Physical therapy--Restorative services prescribed by a physician and provided to a recipient by a qualified physical therapist. It includes any necessary supplies and equipment.

(30) (284) Prescription--A signed written or electronic order by a physician or other healthcare practitioner acting within the scope of his or her licensure. This includes a verbal order subsequently countersigned by the practitioner or verified by the pharmacist.

(31) (294) Psychologist--A person who is licensed to practice as a psychologist in the state in which the service is performed.

(32) (304) Recipient month--A calendar month of continuous eligibility for one individual under the Medicaid program. Each month covers eligibility for only one eligible recipient. Multiple recipient months may cover eligibility for one or more eligible recipients or eligibility for the same individual if prior months are involved. Additional months of recipient eligibility may occur due to:

(A) certification of eligibility for up to three months prior to date of application;

(B) eligibility for those individuals who are certified to be eligible recipients after a first of the month;

(C) eligibility certified retroactively;

(D) certification of four months post eligibility for certain individuals in the non-Medicare related aid to families with dependent children coverage group; or

(E) appropriately identified error adjustments.

(33) (314) Respiratory care practitioner--A person certified to practice respiratory care as defined in the Occupations Code, Chapter 604, relating to Respiratory Care Practitioners.

(34) (322) Semiprivate room--A two-bed, three-bed, or four-bed accommodation.

(35) (332) State fiscal year--The 12-month period beginning September 1 and ending August 31.

(36) (344) State plan--The plan for administration of the Medicaid program which is approved by the secretary of health and human services in accordance with the provisions of Title XIX of the Social Security Act, as amended.
(37) Substitute dentist--A doctor of dentistry (DDS, DMD, or DDM) who provides services in place of another dentist of the same license type under a billing arrangement. These arrangements must comply with Medicaid policy, billing, reporting, and documentation requirements.

(38) [§354.1221] Therapeutic optometrist--A person certified by the Texas Optometry Board to practice therapeutic optometry in accordance with the Texas Optometry Act. References in this chapter to optometrists include therapeutic optometrists.

(39) [§366] Third-party billing vendor--A vendor that submits claims to HHSC, or its designee, for reimbursement on behalf of a provider of medical services under the Medicaid program.

(40) [§372] Third-party liability--The resources that an eligible recipient may have which serve as a source of payment for services provided under the Medicaid program.

(41) [§384] Title XIX hospital--A hospital that is participating as a hospital under Medicare, that has in effect a utilization review plan approved by HHSC applicable to all eligible recipients to whom it provides services or supplies, and has been designated by HHSC as a Title XIX hospital or a hospital not meeting all of the requirements listed in this definition but which provides services or supplies for which benefits are provided under Medicare, the Social Security Act, §1814(d), or would have been provided under such section had the recipients to whom the services or supplies are provided been eligible for and enrolled under Part A of Medicare, to the extent of such services and supplies only, and then only if such hospital has been designated by HHSC as a Title XIX emergency care only hospital, or has been approved by HHSC to provide emergency hospital services and agrees that the reasonable cost of such services or supplies, as defined in the Social Security Act, §1902(a)(13), will be such hospital's total charge for such services and supplies.

(42) [§399] Title XIX spell of illness--With respect to inpatient hospital services, spell of illness is a continuous period of hospital confinement. Successive periods of hospital confinement are considered to be continuous unless the last date of discharge and the date of readmission are separated by at least 60 consecutive days.

(43) [§409] Utilization review--The methods and procedures related to the review of utilization of covered care and services with respect to medical necessity and to safeguard against inappropriate utilization of care and services.

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

Filed with the Office of the Secretary of State on August 15, 2017.
TRD-201703138
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: October 1, 2017
For further information, please call: (512) 462-6276

DIVISION 14. DENTISTS' SERVICES

1 TAC §354.1221

STATUTORY AUTHORITY

This amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

The proposed amendment relates to Texas Human Resources Code Chapter 32, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1221. Authorized Dentists' Services.

(a) Dentists' services provided by a doctor of dentistry (DDS, DMD, or DDM), as defined in §354.1121 [§20.1004] of this subchapter [chapter] (relating to Definitions [General Definitions for Purchased Health Services]), are covered by the Texas Medicaid Program [Medical Assistance Program] if the services:

(1) are within the dentist's scope of practice, as defined by state law; and

(2) would be covered by the Texas Medicaid [Medical Assistance] Program when they are provided by a licensed physician (MD or DO).

(b) Substitute dentist. A dentist may act as a billing agent, pursuant to 42 CFR 447.10, to submit claims. To qualify for reimbursement, the billing agent and substitute dentist must comply with the following requirements:

(1) The substitute dentist must be licensed to practice in the state of Texas.

(2) Consistent with the requirements of §371.1605 and §371.1705 of this title (relating to Provider Responsibility and Mandatory Exclusion, respectively), the substitute dentist must be enrolled in Medicaid and not be on the Medicaid or Title XX provider exclusion list.

(3) The substitute dentist's National Provider Identifier (NPI) must be entered on the dental claim form.

(4) The billing agent dentist must submit the claims on behalf of the substitute dentist and may recover no more than the actual administrative cost of submitting the claim on behalf of the substitute dentist. This cost is not reimbursable by Medicaid.

(5) The billing agent dentist may only bill for services furnished by a substitute dentist on a temporary basis, for no longer than a 14-day consecutive period. Except as provided in paragraph (6) of this subsection, the billing agent dentist may not submit a claim for services furnished by a substitute dentist to address long-term absences or vacancies in a dental practice.

(6) A billing agent dentist may submit claims for the services of a substitute dentist for longer than 14 consecutive days, if the billing agent dentist has been called or ordered to active duty as a member of a reserve component of the Armed Forces. Medicaid accepts claims from the billing agent dentist for services provided by the substitute dentist for the duration of the billing agent dentist's active duty as a member of a reserve component of the Armed Forces.

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

Filed with the Office of the Secretary of State on August 15, 2017.
TRD-201703139
Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Earliest possible date of adoption: October 1, 2017  
For further information, please call: (512) 462-6276

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 4. CREDIT CARD SURCHARGE APPEAL PROCEDURES

SUBCHAPTER A. CONTESTED CASE PROCEDURE FOR VIOLATIONS ON OR BEFORE AUGUST 31, 2013

7 TAC §§4.101 - 4.106

The Finance Commission of Texas (the commission) proposes the repeal of 7 TAC, Part 1, Chapter 4, Credit Card Surcharge Appeal Procedures. Chapter 4 consists of Subchapter A, containing §§4.101 - 4.106, relating to contested case procedure for credit card surcharge violations occurring on or before August 31, 2013.

The purpose of the proposed repeal is to delete obsolete rules contained in 7 TAC, Chapter 4. The commission has determined that Chapter 4 is no longer necessary, as the enforcement of the credit card surcharge prohibition is being transferred to the Office of the Attorney General (OAG).

Through August 31, 2017, Texas Finance Code, §339.001(c) states that the commission has exclusive jurisdiction to enforce and adopt rules relating to §339.001. As enacted by the 85th Texas Legislature, Senate Bill (SB) 560 amends the credit card surcharge prohibition in §339.001 by transferring enforcement authority from the Office of Consumer Credit Commissioner (OCCC) to the OAG. Effective September 1, 2017, the bill relocates these provisions to §604A.0021 of the Texas Business and Commerce Code, which will ensure consistent enforcement with the existing debit card surcharge prohibition contained in §604A.002 also enforced by the OAG.

Additionally, there are no pending contested cases involving credit card surcharge violations on or before August 31, 2013, which is the time period governed by 7 TAC, Chapter 4.

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

Commissioner Pettijohn also has determined that for each year of the first five years the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal will be the elimination of rules that are no longer necessary. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no effect on individuals required to comply with the repeal as proposed.

Comments on the proposed repeal 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. 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 the 31st day after the proposed repeal is published in the Texas Register, no further written comments will be considered or accepted by the commission.

The repeal is proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. The repeal is also proposed under Texas Finance Code, §339.001(c) which currently states that the commission has exclusive jurisdiction to enforce and adopt rules relating to §339.001 (as of the date proposed to the commission). Effective September 1, 2017, SB 560 amends the credit card surcharge prohibition in §339.001 by transferring enforcement authority from the OCCC to the OAG and relocating these provisions to the Texas Business and Commerce Code.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, §339.001.


§4.102. Credit Card Surcharge Complaints.

§4.103. OCCC's Recommendation of Whether to Initiate Credit Card Surcharge Proceeding.

§4.104. Initiative and Notice of Credit Card Surcharge Proceeding.

§4.105. Contested Case on Credit Card Surcharge.

§4.106. Final Order on Credit Card Surcharge.

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

Filed with the Office of the Secretary of State on August 18, 2017.
TRD-201703202
Leslie L. Pettijohn  
Consumer Credit Commissioner  
Finance Commission of Texas  
Earliest possible date of adoption: October 1, 2017  
For further information, please call: (512) 936-7621

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 89. PROPERTY TAX LENDERS

The Finance Commission of Texas (commission) proposes amendments to §§89.102, 89.207, 89.208, 89.301, 89.302, 89.304, 89.306, 89.310, 89.403, 89.404, 89.502, 89.503, 89.504, 89.506, 89.507, 89.601, and 89.702; proposes new §§89.303 and §89.405; and proposes the repeal of §§89.303, 89.405, and 89.406, in Chapter 89, concerning Property Tax Lenders.

In general, the purpose of the proposal regarding 7 TAC, Chapter 89 is to implement changes resulting from the commission’s review of the chapter under Texas Government Code, §2001.039.
The notice of intention to review 7 TAC Chapter 89 was published in the Texas Register on June 16, 2017, (42 TexReg 3167). The commission received four comments in response to that notice. The comments were submitted by the Hunter-Kelsey of Texas, LLC, Propel Financial Services, Sombrero Capital, and the Texas Property Tax Lienholders Association. The responses to the official comments on the rule review notice are included as part of the adopted rule review, published elsewhere in this issue of the Texas Register.

The proposed rule changes generally relate to the following issues: disclosures provided by property tax lenders (including an updated version of the required pre-closing disclosure), licensing processes, fees charged by property tax lenders, and technical corrections. Additionally, certain sections are being proposed for repeal in order to replace them with new, reorganized rules.

The agency circulated an early draft of proposed changes to interested stakeholders. The agency then held a stakeholder meeting where attendees provided oral precomments. In addition, the agency received seven informal written precomments. 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 amendments, new rules, and repeals are provided in the following paragraphs.

Proposed amendments to §89.102 add definitions of the terms "residential property tax loan" and "commercial property tax loan." The definition of "residential property tax loan" states that the term refers to a property tax loan that includes a lien on residential property owned and used for personal, family, or household purposes. Property designated as "Category A (Real Property: Single-Family Residential)" is presumed to be residential property unless the property tax lender obtains an affidavit from the property owner stating that the property is owned and used for a business or investment purpose, not for personal, family, or household purposes. The definition of "commercial property tax loan" states that the term refers to a property tax loan that is not a residential property tax loan. The new definitions of "residential property tax loan" and "commercial property tax loan" are intended to provide consistent terminology in provisions related to disclosures and closing costs. The term "residential property tax loan" is also used to specify the scope of the limitation on closing costs, as discussed later in this proposal in the discussion of proposed amendments to §89.601(a).

Proposed amendments to §89.207 specify records that property tax lenders are required to maintain. These amendments are intended to ensure that the Office of Consumer Credit Commissioner (OCCC) can review a licensee's records to ensure compliance with applicable law. First, an amendment to §89.207(3)(A)(viii) specifies that a property tax lender must maintain any affidavits signed by the borrower applicable to the property tax loan, in addition to signed agreements and disclosures required by the current rule. This would include an affidavit regarding the use of commercial property, as described in the definition of "residential property tax loan" in §89.102(10). Second, an amendment to §89.207(3)(B) specifies that the current requirement regarding the right of rescission refers to maintaining the notice of the right of rescission, as required by Regulation Z, 12 C.F.R. §1026.23. Third, a proposed amendment to §89.207(3)(H) provides that if a property tax loan is satisfied through a foreclosure, the property tax lender must maintain the foreclosure deed, instead of the release of lien required by the current rule. This amendment is in response to an official comment on the notice of intention to review, which requests clarification on this issue. In the case of a foreclosure, there might not be a release of lien. Fourth, a proposed amendment to §89.207(3)(I)(ii) specifies that a property tax lender must maintain receipts and invoices for attorney's fees charged under Texas Finance Code, §351.002(1)(6), which authorizes a reasonable post-closing fee for title examination and preparation of an abstract of title by an attorney, a title company, or a property search company authorized to do business in this state.

A proposed amendment to §89.208(h) explains that the annual percentage rate (APR) disclosed in a property tax loan advertisement must be calculated in accordance with the proposed amendment to §89.502(2). This amendment is intended to ensure that the method of calculating APR is consistent throughout the rules governing property tax lenders, as discussed later in this proposal in the discussion of proposed amendments to §89.502. It is also intended to ensure that potential borrowers receive information that will enable them to make an informed borrowing decision.

A proposed amendment to §89.301 would add a definition of "parent entity," specifying that this term refers to a direct owner of a licensee or applicant. This definition is intended to clarify the provisions on mergers and license transfers in §89.303 and §89.304, discussed later in this proposal, and is consistent with other OCCC licensing rules.

Also in §89.301, an amendment to proposed §89.301(3)(A) (current §89.301(2)(A)) amends the definition of "principal party" for sole proprietorships. The amendment removes the statement that proprietors include spouses with a community property interest. In addition, an amendment to §89.302(1)(A)(ii)(I) removes the requirement to disclose community property interests and documentation regarding separate property status, and replaces it with a requirement to disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license applicants to determine the status of spouses' property interests, and explaining these concepts to applicants. These amendments will help streamline the licensing process and reduce regulatory burden. The amendments will also make the application process simpler and more straightforward for applicants. In specific cases where the spouse is a principal party, the OCCC would be able to request additional information about the spouse under current §89.302(1)(C)(i)-(ii).

Section 89.303 is proposed for repeal and replacement with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Currently, §89.303 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. 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 entity. 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, §351.163.
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 property tax lender 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. 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. Subsection (h) describes the situations where the transferee is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where both parties are responsible.

In §89.304, concerning Change in Form or Proportionate Ownership, conforming changes are proposed corresponding to proposed new §89.303. Throughout subsections (b) and (c), references have been added to the new license application on transfer of ownership. In addition, amendments are proposed in subsection (b) to clarify situations where a merger is a transfer of ownership. The amendments specify that if a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer application or new license application. The amendments to subsection (b) are intended to clarify the current rule text and are consistent with the OCCC's current policy.

Proposed amendments to §89.306 clarify the circumstances in which a licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 14 days applies before a license application is approved. Proposed new §89.306(b) provides that a licensee must notify the OCCC within 30 days if the information relates to the names of principal parties, criminal history, regulatory actions, or court judgments. Proposed new §89.306(c) specifies that each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, and that it is a best practice for licensees to regularly review contact information.

A proposed amendment to §89.310(c) provides that a license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints, replacing a statement that the fee will be paid to the OCCC. This amendment conforms the rule to the method by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program.

Proposed amendments to §89.403 clarify the agency's procedure for providing delinquency notices to licensees that have failed to pay an annual assessment fee. The amendments specify that notice of delinquency is considered to be given when the OCCC sends the notice by mail to the address on file with the OCCC (if the licensee has provided an e-mail address).

A proposed amendment to §89.404 contains a technical correction to ensure that the rule refers to "the prior calendar year's loan activity."

Proposed new §89.405 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a property tax lender license. This section would replace the current §89.405 and §89.406, which are proposed for repeal. Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose. Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of property tax lender. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a property tax lender, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). Subsection (c)(2) contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023. Subsection (d) describes the OCCC's authority to deny a license application if it does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1). Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b). Subsection (f) identifies other grounds for denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

The proposed amendments to §§89.502, 89.503, 89.504, and 89.506 contain updated disclosure requirements for property tax loans. These amendments include a new version of the pre-closing disclosure required under Texas Tax Code, §32.06(a-4)(1), which provides that the commission will "prescribe the form and content of an appropriate disclosure statement to be provided to a property owner before the execution of a tax lien transfer."

The current version of this disclosure, located at §89.506(a), is a one-page form with information about what a property tax loan is, the possibility of foreclosure, and OCCC contact information. The new pre-closing disclosure in this proposal adds an itemization of the costs of a property tax loan, and for residential property tax loans, it includes the annual percentage rate (APR). The proposed amendments to §89.502 describe a standardized method for property tax lenders to calculate the APR.

The commission believes that it is appropriate for the pre-closing disclosure to include cost information and APR. When borrowers are aware of the cost of loans, they can make an informed borrowing decision. Borrowers can use cost information to shop among lenders, enhancing competition. In particular, an APR provides residential borrowers with a benchmark for comparing...
property tax loans to other loan products that may serve their needs.

Last year, the Fifth Circuit held that the federal Truth in Lending Act (TILA) does not apply to Texas property tax loans, because a property tax loan is not a "debt" under TILA. Billings v. Propel Fin. Servs. L.L.C., 821 F.3d 608, 611-12 (5th Cir. 2016). In a closed-end consumer credit transaction TILA and its implementing rule, Regulation Z, require the creditor to make several disclosures, including five key pieces of information: the amount financed, the finance charge, the APR, the total of payments, and the payment schedule. TILA, 15 U.S.C. §1602(v) and §1604(a); Regulation Z, 12 C.F.R. §1026.18. After Billings, there is no general requirement for property tax lenders to disclose the APR and cost information before the closing of a property tax loan.

In light of Billings, the commission believes that it is an appropriate time to revisit the content of the required pre-closing disclosure, and to add information about costs and APR. The Texas Legislature recognized that much of this information is important to disclose to borrowers when it added Texas Finance Code, §351.0023 in SB 247 (2013). That section requires property tax loan advertisements and solicitations to disclose information such as the terms of repayment and APR. In addition, the agency understands that most property tax lenders are already providing this information to borrowers in some form between application and closing. Another purpose of the proposed amendments is to provide a standardized method for disclosing this information that is already being provided, which further helps borrowers make an informed borrowing decision.

Two commenters on the notice of intention to review support reviewing the disclosure rules. One of these commenters recommends reviewing the rules to "ensuring that consumers receive adequate notices regarding the cost and terms of the underlying transaction," and to provide "standardization of the forms and calculation methods for certain terms (e.g., APR) to ensure consumers can make well-informed choices."

Proposed amendments to §89.502 add definitions of the terms "amount financed," "annual percentage rate," "finance charge," and "total of payments." The amount financed, finance charge, and total of payments are all used to calculate the APR. The definitions are intended to provide a standardized, uniform method of calculating the APR for a property tax loan. When this information is disclosed to borrowers through a standardized method, this enables borrowers to shop among lenders, enhancing competition. These terms are used in calculating the amounts on the amended pre-closing disclosure, as described later in the discussion of the proposed amendments to §89.504 and §89.506.

Under the proposed definition at §89.502(2), the APR would be calculated based on the methods described in Regulation Z, 12 C.F.R. §1026.22, which contains a standardized method for calculating APR that is generally used in consumer credit transactions. For this reason, the APR can provide residential borrowers with a benchmark for comparing property tax loans to other loan products that may serve their needs.

One of the key components used in calculating the APR is the finance charge. Generally, the finance charge is the cost of credit as a dollar amount. Regulation Z, 12 C.F.R. §1026.4(a). Other things being equal, a higher finance charge will result in a higher APR. The proposed definition in §89.502(3) explains that the finance charge includes all interest and closing costs paid to the property tax lender or an affiliated business. The term "affiliated business" is defined in current §89.102(1), and includes a business that shares common management with a property tax lender, shares more than 10% common ownership with a property tax lender, or is controlled by a property tax lender through a controlling interest greater than 10%. At the stakeholder meeting, one stakeholder pointed out that certain property tax lenders impose internal costs that they retain, while other property tax lenders pass costs on to affiliated businesses. The stakeholder noted that if a property tax lender can exclude costs paid to the affiliated businesses from the finance charge, this will enable the property tax lenders using affiliated businesses to disclose a lower APR than property tax lenders imposing internal costs, even if the costs are substantially the same for the borrower. In response to this stakeholder statement, the proposed definition of "finance charge" in §89.502(3) specifies that the finance charge includes interest and closing costs paid to an affiliated business. This definition is intended to ensure that a prospective borrower can accurately compare rates between a property tax lender that generally retains fees for services performed at closing, and a property tax lender that passes fees on to an affiliated business.

The proposed amendments to §89.503(b) and (c) add the Calibri font to the list of typefaces considered to be readable, and specify that the text of the disclosure must generally be at least as large as 11 points in the Calibri font. These amendments reflect the updated pre-closing disclosure, which was prepared in the Calibri font for improved readability and design.

The proposed amendments to §89.504 describe the content of the amended pre-closing disclosure. These amendments generally maintain the elements that are required to be in the disclosure under current §89.504, while providing additional disclosures. Proposed amendments at §89.504(a)(1)-(4) require the pre-closing disclosure to include the parties’ contact information, and for a residential property tax loan, require the disclosure to state the name and Nationwide Multistate Licensing System (NMLS) identification number of the residential mortgage loan originator. Under Texas Finance Code, §351.0515, an individual who acts as a residential mortgage loan originator for a property tax loan must be individually licensed with the OCCC. Disclosing the originator's name and NMLS ID number helps ensure that the property tax lender has complied with this requirement.

Proposed §89.504(a)(6) requires the pre-closing disclosure to include a section labeled "Loan Terms," including the funds advanced under Texas Tax Code, §32.06(e) (labeled as the "loan amount"), the contract interest rate, the term of the property tax loan in months, the monthly payment amount, the payment schedule, and a provision explaining whether there is a prepayment penalty.

Several precommenters request guidance about whether prepaid interest could be included in the funds advanced listed on the pre-closing disclosure. The funds advanced are expressly limited by Texas Tax Code, §32.06(e), which states: "Funds advanced are limited to the taxes, penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, plus reasonable closing costs." Interest paid to the property tax lender, including prepaid interest, is not part of the funds advanced under this section. Although this provision mentions interest, this refers to interest paid to the taxing unit as shown on the tax receipt. In response to the precommenters' request for guidance, proposed §89.504(a)(6)(A) explains that the funds advanced include the amounts described by Texas Tax Code, §32.06(e), and do not include prepaid interest. Prepaid interest is disclosed separately on the pre-closing disclosure, as
explained later in the discussion of §89.504(a)(9). At the stakeholder meeting, one stakeholder explained that some property tax lenders include prepaid interest (other than discount points) in the principal balance of the loan, but do not charge interest upon the prepaid interest. The current proposal does not specifically address this practice, but it would require the lender to exclude any prepaid interest from the loan amount on the pre-closing disclosure.

Proposed §89.504(a)(7) requires the pre-closing disclosure for a residential property tax loan to include a section labeled "Loan Calculations," containing the APR, amount financed, finance charge, and total of payments. Several precommenters suggest that this section be titled "Loan Calculations" instead of "Loan APR Calculation," which was the title used in the pre-comment draft. In response to these precomments, proposed §89.504(a)(7) uses the title "Loan Calculations."

Proposed §89.504(a)(8) requires the pre-closing disclosure to include a section labeled "Loan Amount Itemization," containing itemizations of the amounts paid to taxing units, closing costs, and recording costs. At the stakeholder meeting, two stakeholders noted that some amounts may be paid to an entity other than a taxing unit (e.g., collection costs paid to a district clerk). In response to these statements, proposed §89.504(a)(8)(A)(i) explains that the itemization includes amounts paid to taxing units or other governmental entities as shown on the tax receipt.

Proposed §89.504(a)(9) requires the pre-closing disclosure to include a section labeled "Prepaid Interest," containing the total amount of any prepaid interest, itemized into per diem interest and discount points.

Proposed §89.504(a)(10) requires the following tax office notice in boldface type: "Your tax office may offer delinquent tax installment plans that may be less costly to you. You can request information about the availability of these plans from the tax office." This disclosure is based on Texas Finance Code, §351.0023(a), which requires this notice to be included on the first page of any solicitation materials in 12-point boldface type. Three precommenters state that this notice is unnecessary on the pre-closing disclosure, arguing that it should apply only to advertisements and solicitations. The commission disagrees with this argument for two reasons. First, the pre-closing disclosure might be used as a solicitation, which would trigger the requirement in Texas Finance Code, §351.0023 to include the notice. Second, the notice provides potential borrowers with important information that they should consider before entering a property tax loan, as the legislature acknowledged by enacting Texas Finance Code, §351.0023.

Proposed §89.504(a)(23) contains updates to the OCCC's contact information in the pre-closing disclosure. In accordance with instructions from the Texas Department of Information Resources, the OCCC has updated its website and e-mail address with the "texas.gov" extension: occc.texas.gov and consumer.complaints@occc.texas.gov. Other revisions have been made to the text of the OCCC notice to provide more clarity to consumers regarding the role of the OCCC in resolving complaints.

Proposed amendments to §89.504(b) explain that the pre-closing disclosure must fit on two pages, but a property tax lender may attach additional pages if necessary to disclose additional taxing units, additional third parties receiving closing costs, or additional governmental units receiving recording expenses. Proposed §89.504(c) explains that all information on the disclosure must be accurate, and the APR must be accurate within 1/8 of 1 percentage point. If the property tax lender learns that the information is inaccurate, then it must promptly notify the property owner of the inaccuracy and provide an updated disclosure.

Proposed amendments at §89.504(d)-(g) contain technical corrections and updated citations. The proposal maintains the current requirements for delivering the pre-closing disclosure. In particular, the proposal does not amend the timing requirement currently in §89.504(c)(2)(B), which provides that the disclosure must be delivered "within three business days from receipt of the property owner's application for a property tax loan, or within three business days from the date that the property tax lender first has knowledge of the property owner's agreement to enter into a property tax loan with the property tax lender." One precommenter states that this requirement should be maintained for the pre-closing disclosure, while another suggests that the disclosure should be provided at least three days before closing. The commission believes that the current requirement of providing the disclosure within three days of the application provides the borrower with an appropriate amount of time to review the cost information, consider alternatives, and reach an informed borrowing decision. If any information on the disclosure changes and renders the disclosure inaccurate, the property tax lender would be required to promptly notify the property owner and provide an updated disclosure under §89.504(c)(2).

The proposed amendments to §89.506 contain the updated figures for the pre-closing disclosure, with one version for residential property tax loans and another for commercial property tax loans.

Proposed amendments to §89.507 describe the permissible changes to the pre-closing disclosure. As mentioned previously, at the stakeholder meeting, two stakeholders noted that some amounts may be paid to an entity other than a taxing unit (e.g., collection costs paid to a district clerk). In response to these statements, proposed §89.507(a)(5) allows the property tax lender to replace "Amounts paid to taxing units" with "Amounts paid to taxing units and governmental entities" if the property tax lender pays amounts to other governmental entities and these amounts are shown on the tax receipt. In addition, at the stakeholder meeting, one stakeholder suggested adding language to the pre-closing disclosure stating that the APR is not the same as the interest rate, while another stakeholder suggested that this disclosure should be optional. In response to these recommendations, proposed §89.504(a)(7) allows the property tax lender to add the following sentence to the APR line: "This is not your interest rate." Other permissible changes proposed in §89.507 include omitting the loan identification number, adding or omitting lines in the loan amount itemization to disclose all amounts paid to third parties, omitting the prepaid interest section if there is no prepaid interest charged, and adding any required disclosure of affiliated businesses under §89.504(g).

A proposed amendment to §89.601(a) specifies that the limitations in the rule governing closing costs for property tax loans apply to residential property tax loans, as defined by §89.102(10), discussed earlier in this proposal. This amends the current requirement, which states that the limitations apply to property tax loans secured by property designated as "Category A (Real Property: Single-Family Residential)," and homesteads designated as "Category E (Real Property: Farm and Ranch Improve-
ments)" by the Property Classification Guide published by the Texas Comptroller of Public Accounts.

In two of the comments on the notice of intention to review, the commenters recommend limiting the scope of the closing cost rule's limitations to homestead property. Several stakeholders reiterated this recommendation at the stakeholder meeting and in written precomments on the proposal. In response to these comments and precomments, the proposed amendment to §89.601(a), read together with the new definition of "residential property tax loan" in §89.102(10), will specify that the closing cost limitations apply to all property tax loans including a lien on residential property, including all homestead property, as well as any property with a Category A designation, unless the property tax lender obtains an affidavit stating that the property is used for a business or investment purpose. Effectively, this means that the closing cost limitations in §89.601 would no longer apply to Category A property that is owned and used for a business purpose (e.g., rental property), as long as the property tax lender obtains and maintains the appropriate affidavit. All property tax loan closing costs are still required to be reasonable under Texas Tax Code, §32.06(e). The limitations for residential property tax loans in §89.601 are intended to strike an appropriate balance between consumer protection and industry cost recovery. The commission believes that these proposed amendments help strike that balance. The commission disagrees with the suggestion that the rule should only apply to homestead property. Certain non-homestead property, such as a second home, is used as residential property for personal, family, or household use, and it is appropriate to ensure that these property owners can benefit from the consumer protections in §89.601.

Proposed amendments to §89.601(c)(4) deal with closing costs authorized for additional parcels of land. Currently, the rule provides that the property tax lender may charge up to $100, in addition to the general $900 maximum, for each additional parcel of residential property described by §89.601(a). In two of the comments on the notice of intention to review, the commenters recommend allowing the additional $100 in closing costs for each additional parcel of commercial property, for property tax loans that cover both residential and commercial property. Property tax loans that cover both residential and commercial property are subject to the limitations of §89.601, but the current rule authorizes the additional $100 only for residential parcels. In response to these comments, the proposed amendments to §89.601(c)(4) remove language limiting the additional $100 authorization to residential parcels, effectively allowing $100 for each additional parcel regardless of whether it is residential or commercial. This is intended to reflect actual costs incurred by the property tax lender through closing for a property tax loan that includes both residential and commercial property.

Some precommenters recommend increasing the $100 per parcel amount in §89.601(c)(4). Two precommenters suggest a general $150 amount, while another suggests a $300 amount for commercial property. The commission recently adopted the $100 amount in 2015, following an extensive review of closing costs charged in connection with property tax loans. The commission believes that it is unnecessary to amend the $100 amount at this time.

Proposed §89.702(d)(3) allows a permissible change to the certified statement signed by the taxing unit. In a comment on the notice of intention to review, one commenter explains that Texas Tax Code, §33.445 authorizes tax lien transfers when a taxing unit files suit to foreclose a tax lien and joins a tax lien transferee. The commenter recommends allowing the certified statement's citation to §32.06 to be amended in this situation. In response to this comment, proposed §89.702(d)(3) allows a taxing unit to replace "Texas Tax Code, §32.06" with "Texas Tax Code, §33.445" if the transfer occurs in connection with the joinder of a tax lien transferee under Texas Tax Code, §33.445(a).

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 amendments are in effect, the public benefit anticipated as a result of the changes will be that the commission's rules will be more easily understood by licensees required to comply with the rules, will be more easily enforced, and will provide guidance and clarity to property tax lender licensees. The updated disclosure requirements will help ensure that borrowers can make informed borrowing decisions, enhancing competition among property tax lenders.

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 changes contained in §§89.502, 89.503, 89.504, and 89.506, regarding the amended pre-closing disclosure.

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 OCCC anticipates that the costs of printing amended forms will not exceed $0.20 per form. Licensees may also encounter labor costs to prepare the revised disclosures, as well as programming costs for licensees that use electronic recordkeeping systems. These costs are impossible to predict, as much will depend on the particular licensee's current software system and the amount of programming changes required to comply with the proposal.

Overall, the agency anticipates that any costs involved to comply with the proposal will be minimal for most licensees. The OCCC understands that most property tax lenders are already providing APR and cost information in some form. Property tax lenders are already required to provide the current one-page version of the disclosure under current §89.504. The current recordkeeping rule at §89.207(3)(A)(vi) already requires property tax lenders to maintain a final itemization of actual fees, points, interest, costs, and charges that were charged at closing and to whom those charges were paid. In addition, licensees are already required to calculate and disclose an APR for any advertisement that includes a fixed rate, as provided by Texas Finance Code, §351.002(d). Licensees can use free software to calculate the APR, such as the APRWIN program available on the Office of the Comptroller of the Currency's website. The agency anticipates that costs of complying with the proposal will primarily arise from rearranging this already-existing information and entering it into the revised disclosure.

Due to several factors resulting in varying, uncertain, and unpredictable costs, the agency would like to invite comments from licensees on any costs involved to comply with the proposal, as well as any alternatives to lessen those costs while achieving the purposes of the proposal. The agency is considering a delayed implementation date for use of the revised pre-closing disclosure, which will help minimize potential costs and allow use of current forms inventory. In particular, the agency is considering
7 TAC §89.102

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the commission authority to adopt rules to enforce Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065.

The rule change in §89.207 is proposed under Texas Finance Code, §351.0023(f), which authorizes the commission to adopt rules to implement requirements on advertising. The rule changes in §§89.502, 89.503, 89.504, and 89.506 are proposed under Texas Tax Code, §32.06(a-4)(1), which authorizes the commission to adopt the form and content of the pre-closing disclosure statement. The rule changes in §89.601 are proposed under Texas Tax Code, §32.06(a-4)(2), which authorizes the commission to adopt rules relating to the reasonableness of closing costs, fees, and other permitted charges.

The statutory provisions affected by the proposed rule changes are contained in Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

§89.102. Definitions. Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351 have the same meanings as defined in Chapter 351. The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

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

(3) Commercial property tax loan--A property tax loan that is not a residential property tax loan.

(4) [3] Commissioner--The Consumer Credit Commissioner of the State of Texas.

(5) [4] Date of consummation--The date of closing or execution of a loan contract.

(6) [5] Licensee--Any person who has been issued a property tax lender license pursuant to Texas Finance Code, Chapter 351.

(7) [6] Making a loan--The act of making a loan is either the determination of the credit decision to provide the loan, the act of funding the loan, or the act of advancing money on behalf of a borrower to a third party. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the loan.

(8) [7] Negotiating a loan--The process of submitting and considering offers between a borrower and a lender with the objective of reaching agreement on the terms of a loan. The act of passing information between the parties can, by itself, be considered "negotiation" if it was part of the process of reaching agreement on the terms of a loan. "Negotiation" involves acts which take place before an agreement to lend or funding of a loan actually occurs.

(9) [8] OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(10) Residential property tax loan--A property tax loan that includes a lien on residential property owned and used by the property owner for personal, family, or household purposes. This includes any property tax loan that includes a lien on homestead property. For purposes of this definition, non-homestead property designated as "Category A (Real Property: Single-Family Residential)" will be presumed to be residential property owned and used by the property owner for personal, family, or household purposes, unless the property tax lender obtains and maintains and affidavit from the property owner stating that:

(A) the property is owned and used by the property owner for a business or investment purpose; and

(B) the property owner does not own or use the property for personal, family, or household use.

(11) [9] Transacting a loan--Any of the significant events associated with the lending process through funding, including the preparation, negotiation and execution of loan documents, and an advancement of money on behalf of a borrower by the lender to a third party. This also includes the act of arranging a loan.

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

Filed with the Office of the Secretary of State on August 18, 2017.
TRD-201703209
Leslie L. Pettijohn
Commissioner
Officer of Consumer Credit Commissioner

Earlier possible date of adoption: October 1, 2017
For further information, please call: (512) 936-7621

SUBCHAPTER B. AUTHORIZED ACTIVITIES

7 TAC §§89.207, §89.208

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the commission the authority to adopt rules to enforce Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065.

The rule change in §89.207 is proposed under Texas Finance Code, §351.0023(f), which authorizes the commission to adopt rules to implement requirements on advertising.
\section*{
\begin{footnotesize}
\ref*{§89.207}. Files and Records Required.
\end{footnotesize}

Each licensee must maintain records with respect to each property tax loan made under Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065, and make those records available for examination under Texas Finance Code, §351.008. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

\begin{itemize}
\item (1) - (2) (No change.)
\item (3) Property tax loan transaction file. A licensee must maintain a paper or imaged copy of a property tax loan transaction file for each individual property tax loan or be able to produce the same information within a reasonable amount of time. The property tax loan transaction file must contain documents that show the licensee's compliance with applicable law, including Texas Finance Code, Chapter 351; Texas Tax Code, §32.06 and §32.065, and any applicable state and federal statutes and regulations. If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the property tax loan transaction file if the electronic record can be accessed upon request. The property tax loan transaction file must include copies of the following records or documents, unless otherwise specified:
\begin{itemize}
\item (A) For all property tax loan transactions:
\begin{itemize}
\item (i) - (vii) (No change.)
\item (viii) copies of any other agreements, or affidavits signed by the borrower applicable to the property tax loan;
\item (ix) - (x) (No change.)
\end{itemize}
\item (B) If the property is residential property owned and used by the property owner for personal, family, or household use, the notice of the right of rescission as specified by Texas Tax Code, §32.06(d-1) and Truth in Lending (Regulation Z), 12 C.F.R. §1026.23;
\item (C) - (G) (No change.)
\item (H) If the property tax loan is paid off or otherwise satisfied, a copy of the release of lien as required by Texas Tax Code, §32.06(b), or if the property tax loan is satisfied through a foreclosure, the foreclosure deed;
\begin{itemize}
\item (I) If fees are assessed, charged, or collected after closing, copies of the receipts, invoices, checks or other records substantiating the fees as authorized by Texas Finance Code, §351.0021 and Texas Tax Code, §32.06(e-1) including the following:
\begin{itemize}
\item (i) (No change.)
\item (ii) receipts or invoices along with proof of payment for attorney's fees assessed, charged, and collected under Texas Finance Code, §351.0021(a)(4), (5), and (6), including specific descriptions of services performed by the attorney, unless the records required by this clause are maintained under paragraph (1)(B) of this section, and upon request, the licensee produces these records within a reasonable amount of time, and itemizes or otherwise indexes individual entries to a particular property tax loan transaction file; and
\end{itemize}
\end{itemize}
\end{itemize}
\end{itemize}

\section*{
\begin{footnotesize}
\ref*{§89.208}. Advertising.
\end{footnotesize}

\begin{itemize}
\item (a) - (g) (No change.)
\item (h) Annual percentage rate and terms of repayment. The annual percentage rate and terms of repayment described by Texas Finance Code, §351.0023(d) - (e) must be calculated and disclosed in accordance with the Truth in Lending Act, 15 U.S.C. §1664, and Regulation Z, 12 C.F.R. §1026.24, and §89.502(2) of this title (relating to Definitions). The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.
\end{itemize}

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TRD-201703210

Leslie L. Pettijohn

Commissioner

Officer of Consumer Credit Commissioner

Earlyest possible date of adoption: October 1, 2017

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

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\section*{SUBCHAPTER C. APPLICATION PROCEDURES}

\textbf{7 TAC §§89.301 - 89.304, 89.306, 89.310}

The amendments and new rules are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the commission the authority to adopt rules to enforce Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the proposed rule changes are contained in Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

\section*{
\begin{footnotesize}
\ref*{§89.301}. Definitions.
\end{footnotesize}

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351 have the same meanings as defined in Chapter 351. The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

\begin{itemize}
\item (1) (No change.)
\item (2) Parent entity--A direct owner of a licensee or applicant.
\item (3) [21] Principal party--An adult individual with a substantial relationship to the proposed lending business of the applicant. The following individuals are principal parties:
\begin{itemize}
\item (A) a proprietor [proprietors, including spouses with community property interest];
\item (B) - (H) (No change.)
\end{itemize}
\end{itemize}

\section*{
\begin{footnotesize}
\ref*{§89.302}. Filing of New Application.
\end{footnotesize}

An application for issuance of a new license must be submitted in a format prescribed by the OCCC [commissioner] at the date of filing and in accordance with the OCCC's [commissioner's] instructions. The
OCCC [commissioner] may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for license.

(i) - (iii) (No change.)

(iv) Owners and principal parties.

(I) Proprietorships. The applicant must disclose the name of any individual holding an ownership interest in the business and the name of any individual [who owns and who is] responsible for operating the business. If requested, the applicant must also disclose the names of the spouses of these individuals. [All community property interests must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.]

(II) - (VII) (No change.)

(B) - (E) (No change.)

(2) - (3) (No change.)

§89.303. 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 property tax lender 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 §89.304 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 entirety 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 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 10% or more;

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

(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 property tax lender license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §351.163. 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 property tax lender license at the time of the application, then the application must include the information required for new license applications under §89.302 of this title (relating to Filing of New Application). The instructions in §89.302 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a property tax lender 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 §89.302 of this title. The instructions in §89.302 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 §89.302 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 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. The denial of a request for permission to operate does not create a right to a hearing. 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 property tax lender. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the application, then the transferee has a right to a hearing on the denial, as provided by §§89.307(d) of this title (relating to Processing of Application).

(h) Responsibility.

(1) Responsibility of transferor. Before the transferee begins performing property tax lending activity under a license, the transferor is responsible to any consumer and to the OCCC for all property tax lending activity performed under the license.

(2) Responsibility of transferor and transferee. If a transferee begins performing property tax lending activity under a license before the OCCC’s final approval of an application described by subsection (e), then the transferor and transferee are each responsible to any consumer and to the OCCC for activity performed under the license during this period.

(3) Responsibility of transferee. After the OCCC’s final approval of an application described by subsection (e) of this section, the transferee is responsible to any consumer and to the OCCC for all property tax lending activity performed under the license. The transferee is responsible for any transactions that it purchases from the transferor. In addition, if the transferee receives a license transfer, then the transferee’s responsibility includes all activity performed under the license before the license transfer.

§89.304. Change in Form or Proportionate Ownership.

(a) (No change.)

(b) Merger.

(1) If a licensee is a party to a merger that results in a new or different surviving entity other than the licensee, then the merger is a transfer of ownership, and the licensee must file a license transfer application or a new license application on transfer of ownership [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 transfer application] pursuant to §89.303 of this title (relating to Transfer of License; New License Application on Transfer of Ownership).

(2) If a licensee’s parent entity is a party to a merger [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 OCCC [commissioner] of the change in writing within 14 calendar days after the change, by filing a license amendment and paying the required fees as provided in §89.310. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 calendar days in accordance with the OCCC’s instructions.

(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 transfer application, but does require notification when the cumulative ownership change to a single entity or individual amounts to 10% or greater. No later than 14 calendar days following the actual change, the licensee is required to notify the OCCC [commissioner] in writing of the change in proportionate ownership by filing a license amendment and paying the required fees as provided in
§89.310 of this title. This subsection 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 license transfer application or a new license application on transfer of ownership may be required under §89.303 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 for ownership under §89.303 of this title.

§89.306. Updating Application and Contact Information [Reportable Actions After Application].

(a) Applicant's updates to license application information. Before a license application is approved, an applicant must report to the OCCC any [Any action, fact or] information that would require a materially different answer than that given in the original license application and that relates to the qualifications for license, [must be reported] within 14 calendar days after the person has knowledge of the [action, fact or] information.

(b) Licensee's updates to license application information. A licensee must report to the OCCC any information that would require a different answer than that given in the original license application within 30 calendar days after the licensee has knowledge of the information, if the information relates to any of the following:

(1) the names of principal parties;
(2) criminal history;
(3) actions by regulatory agencies; or
(4) court judgments.

(c) Contact information. Each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and all e-mail addresses. It is a best practice for licensees to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§89.310. Fees.

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

(c) Fingerprint processing. An applicant must pay a fee to a party designated by the Texas Department of Public Safety for processing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable. [A nonrefundable fee as prescribed by the commissioner will be charged to recover the costs of investigating each principal party's fingerprint record.]

(d) (No change.)

(e) License duplicates sent by mail. The fee for a license duplicate sent by mail is $10.

(f) (No change.)

(g) Annual renewal and assessment fees.

(1) (No change.)

(2) An annual assessment fee not to exceed [at] $250 is required for each inactive license.

(3) (No change.)

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

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7 TAC §§89.303

The repeal is proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the commission the authority to adopt rules to enforce Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

§§89.303. 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.

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SUBCHAPTER D. LICENSE

7 TAC §§89.403 - 89.405

The amendments and new rules are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the commission the authority to adopt rules to enforce Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the proposed rule changes are contained in Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

§89.403. Notice of Delinquency in Payment of Annual Assessment Fee.

For purposes of Texas Finance Code, §351.155 , and §89.309(d) of this title (relating to License Status), [(Acts 2007, 80th Leg., ch. 1220,)] notice of delinquency in the payment of an annual assessment fee is given when the OCCC sends the delinquency notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address [upon the mailing of the delinquency notice, enclosed in a postpaid, properly addressed envelope, in a post office or official

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PROPOSED RULES  September 1, 2017  42 TexReg 4389
depository under the care and custody of the United States Postal Service.

§89.404. Annual Report.
Each licensee must file the required annual report by March 31 for the prior calendar year's [calendar] loan activity on forms prescribed by the OCCC [commissioner] and must comply with all instructions relating to submitting the report.

§89.405. Denial, Suspension, or Revocation Based on Criminal History:
(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §89.310 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

1. information about arrests, charges, indictments, and convictions of the applicant and its principal parties;
2. reliable documents or testimony necessary to make a determination under subsection (c) of this section, including letters of recommendation from prosecution, law enforcement, and correctional authorities;
3. proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and
4. proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid or are current.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates to the duties and responsibilities of a licensee under Texas Finance Code, Chapter 351, as provided by Texas Occupations Code, §53.021(a)(1).

1. Originating, acquiring, or servicing loans under Texas Finance Code, Chapter 351 involves or may involve making representations to consumers regarding the terms of the loan, receiving money from consumers, remitting money to third parties, maintaining accounts, collecting due amounts in a legal manner, foreclosing on real property in compliance with state and federal law, and compliance with reporting requirements to government agencies. Consequently, the following crimes are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation:

   A. theft;
   B. assault;
   C. any offense that involves misrepresentation, deceptive practices, or making a false or misleading statement (including fraud or forgery);
   D. any offense that involves breach of trust or other fiduciary duty;
   E. any criminal violation of a statute governing credit transactions, property tax lending, or debt collection;
   F. failure to file a government report, filing a false government report, or tampering with a government record;
   G. any greater offense that includes an offense described in subparagraphs (A) - (F) of this paragraph as a lesser included offense;
   H. any offense that involves intent, attempt, aiding, solicitation, or conspiracy to commit an offense described in subparagraphs (A) - (G) of this paragraph.

2. In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

   A. the nature and seriousness of the crime;
   B. the relationship of the crime to the purposes for requiring a license to engage in the occupation;
   C. the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
   D. the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

3. In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

   A. the extent and nature of the person's past criminal activity;
   B. the age of the person when the crime was committed;
   C. the amount of time that has elapsed since the person's last criminal activity;
   D. the conduct and work activity of the person before and after the criminal activity;
   E. evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and
   F. evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation from one or more of the following:

   i. prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
   ii. the sheriff or chief of police in the community where the person resides; and
   iii. other persons in contact with the convicted person.

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant

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42 TexReg 4390  September 1, 2017  Texas Register
the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) and (3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

1. A conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);

2. A conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054 or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3) - (4);

3. Errors or incomplete information in the license application;

4. A fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §351.156(3); and

5. Any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §351.104(a)(1) and §351.156.

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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§§89.502, 89.504, 89.506, 89.507

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the commission the authority to adopt rules to enforce Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065.

The rule changes in §§89.502, 89.503, 89.504, and 89.506 are proposed under Texas Tax Code, §32.06(a-4)(1), which authorizes the commission to adopt the form and content of the pre-closing disclosure statement.

The statutory provisions affected by the proposed rule changes are contained in Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

§89.502. Definitions.

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

1. Amount financed--The total of payments minus the finance charge.

2. Annual percentage rate--Has the meaning described by Regulation Z, 12 C.F.R. §1026.22, using a finance charge and amount financed described by this section.

3. Finance charge--The cost of a property tax loan expressed as a dollar amount. The finance charge includes all interest scheduled to be paid to the property tax lender, including prepaid interest, and includes all closing costs to be retained by the property tax lender or an affiliated business. The finance charge does not include amounts actually paid to a taxing unit for taxes, penalties, interest, and collection costs. A property tax lender may exclude recording expenses actually paid to a governmental unit from the finance charge. A property tax lender may exclude closing costs actually paid to third parties.

7 TAC §89.405, §89.406

The repeal is proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the commission the authority to adopt rules to enforce Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the proposed repeal are contained in Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.
from the finance charge only if the costs are bona fide, reasonable in amount, and paid to a person that is not an affiliated business.

(4) [41] Property tax lender--Has [has] the meaning assigned by Texas Finance Code, §351.002(1) [Acts 2007, 80th Leg., ch. 1220]. Another name for a "property tax lender" is a "transferor" as defined by Texas Tax Code, §32.06(a)(2) [§32.06(2)], and these terms may be used synonymously.

(5) [22] Property tax loan--Has [has] the meaning assigned by Texas Finance Code, §351.002(2) [Acts 2007, 80th Leg., ch. 1220]. Another name for a "property tax loan" is a "tax lien transfer," and these terms may be used synonymously.

(6) [33] Tax lien transfer--Has [has] the meaning assigned by Texas Finance Code, §351.002(2) [Acts 2007, 80th Leg., ch. 1220]. Another name for a "tax lien transfer" is a "property tax loan," and these terms may be used synonymously.

(7) Total of payments--The total amount the borrower will have paid after making all scheduled payments, including payments made at or before closing.

(8) [44] Transferee--Has [has] the meaning assigned by Texas Finance Code, §351.002(1), [Acts 2007, 80th Leg., ch. 1220] and Texas Tax Code, §32.06(a)(2) [§32.06(2)]. Another name for a "transferee" is a "property tax lender," and these terms may be used synonymously.

§89.503. Format.

(1) (No change.)

(b) The text of the document must be set in an easily readable typeface. Typefaces considered to be readable include: Times New Roman, Calibri, Scala, Caslon, Century Schoolbook, Helvetica, and Garamond.

(c) Typeface size is referred to in points. Because different typefaces in the same point size are not of equal size, typeface is not strictly defined but is expressed as a minimum size in the Calibri [Times New Roman] typeface for visual comparative purposes. Generally, the typeface for the body of the disclosures must be at least as large as 11 point in the Calibri [Times New Roman] typeface. The typeface for the headings must be in boldface type and at least as large as 12 point in the Calibri [Times New Roman] typeface. A point is generally viewed as 1/72nd of an inch.

§89.504. Requirements for Disclosure Statement to Property Owner:

(a) Required elements. A disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer must contain the following required elements:

(1) the title "Property Tax Loan Pre-Closing Disclosure" at the top of each page;

(2) the property owner's name and the address of the property;

(3) [44] the property tax lender's name, principal business address, and OCCC license number;

(4) for a residential property loan, the name and NMLS unique identifier of the individual residential mortgage loan originator;

(5) the closing date;

(6) a section labeled "Loan Terms" containing the following:

(A) the funds advanced under Texas Tax Code, §32.06(e), which are limited to the taxes, penalties, interest, and collection costs paid as shown on the tax receipt, expenses paid to record the lien, and reasonable closing costs, and may not include any prepaid interest, labeled "Loan Amount (funds advanced on your behalf);

(B) the contract interest rate described on the promissory note or loan agreement, labeled "Interest Rate (loan contract rate);

(C) the term of the property tax loan in months, labeled "Loan Term";

(D) the monthly payment amount, labeled "Monthly Payment";

(E) the number, amounts, and timing of payments scheduled to repay the property tax loan, labeled "Payment Schedule";

and

(F) one of the following statements, labeled "Prepayment":

(i) for any residential property tax loan, or for a commercial property tax loan that does not have a prepayment penalty, the following statement: "You can pay off the loan at any time without a penalty."

(ii) for a commercial property tax loan that has a prepayment penalty, an explanation of the amount of the prepayment penalty such as: "If you repay the loan within two years, you will pay a prepayment penalty as high as $ _______ .";

(7) for a residential property tax loan, a section labeled "Loan APR Calculation" containing the following:

(A) the annual percentage rate, labeled "APR (cost of loan as a yearly rate)"

(B) the amount financed, labeled "Amount Financed (amount of loan used for APR)"

(C) the finance charge, labeled "Finance Charge (loan cost used for APR)"

(D) the total of payments, labeled "Total of Payments"

(8) a section labeled "Loan Amount Itemization" containing the following:

(A) a subsection labeled "Amounts paid to taxing units" listing:

(i) the total amount that the property tax lender will pay to taxing units or governmental entities for unpaid taxes, penalties, interest, and collection costs as shown on the tax receipt;

(ii) the name of each taxing unit or governmental entity to which the property tax lender will disburse an amount shown on the tax receipt; and

(iii) the amount to be disbursed to each taxing unit or governmental entity;

(B) a subsection labeled "Closing costs" listing:

(i) the total amount of closing costs;

(ii) the total amount of closing costs paid to or retained by the property tax lender, labeled "Costs to lender"; and

(iii) for each portion of the closing costs paid to a third party, a description of the cost, the name of the third party, and the amount of the cost;
(C) a subsection labeled "Recording costs" listing:

(i) the total amount of expenses to record the lien or liens;

(ii) the name of each governmental unit to which the property tax lender will pay an expense to record a lien; and

(iii) the amount to be paid to each governmental unit for recording expenses;

(9) for any property tax loan in which the lender will charge prepaid interest, including per diem interest or discount points, a section labeled "Prepaid Interest" containing the following:

(A) the total amount of prepaid interest that the property tax lender will charge, expressed as a dollar amount, labeled "Total prepaid interest (not included in loan amount)";

(B) if the property tax lender will charge per diem interest, the total amount of per diem interest expressed as a dollar amount, with a statement of the per diem interest rate and number of days, labeled "Per diem interest (% per day, _____ days)";

(C) if the property tax lender will charge discount points, the total amount of discount points expressed as a dollar amount, labeled "Discount points";

(10) the following notice in boldface type, labeled "Tax Office Notice": "Your tax office may offer delinquent tax installment plans that may be less costly to you. You can request information about the availability of these plans from the tax office."

(11) [2] a statement that the property owner currently has a lien against the owner's property for unpaid property taxes;

(12) [3] a statement that the property owner can pay the taxing unit(s) directly;

(13) [4] a statement that the property owner may authorize the lien of the taxing unit(s) to be transferred to the property tax lender;

(14) [5] a statement that unless the property owner agrees in writing, the property tax lender may not make the property tax loan;

(15) [6] a statement that the property tax loan may include unpaid property taxes, penalties, interest, and collection costs paid as shown on the tax receipt;

(16) [7] a statement that the property tax lender may also assess closing costs and interest not to exceed 18% per year;

(17) [8] a statement that the property tax loan is superior to any other preexisting lien on the property;

(18) [9] a statement that if the property is a homestead, disabled persons are entitled to tax deferral under Texas Tax Code, §33.06;

(19) [10] a statement that there may be alternatives available to the property owner instead of the property tax loan, (e.g., entering into a payment installment agreement with the taxing unit(s), financing options through an existing mortgage lender or other private lenders, borrowing from savings or family members);

(20) [11] a statement that if the property owner does not pay, the property owner may lose the property;

(21) [12] a statement that the tax lien may be considered a default by any mortgage holder with a lien on the same property, and the only way to correct the default is to pay off the taxes and have the lien released;

(22) [13] a statement that any secured loan may be foreclosed if the loan is in default, and the cost of a foreclosure, either tax lien or mortgage, may be added to the amount owed by the property owner;

(23) the following statement: "For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). If this does not resolve your question or complaint, you can contact the OCCC and the OCCC's address, consumer helpline, website, and consumer complaint email address as follows: 2601 N. Lamar Blvd., Austin, TX 78705. (800) 538-1579, occc.texas.gov, consumer.complaints@occc.texas.gov;

(14) a statement that the property owner may contact the Office of Consumer Credit Commissioner about questions or problems, listing the OCCC's address, toll-free consumer helpline, and website, as follows: 2601 North Lamar Boulevard, Austin, Texas 78705-4207, (800) 538-1579, www.occc.state.tx.us;

(24) [15] a statement that the property owner may seek the advice of an attorney or another third party before signing a property tax loan; and

(25) [16] a statement that the property owner should ask about the terms of any loan and should read any document before signing it.

(b) Page requirement. [Single page required.] The disclosure statement required by §§89.506(a) of this title (regarding Disclosures) must fit on one standard-size sheet of paper (8 1/2 by 11 inches) printed on both sides, or on two standard sheets of paper printed only on the front sides of each page. A property tax lender may attach additional pages if necessary to disclose additional taxing units, additional third parties receiving closing costs, or additional governmental units receiving recording expenses. The disclosure statement must be delivered in a manner that does not minimize its significance.

(c) Accuracy. All information and amounts on the disclosure statement must be accurate and must correctly reflect the terms of the property tax loan at closing.

(1) Annual percentage rate. For a residential property tax loan, the annual percentage rate will be considered accurate if it is not more than 1 1/8 of 1 percentage point above or below the annual percentage rate determined in accordance with §89.502(2) of this title (relating to Definitions).

(2) Amended disclosure statement. At any time after delivering the disclosure statement, if the property tax lender learns that any information on the disclosure statement was inaccurate or did not correctly reflect the terms of the loan at closing, then the property tax lender must promptly notify the property owner of the inaccuracy, and must send an amended, accurate disclosure statement to the property owner in a manner described by subsection (d) of this section. The amended disclosure statement must list the date on which it was revised.

(d) Delivery.

(1) Face-to-face interview before closing. In the case of a face-to-face interview, a property tax lender must provide a disclosure statement containing all of the elements outlined by subsection (a) of this section, [as prescribed by Figure: 7 TAC §89.506(a) of this title] to the property owner at the time of the interview. A property owner present at the interview may sign an acknowledgment verifying receipt of the disclosure statement at that time.
(2) No face-to-face interview. If there is no face-to-face interview, a licensee must deliver a disclosure statement containing all of the elements outlined by subsection (a) of this section [prescribed by Figure: 7 TAC §89.506(a) of this title] to the owner of the property.

(A) Method of delivery. The disclosure statement may be delivered by U.S. mail, with prepaid first-class postage, or via facsimile or email if the property owner consents. Alternatively, licensees may deliver the disclosure statement by certified mail with return receipt requested, by using a commercial delivery service with tracking abilities, or by using a courier service.

(B) Timing of delivery. The disclosure statement must be delivered within three business days from receipt of the property owner's application for a property tax loan, or within three business days from the date that the property tax lender first has knowledge of the property owner's agreement to enter into a property tax loan with the property tax lender.

(C) Co-applicants. If property owners who are co-applicants provide the same mailing address, one copy delivered to that address is sufficient. If different addresses are shown by co-applicants, a copy must be delivered to each of the co-applicants.

(e) Verification of delivery.

(1) (No change.)

(2) No face-to-face interview. If there is no face-to-face interview, the property tax lender must deliver the disclosure statement to the property owner as prescribed in subsection (d)(2) of this section.

(A) Verification of delivery by mail. The property tax lender must allow a reasonable period of time for delivery by mail. A period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery.

(B) Verification of delivery via facsimile. For disclosures delivered via facsimile, a dated facsimile confirmation page indicating that the disclosure statement was successfully transmitted to the fax number provided by the property owner will constitute a rebuttable presumption for sufficient delivery.

(C) Verification of delivery by certified mail with return receipt requested. For disclosures delivered by certified mail with return receipt requested, a dated return receipt indicating that the disclosure statement was successfully delivered to the property owner's address will constitute verification of delivery.

(D) Verification of delivery by commercial delivery service with tracking abilities. For disclosures delivered by commercial delivery service, a dated receipt indicating that the disclosure statement was successfully delivered to the property owner's address will constitute verification of delivery.

(E) Verification of delivery by courier service. For disclosures delivered by courier service, a dated receipt indicating that the disclosure statement was successfully delivered to the property owner will constitute verification of delivery.

(F) Verification of delivery by email. For disclosures delivered via email, a dated reply email indicating that the disclosure statement was successfully delivered to the property owner will constitute verification of delivery. Alternatively, a property owner's affirmative consent to electronic delivery of the disclosure in accordance with §7001 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001(c), will constitute a rebuttable presumption for sufficient delivery.

(f) Acknowledgment at time of closing. At the time of closing, a property tax lender may deliver an additional copy of the disclosure statement [prescribed by Figure: 7 TAC §89.506(a) of this title], but is not required to do so. The property tax lender must obtain a dated acknowledgment signed by the property owner stating that the property owner received the disclosure statement prior to closing. The acknowledgment of receipt may be included on the disclosure form as provided in §89.507(a)(11) of this title (relating to Permissible Changes).

(1) Married property owners. If the property is designated as a homestead, the signatures of both spouses must be obtained by the property tax lender in order to acknowledge delivery of a disclosure under this section.

(2) Property owned by a legal entity. If the property is owned by a legal entity (e.g., a living trust), the signature of a person with authority to sign on behalf of the legal entity must be obtained by the property tax lender in order to acknowledge delivery of a disclosure under this section.

(g) Disclosure of affiliated businesses. If a property tax lender regularly contracts with one or more affiliated businesses for services under Texas Finance Code, §351.0021(a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(10) that are not performed by an employee of the property tax lender, then the disclosure statement must include a statement substantially similar to the following: "The property tax lender may impose certain additional charges after closing. Some of these charges may be paid to (INSERT NAME OF AFFILIATED BUSINESS OR BUSINESSES), which is affiliated with the property tax lender. The costs paid to the affiliated business cannot be for services performed by employees of the property tax lender."

§89.506. Disclosures.

(a) The required disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer is presented in the following figure: Figure: 7 TAC §89.506(a)

(1) the following figure is for residential property tax loans:

Figure: 7 TAC §89.506(a)(1)

(2) the following figure is for commercial property tax loans:

Figure: 7 TAC §89.506(a)(2)

(b) (No change.)

§89.507. Permissible Changes.

(a) A property tax lender must use the required disclosure statement under Texas Tax Code, §32.06(a-4)(1) as prescribed by Figure: 7 TAC §89.506(a)(1) or Figure: 7 TAC §89.506(a)(2) of this title, but may consider making only limited technical changes, as provided by the following exclusive list:

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

(3) Substituting "tax lien transfer" for "property tax loan";

(4) Omitting the loan identification number;

(5) Replacing "Amounts paid to taxing units" with "Amounts paid to taxing units and governmental entities" if the property tax lender pays amounts to governmental entities other than taxing units and these amounts are shown on the tax receipt;

(6) Adding or omitting lines in the "Loan Amount Itemization" section as necessary to disclose all amounts paid to third parties;
(7) Adding the following statement to the "APR" line of the "Loan Calculations" section: "This is not your interest rate.":

(8) Omitting the "Prepaid Interest" section if there is no prepaid interest charged, omitting the "per diem interest" line if there is no per diem interest charged, and omitting the "discount points" line if there are no discount points charged;

(9) Adding any required disclosure of affiliated businesses under §89.504(g) of this title (relating to Requirements for Disclosure Statement to Property Owner);

(10) Attaching additional pages described by §89.504(b) of this title; or

(11) [44] Adding an optional, dated signature block at the very bottom of the second page of the disclosure form, which must include the following statement directly above the signature line of the property owner(s): "ACKNOWLEDGMENT OF RECEIPT: By signing below, I acknowledge only that I have received a copy of this disclosure prior to closing, this ___ day of ____, 20__ ."

(A) Adding an optional affirmation statement to the optional signature block for married property owners: "I affirm that I am married to ___ (insert name of spouse)."

(B) Adding an optional affirmation statement to the optional signature block for persons signing on behalf of a legal entity: "I affirm that I am authorized to sign this document on behalf of ___ (insert name of legal entity property owner)."

(C) Adding the property owner's address to the optional signature block.

(b) (No change.)

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

Filed with the Office of the Secretary of State on August 18, 2017.

TRD-201703213

Leslie L. Pettijohn

Commissioner

Officer of Consumer Credit Commissioner

Earliest possible date of adoption: October 1, 2017

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

SUBCHAPTER F. COSTS AND FEES

7 TAC §89.601

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the commission the authority to adopt rules to enforce Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065.

The rule changes in §89.601 are proposed under Texas Tax Code, §32.06(a-4)(2), which authorizes the commission to adopt rules relating to the reasonableness of closing costs, fees, and other permitted charges.

The statutory provisions affected by the proposed rule changes are contained in Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

§89.601. Fees for Closing Costs.

(a) Applicability. The fee limitations contained in this section are applicable to a residential property tax loan described by §89.102(10) of this title (relating to Definitions) [property tax loans secured by property designated as "Category A (Real Property: Single-Family Residential)," and homesteads designated as "Category F (Real Property: Farm and Ranch Improvements)" by the Property Classification Guide published by the Texas Comptroller of Public Accounts].

(b) (No change.)

(c) Total maximum fees for closing costs.

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

(4) Cost for additional parcels of real property. If a property tax loan includes the payment of taxes for more than one parcel of real property, then the property tax lender may charge up to $100 for each additional parcel of [residential] property [described by subsection (a)], in addition to the general maximum fee limit described in paragraph (3) of this subsection.

(5) - (6) (No change.)

(d) Discount points. Legitimate discount points are prepaid interest and are not subject to the general maximum fee limit described by subsection (c) of this section.

(1) Discount points are legitimate if:

(A) - (B) (No change.)

(C) before closing, the property tax lender provides the property owner with a written proposal describing the options offered to the property owner, including all of the following:

(i) an offer of a property tax loan that includes a contract rate without discount points and a corresponding annual percentage rate, calculated in accordance with Regulation Z, 12 C.F.R. §1026.22, and §89.502(2) of this title (relating to Definitions);

(ii) an offer of a property tax loan that includes a lower contract rate based on discount points and a corresponding annual percentage rate, calculated in accordance with Regulation Z, 12 C.F.R. §1026.22, and §89.502(2) of this title;

(iii) - (vi) (No change.)

(2) - (5) (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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Leslie L. Pettijohn

Commissioner

Officer of Consumer Credit Commissioner

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

SUBCHAPTER G. TRANSFER OF TAX LIEN

7 TAC §89.702

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the com-
mission the authority to adopt rules to enforce Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065. The statutory provisions affected by the proposed rule changes are contained in Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

§89.702. Certified Statement of Transfer of Tax Lien.

(a) - (c) (No change.)

(d) Permissible changes.

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

(3) Citation to Tax Code. The phrase "Texas Tax Code, §32.06" may be replaced with "Texas Tax Code, §33.445" if the transfer occurs in connection with the joinder of a tax lien transferee under Texas Tax Code, §33.445(a).

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-201703214
Leslie L. Pettijohn
Commissioner
Officer of Consumer Credit Commissioner
Earliest possible date of adoption: October 1, 2017
For further information, please call: (512) 936-7621

PART 7. STATE SECURITIES BOARD

CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.25

The Texas State Securities Board proposes an amendment to §139.25, concerning the intrastate crowdfunding exemption. The proposed amendment is identical to the one published in the February 17, 2017, issue of the Texas Register (42 TexReg 647), which has expired and has been automatically withdrawn.

Subsection (f) would be amended to permit the use of a segregated account in lieu of an escrow account for offerings up to $1 million conducted pursuant to this exemption. The financial institution that has acted as escrow agent for most of the intrastate crowdfunding offerings has decided to stop providing that service and the staff is unaware of another financial institution that has opted to generally enter this area. This would leave crowdfunding offerings seeking to raise between $100,000 and $1 million without access to an escrow account as required by the rule. The proposed amendment would permit these offerings to use a segregated account in lieu of an escrow account.

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

Mr. Edgar also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to keep intrastate crowdfunding viable in Texas for offerings over $100,000. There will be no adverse economic effect on micro- or small businesses. Since the rule will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

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

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


§139.25. Intrastate Crowdfunding Exemption.

(a) - (e) (No change.)

(f) Escrow or segregated account to safeguard investor and issuer funds.

(1) (No change.)

(2) A segregated account may be used in lieu of an escrow account if the maximum offering amount is $1 million [$100,000] or less.

(3) - (6) (No change.)

(g) - (m) (No change.)

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

Filed with the Office of the Secretary of State on August 18, 2017.
TRD-201703195
John Morgan
Securities Commissioner
State Securities Board
Earliest possible date of adoption: October 1, 2017
For further information, please call: (512) 305-8301

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 8. PIPELINE SAFETY REGULATIONS
SUBCHAPTER A. GENERAL REQUIREMENTS AND DEFINITIONS

16 TAC §8.1


Docket PHMSA-2011-0337, published at 80 Fed. Reg. 165, amended 49 CFR Parts 192, 193, 195, and 199 to incorporate by reference new, updated, or reaffirmed editions of the voluntary consensus technical standards. This action allows pipeline operators to use current technologies, improved materials, and updated industry and management practices. The amendment did not require pipeline operators to take on any significant new pipeline safety initiatives. The final rule was effective March 6, 2015. PHMSA later published a correction to Docket PHMSA-2011-0337 at 80 Fed. Reg. 46847. The original document inadvertently removed paragraphs (b)(1) through (b)(4) in 49 CFR 192.153; incorrectly listed a cross-reference in §193.2321(b)(1); incorrectly formatted the word "see" in various sections, and specified an incorrect authority in part 193. The correcting amendments were effective August 6, 2015.

Docket PHMSA-2010-0026, published at 80 Fed. Reg. 12762, amended 49 CFR Parts 191, 192, and 195 to make miscellaneous updates regarding performance of post-construction inspections, leak surveys of Type B onshore gas gathering lines, qualifying plastic pipe joiners, regulation of ethanol, transportation of pipe, filing of offshore pipeline condition reports, and calculation of pressure reductions for hazardous liquid pipeline anomalies. The final rule was effective October 1, 2015. However, on September 30, 2015, PHMSA published at 80 Fed. Reg. 58633 a response to petitions for reconsideration, which delayed the effective date indefinitely for amendments to 49 CFR 192.305, relating to responsibility to conduct construction inspections. As of the date of this rulemaking, PHMSA has not announced a new effective date for the amendments to §192.305. Therefore, those amendments are not incorporated into §8.1.

Docket DOT-2016-18328, published at 81 Fed. Reg. 52364, amended 49 CFR Part 40 to conform Department of Transportation (DOT) drug and alcohol testing regulations to legislation that changed the definition of "service agent." The new definition of "service agent" includes all entities that provide services for DOT mandated drug and alcohol programs. The final rule was effective August 8, 2016.

Docket PHMSA-2013-0163, published at 82 Fed. Reg. 7972, amended 49 CFR Parts 191, 192, 195, and 199, to address requirements of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011. Specifically, PHMSA added a time frame for telephonic or electronic notifications of accidents and incidents and added provisions setting up cost recovery for design reviews of certain new projects, providing a renewal procedure for expiring special permits, and setting out the process for requiring protection of confidential commercial information. PHMSA also amended the drug and alcohol testing requirements and incorporated consensus standards by reference for in-line inspection (ILI) and Stress Corrosion Cracking Direct Assessment (SCCDA). The final rule was effective March 24, 2017.

Docket PHMSA-2011-0009, published at 81 Fed. Reg. 70987, amended 49 CFR Part 192 to require an excess flow valve (EFV) on new or replaced branched service lines servicing single-family residences, multifamily residences, and small commercial entities consuming gas volumes not exceeding 1,000 Standard Cubic Feet per Hour (SCFH). PHMSA also changed part 192 to require manual service line shut-off valves or EFVs, if appropriate, for new or replaced service lines with meter capacities exceeding 1,000 SCFH. Finally, the rule required operators to notify customers of their right to request installation of an EFV on service lines that are not being newly installed or replaced. The final rule was effective April 14, 2017.

Kari French, Director, Oversight and Safety Division, has determined that for the first five years the amendment will be in effect, there will be minimal fiscal implications for state and local governments as a result of enforcing or administering the proposed amendment. In addition, there is no anticipated cost for persons required to comply with the proposed amendment. Texas intrastate pipeline operators already must comply with the federal pipeline safety requirements; the Commission’s proposed amendment merely updates the references to those federal statutes.

Ms. French has determined that for each year of the first five years that the amendment will be in effect, the primary public benefit will be accurate references to federal pipeline safety standards enforced by the Commission.

The Commission has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses. The proposed amendment would simply change the date as of which the Commission adopts by reference the federal pipeline safety rules. Texas pipelines are already required to comply with the federal rules. Because the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses, the Commission has not prepared the economic impact statement or the regulatory flexibility analysis pursuant to Texas Government Code §2006.002.

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

The Commission has determined that the new rule does not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis pursuant to that section is not required. Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967.
online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 p.m. on Wednesday, September 27, 2017. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission’s web site more than two weeks prior to Texas Register publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. French at (512) 463-8559. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules.

The Commission proposes the amendment under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §§117.001-117.101, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101, et seq.; and Texas Utilities Code, §§121.201-121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, et seq.

Statutory authority: Texas Natural Resources Code, §81.051, §81.052, and §§117.001-117.101; Texas Utilities Code, §§121.201-121.211; §121.251 and §121.253, §§121.5005-121.507; and 49 United States Code Annotated, §§60101, et seq.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601. Issued in Austin, Texas, on August 15, 2017.

§81. General Applicability and Standards.

(a) (No change.)

(b) Minimum safety standards. The Commission adopts by reference the following provisions, as modified in this chapter, effective October 30, 2017 [as of the effective date of this section].

(1) (4) (No change.)

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

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

Filed with the Office of the Secretary of State on August 15, 2017. TRD-201703135

Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: October 1, 2017
For further information, please call: (512) 475-1295

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER CC. COMMISSIONER’S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1034

The Texas Education Agency (TEA) proposes an amendment to §61.1034, concerning the new instructional facility allotment (NIFA). The proposed amendment would modify the rule to reflect changes made by House Bill (HB) 1081, 85th Texas Legislature, Regular Session, 2017.

The Texas Education Code (TEC), §42.158, allows the commissioner by rule to establish procedures and adopt guidelines for the administration of the NIFA. Through 19 TAC §61.1034, last amended to be effective January 2, 2012, the commissioner exercised rulemaking authority to establish definitions, explain the application process, and describe costs and payments related to the allotment.

HB 1081, 85th Texas Legislature, Regular Session, 2017, amended the TEC, §42.158, to increase the allotment per student from $250 to $1,000 for each student in average daily attendance for the first school year students attend a new instructional facility and from $250 to $1,000 for each additional student in average daily attendance for the second year students attend a new instructional facility. The bill also added a definition of a new instructional facility to include a newly constructed instructional facility, a repurposed instructional facility, and a leased facility operating for the first time as an instructional facility with a minimum lease term of not less than 10 years.

The proposed amendment to 19 TAC §61.1034 would add new subsection (a) for definitions. The definitions would implement HB 1081 by defining the term new instructional facility as a newly constructed instructional facility, a repurposed instructional facility, or a leased facility operating for the first time as an instructional facility with a minimum lease term of not less than 10 years. Language in current subsection (a)(2), relettered as subsection (b)(2), would be incorporated into the new definition for instructional campus.

The amendment would also expand the eligibility criteria in current subsection (a), relettered as subsection (b), to include repurposed and leased buildings and remove language in current subsection (a)(4) that prohibits leased facilities from being eligible for the NIFA.

Subsection (b)(1)(B), relettered as subsection (c)(1)(B), would be modified to include references to repurposed and leased buildings in the description of the photograph needed and the legal documents required for the initial application.
Subsection (d), relettered as subsection (e), would be updated to explain that reductions to allotments will be made by applying the same percentage of adjustment to each district and charter school in accordance with the TEC, §42.253. Subsection (d)(2)(A) and (B), relettered as subsection (e)(2)(A) and (B), would be eliminated to reflect the TEC, §42.253, regarding proration of funds.

HB 3593, 85th Texas Legislature, Regular Session, 2017, amended the TEC, §42.158, to add language to specify that a school district entitled to an allotment may use funds from the district's allotment to renovate an existing instructional facility to serve as a dedicated cybersecurity computer laboratory. The TEA has determined that no changes to §61.1034 are necessary as a result of the bill.

The current rule requires a school district or charter school that wishes to receive an allotment to complete and submit an application requesting funding and provide certain documentation electronically. Since the proposed amendment would include repurposed or leased facilities, initial applications would be required to include documentation specific to those types of facilities.

Any locally maintained paperwork requirements resulting from the proposed amendment would correspond with and support the stated procedural and reporting implications.

FISCAL NOTE. Leo Lopez, 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 fiscal implications for state government as a result of enforcing or administering the amendment. The rule action could have fiscal implications for local government, including school districts and open-enrollment charter schools, that choose to apply for the allotment. The statutory increase in the allotment from $250 per student in average daily attendance to $1,000 per student in average daily attendance could increase the amount to which a school district is entitled. However, the total appropriation was not increased. It remains at $23,750,000 for each year of the biennium, and awards will likely be prorated.

There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. The proposed amendment does not impose a cost on regulated persons and, therefore, is not subject to Texas Government Code, §2001.0045.

PUBLIC BENEFIT/COST NOTE. Mr. Lopez 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 implementing legislative changes to the NIFA program, which helps school districts accommodate growth by providing funding to build new instructional facilities. 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 BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins September 1, 2017, and ends October 2, 2017. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to rules@tea.texas.gov. 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 September 1, 2017.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code, §42.158, as amended by House Bill 1081, 85th Texas Legislature, Regular Session, 2017, which authorizes the commissioner of education to adopt rules as necessary to implement the new instructional facilities allotment.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §42.158, as amended by House Bill 1081, 85th Texas Legislature, Regular Session, 2017.

§61.1034. New Instructional Facility Allocated.

(a) Definitions. The following definitions apply to the new instructional facility allotment (NIFA) in accordance with the Texas Education Code (TEC), §42.158.

(1) Instructional campus--A campus that:

(A) has its own unique campus ID number registered with the Texas Education Agency (TEA), an assigned administrator, enrolled students who are counted for average daily attendance, and assigned instructional staff;

(B) receives federal and/or state and/or local funds as its primary support;

(C) provides instruction in the Texas Essential Knowledge and Skills (TEKS);

(D) has one or more grade groups in the range from early education through Grade 12; and

(E) is not a program for students enrolled in another public school.

(2) Instructional facility--A real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by the TEC, §28.002.

(3) New instructional facility--A facility that includes:

(A) a newly constructed instructional facility, which is a new instructional campus built from the ground up;

(B) a repurposed instructional facility, which is a facility that has been renovated to become an instructional facility for the first time. An existing facility must not have been used by the school as an instructional facility for at least 10 years prior to application; or

(C) a leased facility operating for the first time as an instructional facility with a minimum lease term of not less than 10 years. The lease must not be a continuation of or renegotiation of an existing lease for an instructional facility.

(b) [4a] Eligibility. The following eligibility criteria apply to the NIFA (new instructional facility allotment (NIFA)) in accordance with the TEC (Texas Education Code (TEC)) , §42.158.

(1) Both school districts and open-enrollment charter schools are eligible to apply for the NIFA for eligible facilities.

PROPOSED RULES September 1, 2017 42 TexReg 4399
(2) The facility for which NIFA funds are requested must meet the following requirements.

(A) The facility must be an [a newly constructed] instructional campus [facility] used for teaching the curriculum required by the TEC, Chapter 28, and must be:[,]

(i) a newly constructed instructional facility;

(ii) a repurposed instructional facility; or

(iii) a leased facility operating for the first time as an instructional facility with a minimum lease term of not less than 10 years.

(B) To qualify for first-year funding, a new facility must not have been occupied in the prior school year. To qualify for follow-up funding, the facility must have been occupied for the first time in the prior school year and funded for the NIFA for that first year. A special case of one-year funding pertains to a facility that was occupied for the first time in the prior school year but did not receive NIFA funds because of a failure to apply. Any such eligible facility will receive funds for one year of operation only.

[DH] The facility must have its own assigned instructional staff and instructional program distinct from other facilities, and this program cannot be a program for students enrolled in another public school (summer school, evening school, etc.).

[C] With the exception of a covered walkway connecting the new facility to another building, the new facility must be physically separate from other existing school structures.

[DI] The facility must have its own principal or receive an accountability rating through the standard or the optional alternative rating procedures as described in the most current accountability manuals published by the Texas Education Agency (TEA).

[DE] The facility must have its own unique campus ID number as designated by the TEA, its own record of expenditures that is not a subset of another school budget, and attendance data that can be reported for those students who are assigned to its campus.

[D] If the applicant is an open-enrollment charter school, the facility must be a charter school site approved for instructional use [either] in the original open-enrollment charter as granted by either the State Board of Education or the commissioner of education or in an amendment granted under §100.1033(b)(9)-(11) $100.1033(c)(5)$ of this title (relating to Charter Amendment), as described in §100.1001(3) $100.1001(3)$(D) $100.1001(3)$(D)) of this title (relating to Definitions).

(3) Expansion or renovation of existing instructional facilities, as well as portable and temporary structures, are not eligible for the NIFA.

[DA] A facility leased by the school district or by the open-enrollment charter school or open-enrollment charter holder is not eligible for the NIFA.

[c] Application process. To apply for the NIFA, school districts and open-enrollment charter schools must complete the TEA's online application processing request funding pursuant to the NIFA.

(1) The initial (first-year) application, or an application for one-year funding only, must be submitted electronically no later than July 15. The application must include the following:

(A) the electronic submission of the TEA's online application for initial funding; and

(B) the electronic submission of the following materials:

(i) a brief description and photograph of the newly constructed, repurposed, or leased instructional facility [site];

(ii) a copy of a legal document that clearly describes the nature and dates of the new or repurposed construction or a copy of the applicable lease;

(iii) a site plan;

(iv) a floor plan; and

(v) if applicable, a demolition plan.

(2) Second-year applications require only the electronic submission of the TEA's online application for follow-up funding no later than July 15 of the year preceding the applicable school year.

[3d] Survey on days of instruction. In the fall of the school year after a school year for which an applicant received NIFA funds, the school district or open-enrollment charter school that received the funds must complete an online survey on the number of instructional days held in the new facility and submit the completed survey electronically. The TEA will use submitted survey information in determining the final (settle-up) amount earned by each eligible school district and open-enrollment charter school, as described in subsection (e)(6) of this section.

[e] Costs and payments. The costs and payments for the NIFA are determined by the commissioner of education.

(1) The allotment for the NIFA is a part of the cost of the first tier of the Foundation School Program (FSP). This allotment is not counted in the calculation of weighted average daily attendance for the second tier of the FSP.

(2) If, for all eligible applicants combined, the total cost of the NIFA exceeds the amount appropriated, each allotment is reduced so that the total amount to be distributed equals the amount appropriated. Reductions to allotments are made by applying the same percentage adjustment to each school district and charter school.

[A] For eligible school districts, reductions to allotments are made by applying the same number of cents of tax rate in each school district to the school district's taxable value of property so that the reduced total for all school districts equals the amount appropriated. For each school district, the taxable value of property is the property value certified by the Texas Comptroller of Public Accounts for the preceding school year as determined under the Texas Government Code, Chapter 403, Subchapter M, or, if applicable, a reduced property value that reflects a rapid decline pursuant to the TEC, §42.2521.

[B] For eligible open-enrollment charter schools, reductions to allotments are made in the same way as for school districts, as described in subparagraph (A) of this paragraph, except that the value used as the taxable value of property for each charter school is calculated by determining the statewide taxable value of property for all school districts in the state, dividing that number by the number of non-charter-school students in average daily attendance (ADA) in the state, and multiplying the result by the charter school's total number of ADA.

(3) If an additional $1 million is appropriated for the NIFA for a school year under the TEC, §42.158(d-1), and if proration as described in paragraph (2) of this subsection is necessary for the school year, the additional appropriation must first be applied to prevent a reduction in the NIFA for eligible high school facilities. Any funds remaining after preventing all reductions in the NIFA for eligible high
school facilities will be prorated as described in paragraph (2) of this subsection.

(4) Allocations will be made in conjunction with allotments for the FSP in accordance with the school district’s or open-enrollment charter school’s payment class. For school districts that are not subject to the requirements of the TEC, Chapter 41, and do not receive payments from the Foundation School Fund, NIFA distributions will correspond to the schedule for payment class 3.

(5) For school districts that are required to reduce wealth pursuant to the TEC, Chapter 41, any NIFA funds for which the school district is eligible are applied as credits to the amounts owed to equalize wealth.

(6) For all school districts and open-enrollment charter schools receiving the NIFA, a final (settle-up) amount earned is determined by the commissioner when information reported through the survey described in subsection (d) [(d)] of this section is available in the fall of the school year after the school year for which NIFA funds were received. The final amount earned is determined using the submitted survey information and final counts of ADA for the school year for which NIFA funds were received, as reported through the Texas Student Data System Public Education Information Management System.

(7) The amount of funds to be distributed for the NIFA to a school district or open-enrollment charter school is in addition to any other state aid entitlements.

(8) [(e)] Ownership of property purchased with NIFA funds. Property purchased with NIFA funds by an open-enrollment charter school is presumed to be public property under the TEC, §12.128, and remains public property in accordance with that section.

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

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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CHAPTER 153. SCHOOL DISTRICT PERSONNEL
SUBCHAPTER DD. CRIMINAL HISTORY RECORD INFORMATION REVIEW

19 TAC §153.1117

The Texas Education Agency proposes the repeal of §153.1117, concerning criminal history record information review. The repeal is necessary since House Bill (HB) 3270, 85th Texas Legislature, 2017, specifies criminal history record information review of certain school contractor employees in statute, rendering the provisions in 19 TAC §153.1117 redundant and obsolete.

Senate Bill 9, 80th Texas Legislature, 2007, added the Texas Education Code, (TEC), §22.0834, which required the criminal history record information review of certain contract employees. To implement this requirement the commissioner exercised rulemaking authority by adopting rules in 19 TAC Chapter 153, School District Personnel, Subchapter DD, Criminal History Record Information Review.

HB 3270, 85th Texas Legislature, Regular Session, 2017, added new TEC, §22.08341, which specifies the requirements for criminal history record information review of certain school contractor employees and conflicts with the provisions in 19 TAC §153.1117. As a result, the repeal of §153.1117 is necessary to remove redundant and obsolete provisions.

The proposed repeal would have no procedural or reporting implications. The proposed repeal 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 repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal. There is no effect on local economy for the first five years that the proposed repeal is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. The proposed repeal does not impose a cost on regulated persons and, therefore, is not subject to Texas Government Code, §2001.0045.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal would be removing from rule provisions that conflict with statute. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins September 1, 2017, and ends October 2, 2017. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to rules@tea.texas.gov. 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 September 1, 2017.

STATUTORY AUTHORITY. The repeal is proposed under the Texas Education Code (TEC), §22.0834, as amended by House Bill (HB) 3270, 85th Texas Legislature, Regular Session, 2017, which exempts contracting entities, subcontracting entities, and persons subject to TEC, §22.08341, from the requirement to submit information to the Texas Education Agency for a criminal history background check prior to employment; and TEC, §22.08341, as added by HB 3270, 85th Texas Legislature, Regular Session, 2017, which sets out the requirements for contracting entities and subcontracting entities to conduct criminal history background checks on their employees working in public school instructional facilities.

CROSS REFERENCE TO STATUTE. The repeal implements the Texas Education Code (TEC), §22.0834, as amended by
PART 7.  STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 231.  REQUIREMENTS FOR PUBLIC SCHOOL PERSONNEL ASSIGNMENTS


Current 19 TAC Chapter 231, Requirements for Public School Personnel Assignments, provides guidance to school districts by listing courses by grade level and subject area and identifying the corresponding certificates appropriate for placement into each classroom assignment. This information assists districts with hiring and personnel assignment decisions.

To reflect career and technical education courses approved by the SBOE, the proposed revisions to 19 TAC Chapter 231, Subchapter C and Subchapter E, would identify the appropriate certificates and/or training requirements for placement in various assignments for Grades 6-8 and Grades 9-12 listed throughout the divisions below:

Division 9.  Career Development, Grades 9-12 Assignments
Division 10.  Agriculture, Food, and Natural Resources, Grades 9-12 Assignments
Division 11.  Architecture and Construction, Grades 9-12 Assignments
Division 12.  Arts, Audio/Video Technology, and Communications, Grades 9-12 Assignments
Division 13.  Business Management and Administration, Grades 9-12 Assignments
Division 14.  Education and Training, Grades 9-12 Assignments
Division 15.  Finance, Grades 9-12 Assignments
Division 16.  Government and Public Administration, Grades 9-12 Assignments
Division 17.  Health Science, Grades 9-12 Assignments
Division 18.  Hospitality and Tourism, Grades 9-12 Assignments
Division 19.  Human Services, Grades 9-12 Assignments
Division 20.  Information Technology, Grades 9-12 Assignments
Division 21.  Law, Public Safety, Corrections, and Security, Grades 9-12 Assignments
Division 22.  Manufacturing, Grades 9-12 Assignments
Division 23.  Marketing, Grades 9-12 Assignments
Division 24.  Science, Technology, Engineering, and Mathematics, Grades 9-12 Assignments
Division 25.  Transportation, Distribution, and Logistics, Grades 9-12 Assignments

The proposed revisions would have no additional procedural and reporting implications. The proposed revisions 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 revisions are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the revisions. There is no effect on local economy for the first five years that the proposed revisions are in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. The proposed revisions do not impose a cost on regulated persons and, therefore, are not subject to Texas Government Code, §2001.0045.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for each year of the first five years the revisions are in effect the public benefit anticipated as a result of enforcing the revisions would be the ability of districts to continue placing educators who are prepared to positively affect the performance of the diverse student population of this state into career and technical education assignments. There is no anticipated economic cost to persons who are required to comply with the proposed revisions.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins September 1, 2017, and ends October 2, 2017. The SBEC will take registered oral and written
comments on the proposed revisions at the October 6, 2017, meeting in accordance with the SBEC board operating policies and procedures. 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.

SUBCHAPTER C. GRADES 6-8

ASSIGNMENTS

19 TAC §231.79

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §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; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.79. Career Development, Grades 6-8.

An assignment in a departmentalized classroom for Career Development, College and Career Readiness, [Exploring Careers], or Investigating Careers [Career Portals], Grades 6-8, for a holder of a valid secondary or all-level certificate is allowed with any vocational or career and technical education classroom teaching certificate specified in §233.13 of this title (relating to Career and Technical Education (Certificates not requiring experience and preparation in a skill area)) or §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)).

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

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SUBCHAPTER E. GRADES 9-12

ASSIGNMENTS

DIVISION 9. CAREER DEVELOPMENT, GRADES 9-12

ASSIGNMENTS

19 TAC §231.271

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §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; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.271. Career Development, Grades 9-12.

(a) Subject to the requirements in subsection (e) [(e)] of this section, an assignment for Career Preparation I, Career Preparation II, or Extended Career Preparation [Career Preparation I and II], Grades 9-12, is allowed with any vocational or career and technical education (CTE) classroom teaching certificate specified in §233.13 of this title (relating to Career and Technical Education (Certificates not requiring experience and preparation in a skill area)) or §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)).

(b) An assignment for Project-Based Research [Problems and Solutions], Grades 9-12, is allowed with any vocational or CTE classroom teaching certificate specified in §233.13 of this title or §233.14 of this title.

(c) An assignment for Applied Mathematics for Technical Professionals, Grades 9-12, is allowed with one of the following certificates:

(1) Any vocational or CTE classroom teaching certificate specified in §233.13 of this title or §233.14 of this title. This assignment requires a bachelor's degree.

(2) Grades 6-12 or Grades 9-12 Mathematics.

(3) Master Mathematics Teacher (Grades 8-12).

(4) Mathematics: Grades 7-12.

(5) Mathematics: Grades 8-12.

(6) Mathematics/Physical Science/Engineering: Grades 6-12.

(7) Mathematics/Physical Science/Engineering: Grades 8-12.

(8) Physics/Mathematics: Grades 7-12.

(9) Physics/Mathematics: Grades 8-12.

(10) Secondary Mathematics (Grades 6-12).
(d) All teachers assigned to Applied Mathematics for Technical Professionals shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2018-2019 school year. Specific details about the required training can be found at tea.texas.gov/cte.

(e) [ee] The school district is responsible for ensuring that each teacher assigned to Career Preparation I, Career Preparation II, [and IV] or Extended Career Preparation [Problems and Solutions], 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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DIVISION 10. AGRICULTURE, FOOD, AND NATURAL RESOURCES, GRADES 9-12

ASSIGNMENTS

19 TAC §§231.281, 231.283, 231.287, 231.289, 231.291

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostian, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.281. Agriculture, Food, and Natural Resources, Grades 9-12.

(a) An assignment for Advanced Energy and Natural Resource Technology; Agriculture Laboratory and Field Experience; Energy and Natural Resource Technology [Advanced Environmental Technology]; Equine Science; Food Processing; Food Technology and Safety; Forestry and Woodland Ecosystems; Greenhouse Operation and Production; Horticultural [Horticulture] Science; Landscape Design and [Turf Grass] Management; Livestock Production; Principles of Agriculture, Food, and Natural Resources; Professional Standards in Agribusiness; Range Ecology and Management; Small Animal Management; Turf Grass Management; Veterinary Medical Applications; or Wildlife, Fisheries, and Ecology Management, Grades 9-12, is allowed with one of the following certificates.

1. Agriculture, Food, and Natural Resources: Grades 6-12.
2. Agricultural Science and Technology: Grades 6-12.
3. Any vocational agriculture certificate.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Agriculture, Food, and Natural Resources or Extended Practicum in Agriculture, Food, and Natural Resources, Grades 9-12, is allowed with one of the following certificates.

1. Agriculture, Food, and Natural Resources: Grades 6-12.
2. Agricultural Science and Technology: Grades 6-12.
3. Any vocational agriculture certificate.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Agriculture, Food, and Natural Resources or Extended Practicum in Agriculture, Food, and Natural Resources, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.


(a) Subject to the requirements in subsection (b) of this section, an assignment for Advanced Animal Science or Advanced Plant and Soil Science, Grades 9-12, is allowed with one of the following certificates.

1. Agriculture, Food, and Natural Resources: Grades 6-12.
2. Agricultural Science and Technology: Grades 6-12.
3. Any vocational agriculture certificate.
4. Master Science Teacher (Grades 8-12).
5. Science: Grades 8-12.
6. Secondary Biology (Grades 6-12).
7. Secondary Science, Composite (Grades 6-12).
8. Any vocational agriculture certificate.

(b) All teachers assigned to these courses shall participate in Texas Education Agency-approved training prior to teaching these courses effective with the 2013-2014 school year. Specific details about the required training can be found at tea.texas.gov/cte.

§231.287. Mathematical Applications in Agriculture, Food, and Natural Resources, Grades 9-12.

(a) Subject to the requirements in subsection (b) of this section, an assignment for Mathematical Applications in Agriculture, Food, and Natural Resources, Grades 9-12, is allowed with one of the following certificates.

1. Agriculture, Food, and Natural Resources: Grades 6-12.
2. Agricultural Science and Technology: Grades 6-12.
3. Any vocational agriculture certificate.
4. Master Mathematics Teacher (Grades 8-12).
§231.289. Agricultural Equipment [Facilities] Design and Fabrication; Agricultural Structures Design and Fabrication; Agricultural Mechanics and Metal Technologies; Agricultural Power Systems; Oil and Gas Production [Energy and Natural Resources Technology], Grades 6-12.

An assignment for Agricultural Equipment [Facilities] Design and Fabrication, Agricultural Structures Design and Fabrication, Agricultural Mechanics and Metal Technologies, Agricultural Power Systems, Oil and Gas Production I [or Energy and Natural Resources Technology], Grades 9-12, is allowed with one of the following certificates.

(1) Agriculture, Food, and Natural Resources: Grades 6-12.
(2) Agricultural Science and Technology: Grades 6-12.
(3) Any vocational agriculture certificate.
(4) Secondary Industrial Arts (Grades 6-12).
(5) Secondary Industrial Technology (Grades 6-12).
(6) Technology Education: Grades 6-12.
(7) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
(8) [69] 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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DIVISION 11. ARCHITECTURE AND CONSTRUCTION, GRADES 9-12

ASSIGNMENTS

19 TAC §§231.301, 231.303, 231.305, 231.307, 231.309, 231.313

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §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; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).


An assignment for Principles of Architecture or Principles of [and] Construction, Grades 9-12, is allowed with one of the following certificates.

(1) Any home economics or homemaking certificate.
(2) Family and Consumer Sciences, Composite: Grades 6-12.
(3) Mathematics/Physical Science/Engineering: Grades 6-12.
(4) Mathematics/Physical Science/Engineering: Grades 8-12.
(5) Secondary Industrial Arts (Grades 6-12).
(6) Secondary Industrial Technology (Grades 6-12).
(7) Technology Education: Grades 6-12.
(8) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(9) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(10) Vocational Trades and Industry. This assignment requires appropriate work approval.

§231.303. Interior Design, Grades 9-12.

(a) An assignment for Interior Design I or [Advanced] Interior Design II, Grades 9-12, is allowed with one of the following certificates:

(1) Any home economics or homemaking certificate.

(2) Family and Consumer Sciences, Composite: Grades 6-12.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Interior Design or Extended Practicum in Interior Design, Grades 9-12, is allowed with one of the following certificates:

(1) Any home economics or homemaking certificate.

(2) Family and Consumer Sciences, Composite: Grades 6-12.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Interior Design or Extended Practicum in Interior Design, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.


(a) An assignment for Architectural Design I or [Advanced] Architectural Design II, Grades 9-12, is allowed with one of the following certificates:

(1) Mathematics/Physical Science/Engineering: Grades 6-12.

(2) Mathematics/Physical Science/Engineering: Grades 8-12.

(3) Secondary Industrial Arts (Grades 6-12).

(4) Secondary Industrial Technology (Grades 6-12).

(5) Technology Education: Grades 6-12.

(6) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(7) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(8) 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 Architectural Design or Extended Practicum in Architectural Design, Grades 9-12, is allowed with one of the following certificates:

(1) Mathematics/Physical Science/Engineering: Grades 6-12.

(2) Mathematics/Physical Science/Engineering: Grades 8-12.

(3) Secondary Industrial Arts (Grades 6-12).

(4) Secondary Industrial Technology (Grades 6-12).

(5) Technology Education: Grades 6-12.

(6) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(7) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(8) 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 Architectural Design or Extended Practicum in Architectural Design, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.


(a) An assignment for Construction Management I, [Advanced] Construction Management II, Construction Technology I, or [Advanced] Construction Technology II, Grades 9-12, is allowed with one of the following certificates:

(1) Agriculture, Food, and Natural Resources: Grades 6-12.

(2) Agricultural Science and Technology: Grades 6-12.

(3) Any vocational agriculture certificate.

(4) Mathematics/Physical Science/Engineering: Grades 6-12.

(5) Mathematics/Physical Science/Engineering: Grades 8-12.

(6) Secondary Industrial Arts (Grades 6-12).

(7) Secondary Industrial Technology (Grades 6-12).

(8) Technology Education: Grades 6-12.

(9) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(10) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(11) 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 Construction Management, Practicum in Construction Technology, Extended Practicum in Construction Management, or Extended Practicum in Construction Technology, Grades 9-12, is allowed with one of the following certificates:

(1) Agriculture, Food, and Natural Resources: Grades 6-12.

(2) Agricultural Science and Technology: Grades 6-12.

(3) Any vocational agriculture certificate.

(4) Mathematics/Physical Science/Engineering: Grades 6-12.

(5) Mathematics/Physical Science/Engineering: Grades 8-12.

(6) Secondary Industrial Arts (Grades 6-12).

(7) Secondary Industrial Technology (Grades 6-12).

(8) Technology Education: Grades 6-12.
§231.309. Assignment requires appropriate work approval.

(9) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(10) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(11) 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 Construction Management, Practicum in Construction Technology, Extended Practicum in Construction Management, or Extended Practicum in Construction Technology, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.309. Building Maintenance Technology; Grades 9-12.
An assignment for Building Maintenance Technology I or [Advanced] Building Maintenance Technology II, Grades 9-12, is allowed with one of the following certificates.

(1) Agriculture, Food, and Natural Resources: Grades 6-12.

(2) Agricultural Science and Technology: Grades 6-12.

(3) Any vocational agriculture certificate.

(4) Secondary Industrial Arts (Grades 6-12).

(5) Secondary Industrial Technology (Grades 6-12).

(6) Technology Education: Grades 6-12.

(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.

§231.313. Electrical Technology: Heating, Ventilation, and Air Conditioning (HVAC), and Refrigeration Technology: Masonry Technology, and Plumbing Technology; Grades 9-12.

(a) An assignment for Electrical Technology I: [Advanced] Electrical Technology II; Heating, Ventilation, and Air Conditioning (HVAC) and Refrigeration I [Technology], Heating, Ventilation, and Air Conditioning (HVAC) [Advanced HVAC] and Refrigeration II [Technology]; Masonry Technology I; Masonry Technology II; [Pipe, and] Plumbing Technology I; or [Advanced Pipe, and] Plumbing Technology II, Grades 9-12, is allowed with one of the following certificates.

(1) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(2) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(3) 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 Masonry Technology or Extended Practicum in Masonry Technology, Grades 9-12, is allowed with one of the following certificates.

(1) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(2) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(3) 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 Masonry Technology or Extended Practicum in Masonry Technology, 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
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For further information, please call: (512) 475-1497

DIVISION 12. ARTS, AUDIO/VIDEO TECHNOLOGY, AND COMMUNICATIONS, GRADES 9-12 ASSIGNMENTS

19 TAC §§231.331, 231.333, 231.335, 231.337, 231.339, 231.341, 231.343

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §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; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.331. Professional Communications, Grades 9-12.
An assignment for Professional Communications, Grades 9-12, is allowed with one of the following certificates.

(1) All-Level Speech and Drama/Theatre Arts (Prekindergarten-Grade 12).

(2) Any vocational or career and technical education classroom teaching certificate specified in §233.13 of this title (relating to Career and Technical Education (Certificates not requiring experience and preparation in a skill area)) or §233.14 of this title (relating to Career and Technical Education (Certificates requiring experience and preparation in a skill area)) (with a minimum of a bachelor's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization rec-

An assignment for Principles of Arts, Audio/Video [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.
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 8-12.
8. Technology Education: Grades 6-12.
9. Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
10. Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
11. Vocational Trades and Industry. This assignment requires appropriate work approval.

§231.336. Animation, Grades 9-12.
(a) An assignment for Animation I, Animation I Lab, Animation II, or [Advanced] Animation II Lab, 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.
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 8-12.
8. Technology Education: Grades 6-12.
9. Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
10. Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
11. 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 Animation or Extended Practicum in 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.
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 8-12.
8. Technology Education: Grades 6-12.
9. Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
10. Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
11. 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 Animation or Extended Practicum in Animation, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.337. Audio/Video [Audio Video] Production; Graphic Design and Illustration, Grades 9-12.
(a) An assignment for Audio/Video [Audio Video] Production I; Audio/Video Production I Lab; Audio/Video Production II; Audio/Video Production II Lab; Digital Audio Technology I; Digital Audio Technology II; [Advanced Audio Video Production]; Graphic Design and Illustration I; Graphic Design and Illustration I Lab; [Advanced] Graphic Design and Illustration II; Graphic Design and Illustration II Lab; or Video Game Design, 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 8-12.
5. Technology Education: Grades 6-12.
6. Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
7. Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
8. 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 [Audio Video] Production, [Advanced Practicum in Graphic Design and Illustration, Extended Practicum in Audio/Video Production, or Extended 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 Applications: Early Childhood-Grade 12.
§231.339. Photography, Grades 9-12.

(a) An assignment for Commercial Photography I, Commercial Photography II Lab, Commercial Photography II, or [Advanced] Commercial Photography II Lab, Grades 9-12, is allowed with one of the following certificates.

1. Art (Early Childhood-Grade 12).
2. Art: Junior High School (Grades 9-10 only), High School, Secondary.
3. Art (Grades 6-12, Grades 9-12, or All-Level).
4. [H] Secondary Industrial Arts (Grades 6-12).
5. [H] Secondary Industrial Technology (Grades 6-12).
6. [H] Technology Education: Grades 6-12.
7. [H] Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
8. [H] Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
9. [H] 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 Commercial Photography or Extended Practicum in Commercial Photography, 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 Commercial Photography or Extended Practicum in Commercial Photography, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.341. Printing and Imaging Technology, Grades 9-12.

(a) An assignment for Printing and Imaging Technology I, Printing and Imaging Technology I Lab, Printing and Imaging Technology II, or [Advanced] Printing and Imaging Technology II Lab, Grades 9-12, is allowed with one of the following certificates.

1. Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
2. Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
3. Vocational Trades and Industry. This assignment requires appropriate work approval.
4. 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 Printing and Imaging Technology or Extended Practicum in Printing and Imaging Technology, Grades 9-12, is allowed with one of the following certificates.

1. Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
2. Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
3. 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 Printing and Imaging Technology or Extended Practicum in Printing and Imaging Technology, 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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DIVISION 13. BUSINESS MANAGEMENT AND ADMINISTRATION, GRADES 9-12 ASSIGNMENTS

19 TAC §§231.361, 231.363, 231.365

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §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; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.361. Business Information Management; Business Law; and Touch System Data Entry, Grades 9-12.

(a) An assignment for Business Information Management I and II, Business Law, or Touch System Data Entry, 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.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Business Management or Extended Practicum in Business Management, 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.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Business Management or Extended Practicum in Business Management, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.363. Business Management; Business Lab; Global Business; Human Resources Management; Principles of Business, Marketing, and Finance; and Virtual Business, Grades 9-12.

An assignment for Business Management; Business Lab; Global Business; Human Resources Management; Principles of Business, Marketing, and Finance; or Virtual Business, Grades 9-12, is allowed with one of the following certificates.

(1) Any business or office education certificate.
(2) Any marketing or distributive education certificate.

(3) Business and Finance: Grades 6-12.
(4) Business Education: Grades 6-12.
(5) Marketing: Grades 6-12.
(6) Marketing Education: Grades 8-12.


(a) An assignment for Business English, Grades 9-12, is allowed with one of the following certificates.

(1) Any business or office education certificate.
(2) Business and Finance: Grades 6-12.
(3) Business Education: Grades 6-12.
(4) English Language Arts and Reading: Grades 7-12.
(5) English Language Arts and Reading: Grades 8-12.
(6) Grades 6-12 or Grades 9-12--English.
(7) Grades 6-12 or Grades 9-12--English Language Arts, Composite.
(8) Junior High School (Grades 9-10 only) or High School-English.
(9) Junior High School (Grades 9-10 only) or High School-English Language Arts, Composite.
(10) Secondary English (Grades 6-12).
(11) Secondary English Language Arts, Composite (Grades 6-12).

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2018-2019 school year. Specific details about the required training can be found at tea.texas.gov/cte.

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 14. EDUCATION AND TRAINING, GRADES 9-12 ASSIGNMENTS

19 TAC §231.381

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §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; TEC, §21.041(b)(1), which requires the SBEC to propose rules that
provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.381. Education and Training, Grades 9-12.

(a) An assignment for Instructional Practices [in Education and Training] or Principles of Education and Training, Grades 9-12, is allowed with one of the following certificates.

1. Any home economics or homemaking certificate.
2. Family and Consumer Sciences, Composite: Grades 6-12.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Education and Training or Extended Practicum in Education and Training, Grades 9-12, is allowed with one of the following certificates.

1. Any home economics or homemaking certificate.
2. Family and Consumer Sciences, Composite: Grades 6-12.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Education and Training or Extended Practicum in Education and Training, 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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DIVISION 15. FINANCE, GRADES 9-12
ASSIGNMENTS

19 TAC §§231.393 - 231.395, 231.397

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; TEC, §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; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendments and new section implement the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.393. Accounting I; Financial Analysis; Insurance Operations; and Securities and Investments, Grades 9-12.

An assignment for Accounting I; [Accounting II] Financial Analysis; Insurance Operations; and Securities and Investments, 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.

§231.394. Statistics and Business Decision Making [Risk Management], Grades 9-12.

(a) Subject to the requirements in subsection (b) of this section, an assignment for Statistics and Business Decision Making [Risk Management], 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.
4. Master Mathematics Teacher (Grades 8-12).
5. Mathematics: Grades 7-12.
11. Secondary Mathematics (Grades 6-12).

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2013-2014 school year. Specific details about the required training can be found at tea.texas.gov/cte.


(a) An assignment for Financial Mathematics, 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.
4. Master Mathematics Teacher (Grades 8-12).
5. Mathematics: Grades 7-12.
DIVISION 16. GOVERNMENT AND PUBLIC ADMINISTRATION, GRADES 9-12 ASSIGNMENTS

19 TAC §231.401, §231.403

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostian, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.401. Government and Public Administration, Grades 9-12.

(a) An assignment for Foreign Service and Diplomacy, Planning and Governance, Political Science I and II, Principles of Government and Public Administration, or Public Management and Administration, Grades 9-12, is allowed with one of the following.

1. Grades 6-12 or Grades 9-12--Government.
2. Grades 6-12 or Grades 9-12--Social Studies.
3. Junior High School (Grades 9-10 only) or High School-Government-Political Science.
4. Junior High School (Grades 9-10 only) or High School-Social Science, Composite.
5. Secondary Government (Grades 6-12).
6. Secondary Political Science (Grades 6-12).
7. Secondary Social Science, Composite (Grades 6-12).
8. Secondary Social Studies, Composite (Grades 6-12).
10. Social Studies: Grades 8-12.
11. Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
12. Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
13. 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 Local, State, and Federal Government or Extended Practicum in Local, State, and Federal Government, Grades 9-12, is allowed with one of the following certificates.

1. Grades 6-12 or Grades 9-12--Government.
2. Grades 6-12 or Grades 9-12--Social Studies.
3. Junior High School (Grades 9-10 only) or High School-Government-Political Science.
4. Junior High School (Grades 9-10 only) or High School-Social Science, Composite.
5. Secondary Government (Grades 6-12).
6. Secondary Political Science (Grades 6-12).
7. Secondary Social Science, Composite (Grades 6-12).
8. Secondary Social Studies, Composite (Grades 6-12).
10. Social Studies: Grades 8-12.
11. Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
12. Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
13. Vocational Trades and Industry. This assignment requires appropriate work approval.

DIVISION 16. GOVERNMENT AND PUBLIC ADMINISTRATION, GRADES 9-12 ASSIGNMENTS

19 TAC §231.401, §231.403

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostian, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.401. Government and Public Administration, Grades 9-12.

(a) An assignment for Foreign Service and Diplomacy, Planning and Governance, Political Science I and II, Principles of Government and Public Administration, or Public Management and Administration, Grades 9-12, is allowed with one of the following.

1. Grades 6-12 or Grades 9-12--Government.
2. Grades 6-12 or Grades 9-12--Social Studies.
3. Junior High School (Grades 9-10 only) or High School-Government-Political Science.
4. Junior High School (Grades 9-10 only) or High School-Social Science, Composite.
5. Secondary Government (Grades 6-12).
6. Secondary Political Science (Grades 6-12).
7. Secondary Social Science, Composite (Grades 6-12).
8. Secondary Social Studies, Composite (Grades 6-12).
10. Social Studies: Grades 8-12.
11. Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
12. Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
13. 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 Local, State, and Federal Government or Extended Practicum in Local, State, and Federal Government, Grades 9-12, is allowed with one of the following certificates.

1. Grades 6-12 or Grades 9-12--Government.
2. Grades 6-12 or Grades 9-12--Social Studies.
3. Junior High School (Grades 9-10 only) or High School-Government-Political Science.
4. Junior High School (Grades 9-10 only) or High School-Social Science, Composite.
5. Secondary Government (Grades 6-12).
6. Secondary Political Science (Grades 6-12).
7. Secondary Social Science, Composite (Grades 6-12).
8. Secondary Social Studies, Composite (Grades 6-12).
10. Social Studies: Grades 8-12.
11. Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
12. Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
13. 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 Local, State, and Federal Government or Extended Practicum in Local, State, and Federal Government, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.403. Revenue, Taxation, and Regulation, Grades 9-12.
An assignment for Revenue, Taxation, and Regulation, 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) Grades 6-12 or Grades 9-12--Social Studies.
(5) Junior High School (Grades 9-10 only) or High School-Social Science, Composite.
(6) Secondary Social Science, Composite (Grades 6-12).
(7) Secondary Social Studies, Composite (Grades 6-12).
(8) Social Studies: Grades 7-12.
(9) Social Studies: 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.

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 17. HEALTH SCIENCE, GRADES 9-12 ASSIGNMENTS
19 TAC §§231.421, 231.423, 231.425, 231.427

STATUTORY AUTHORITY. The amendments and new sections 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; TEC, §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; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendments and new sections implement the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.421. Health Science, Grades 9-12.
(a) An assignment for Health Science Theory, Health Science Clinical, Medical Terminology, Pharmacology, Principles of Health Science, or World Health Research, Grades 9-12, is allowed with one of the following certificates.

(1) Health Science: Grades 6-12.
(2) Health Science Technology Education: Grades 8-12.
(3) Vocational Health Occupations.
(4) Vocational Health Science Technology.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Health Science or Extended Practicum in Health Science, Grades 9-12, is allowed with one of the following certificates.

(1) Health Science: Grades 6-12.
(2) Health Science Technology Education: Grades 8-12.
(3) Vocational Health Occupations.
(4) Vocational Health Science Technology.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Health Science or Extended Practicum in Health Science, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.423. Anatomy and Physiology, Medical Microbiology, and Pathophysiology, Grades 9-12.
(a) An assignment for Anatomy and Physiology, Medical Microbiology, or Pathophysiology, Grades 9-12, is allowed with one of the following certificates.

(1) Secondary Biology (Grades 6-12).
(2) Secondary Science (Grades 6-12).
(3) Secondary Science, Composite (Grades 6-12).
(4) Health Science: Grades 6-12. This assignment requires a bachelor's degree.

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this
course effective with the 2018-2019 school year. Specific details about the required training can be found at tea.texas.gov/cte.


(a) An assignment for Mathematics for Medical Professionals, Grades 9-12, is allowed with one of the following certificates.

   (1) Health Science: Grades 6-12. This assignment requires a bachelor's degree.
   (2) Health Science Technology Education: Grades 8-12. This assignment requires a bachelor's degree.
   (3) Vocational Health Occupations. This assignment requires a bachelor's degree.
   (4) Vocational Health Science Technology. This assignment requires a bachelor's degree.
   (5) Master Mathematics Teacher (Grades 8-12).
   (6) Mathematics: Grades 7-12.
   (7) Mathematics: Grades 8-12.
   (8) Mathematics/Physical Science/Engineering: Grades 6-12.
   (9) Mathematics/Physical Science/Engineering: Grades 8-12.
   (10) Physics/Mathematics: Grades 7-12.
   (11) Physics/Mathematics: Grades 8-12.
   (12) Secondary Mathematics.
(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2018-2019 school year. Specific details about the required training can be found at tea.texas.gov/cte.

§231.427. Health Informatics, Grades 9-12.

An assignment for Health Informatics, Grades 9-12, is allowed with one of the following certificates.

   (1) Health Science: Grades 6-12.
   (2) Health Science Technology Education: Grades 8-12.
   (3) Vocational Health Occupations.
   (4) Vocational Health Science Technology.
   (5) Any business or office education certificate.
   (6) Business and Finance: Grades 6-12.
   (7) Business Education: Grades 6-12.

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

DIVISION 18. HOSPITALITY AND TOURISM, GRADES 9-12 ASSIGNMENTS
19 TAC §§231.441, 231.443, 231.445

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §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; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.441. Hospitality and Tourism, Grades 9-12.

(a) An assignment for Hospitality Services, Hotel Management, Principles of Hospitality and Tourism, [Restaurant Management], or Travel and Tourism Management, Grades 9-12, is allowed with one of the following certificates.

   (1) Any home economics or homemaking certificate.
   (2) Any marketing or distributive education certificate.
   (3) Family and Consumer Sciences, Composite: Grades 6-12.
   (4) Hospitality, Nutrition, and Food Sciences: Grades 8-12.
   (5) Marketing: Grades 6-12.
   (6) Marketing Education: Grades 8-12.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Hospitality Services or Extended Practicum in Hospitality Services, Grades 9-12, is allowed with one of the following certificates.

   (1) Any home economics or homemaking certificate.
   (2) Any marketing or distributive education certificate.
   (3) Family and Consumer Sciences, Composite: Grades 6-12.
   (4) Hospitality, Nutrition, and Food Sciences: Grades 8-12.
   (5) Marketing: Grades 6-12.
   (6) Marketing Education: 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.

c) The school district is responsible for ensuring that each teacher assigned to Practicum in Hospitality Services or Extended Practicum in Hospitality Services, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.443. Culinary Arts, Grades 9-12.
(a) An assignment for Introduction to Culinary Arts, Culinary Arts, or Advanced Culinary Arts, Grades 9-12, is allowed with one of the following certificates.

1. Any home economics or homemaking certificate.

2. Family and Consumer Sciences, Composite: 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.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Culinary Arts or Extended Practicum in Culinary Arts, Grades 9-12, is allowed with one of the following certificates.

1. Any home economics or homemaking certificate.

2. Family and Consumer Sciences, Composite: 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 Culinary Arts or Extended Practicum in Culinary Arts, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.445. Food Science, Grades 9-12.
(a) Subject to the requirements in subsection (b) of this section, an assignment for Food Science, Grades 9-12, is allowed with one of the following certificates.

1. Any home economics or homemaking certificate.

2. Chemistry: Grades 7-12.


DIVISION 19. HUMAN SERVICES, GRADES 9-12 ASSIGNMENTS

19 TAC §231.461, §231.469

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §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; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.461. Human Services, Grades 9-12.
(a) An assignment for Child Development, Child Guidance, Family and Community Services, Interpersonal Studies, or Principles of Human Services, Grades 9-12, is allowed with one of the following certificates.

(1) Any home economics or homemaking certificate.

(2) Family and Consumer Sciences, Composite: Grades 6-12.

(3) Human Development and Family Studies: Grades 8-12.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Human Services or Extended Practicum in Human Services, Grades 9-12, is allowed with one of the following certificates.

(1) Any home economics or homemaking certificate.

(2) Family and Consumer Sciences, Composite: Grades 6-12.

(3) Human Development and Family Studies: Grades 8-12.

(c) The school district is responsible for ensuring that each teacher assigned to Practicum in Human Services or Extended Practicum in Human Services, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.469. Cosmetology, Grades 9-12.
An assignment for Introduction to Cosmetology, Cosmetology I, or Cosmetology II, or Principles of Cosmetology Design and Color Theory, Grades 9-12, is allowed with one of the following certificates plus a valid license as a cosmetology instructor issued by the Texas Department of Licensing and Regulation.

(1) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(2) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(3) Vocational Trades and Industry. This assignment requires appropriate work approval.

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DIVISION 20. INFORMATION TECHNOLOGY, GRADES 9-12 ASSIGNMENTS
19 TAC §§231.481, 231.483, 231.485, 231.487, 231.489
STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §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; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.481. Information Technology, Grades 9-12.
An assignment for Principles of Information Technology, Networking, or Networking Lab [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 8-12.

(8) Technology Education: Grades 6-12.

(9) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(10) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(11) Vocational Trades and Industry. This assignment requires appropriate work approval.

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 8-12.

(9) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(10) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
An assignment for Computer Programming I or [Advanced] Computer Programming II, Grades 9-12, is allowed using one of the following certificates.

1. Any business or office education certificate.
2. Business and Finance: Grades 6-12.
4. Computer Science: Grades 8-12.
5. Secondary Computer Information Systems (Grades 6-12).
6. Secondary Industrial Arts (Grades 6-12).
7. Secondary Industrial Technology (Grades 6-12).
8. Technology Applications: Early Childhood-Grade 12.
11. [MM] Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
12. [HH] Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
13. [LL] Vocational Trades and Industry. This assignment requires appropriate work approval.

An assignment for Computer Maintenance or Computer Maintenance Lab, 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.

(a) Subject to the requirements in subsection (b) of this section, an [An] assignment for Computer Technician Practicum, Extended Computer Technician Practicum, Practicum in Information Technology, or Extended Practicum in Information Technology, 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 8-12.
6. Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

7. Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
8. Vocational Trades and Industry. This assignment requires appropriate work approval.

(b) The school district is responsible for ensuring that each teacher assigned to Computer Technician Practicum, Extended Computer Technician Practicum, Practicum in Information Technology, or Extended Practicum in Information Technology, 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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DIVISION 21.  LAW, PUBLIC SAFETY, CORRECTIONS, AND SECURITY, GRADES 9-12 ASSIGNMENTS
19 TAC §231.501, §231.503
STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §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; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

(a) An assignment for Correctional Services; Court Systems and Practices; Criminal Investigations; Federal Law Enforcement and Protective Services; Firefighter I and II; Law Enforcement I and II; or Principles of Law, Public Safety, Corrections, and Security[, or Security Services], Grades 9-12, is allowed with a valid license appropriate for the assignment plus one of the following certificates.

1. Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
(2) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(3) 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 Law, Public Safety, Corrections, and Security or Extended Practicum in Law, Public Safety, Corrections, and Security, Grades 9-12, is allowed with a current license appropriate for the assignment plus one of the following certificates.

(1) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

(2) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(3) 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 Law, Public Safety, Corrections, and Security or Extended Practicum in Law, Public Safety, Corrections, and Security, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.503. Forensic Science, Grades 9-12.

(a) Subject to the requirements in subsection (b) of this section, an assignment for Forensic Science, Grades 9-12, is allowed with one of the following certificates.

(1) Chemistry: Grades 7-12.

(2) Chemistry: Grades 8-12.

(3) Health Science: Grades 6-12. This assignment requires a bachelor's degree.

(4) Health Science Technology Education: Grades 8-12. This assignment requires a bachelor's degree.

(5) Life Science: Grades 7-12.

(6) Life Science: Grades 8-12.

(7) Master Science Teacher (Grades 8-12).

(8) Science: Grades 7-12.

(9) Science: Grades 8-12.

(10) Secondary Biology (Grades 6-12).

(11) Secondary Chemistry (Grades 6-12).

(12) Secondary Science (Grades 6-12).

(13) Secondary Science, Composite (Grades 6-12).

(14) Trade and Industrial Education: Grades 6-12. This assignment requires a bachelor's degree and appropriate work approval.

(15) Trade and Industrial Education: Grades 8-12. This assignment requires a bachelor's degree and appropriate work approval.

(16) Vocational Health Occupations. This assignment requires a bachelor's degree.

(17) Vocational Health Science Technology. This assignment requires a bachelor's degree.

(18) Vocational Trades and Industry. This assignment requires a bachelor's degree and appropriate work approval.

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2013-2014 school year. Specific details about the required training can be found at tea.texas.gov/cte.

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 22. MANUFACTURING, GRADES 9-12 ASSIGNMENTS

19 TAC §§231.521, 231.523, 231.525

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; TEC, §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; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendments and new section implement the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.521. Manufacturing, Grades 9-12.

(a) An assignment for Diversified Manufacturing I, Diversified Manufacturing II, Manufacturing Engineering Technology I, Metal Fabrication and Machining I, Metal Fabrication and Machining II, Precision Metal Manufacturing I, Precision Metal Manufacturing II, Precision Metal Manufacturing II Lab, Principles of Manufacturing, Precision Metal Manufacturing, Advanced Precision Metal Manufacturing, Flexible Manufacturing, Advanced Flexible Manufacturing, or Manufacturing Engineering], Grades 9-12, is allowed using one of the following certificates.

(1) Mathematics/Physical Science/Engineering: Grades 6-12.

(2) Mathematics/Physical Science/Engineering: Grades 8-12.

(3) Secondary Industrial Arts (Grades 6-12).

(4) Secondary Industrial Technology (Grades 6-12).

(5) Technology Education: Grades 6-12.

(6) Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
(7) Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.

(8) 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 Manufacturing or Extended Practicum in Manufacturing, Grades 9-12, is allowed with one of the following certificates.

1. Mathematics/Physical Science/Engineering: Grades 6-12.
3. Secondary Industrial Arts (Grades 6-12).
4. Secondary Industrial Technology (Grades 6-12).
5. Technology Education: Grades 6-12.
6. Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
7. Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
8. 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 Manufacturing or Extended Practicum in Manufacturing, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.523. Welding, Grades 9-12.
An assignment for Introduction to Welding, Welding I, Welding II, or Welding II Lab [or Advanced Welding], Grades 9-12, is allowed with one of the following certificates.

1. Agriculture, Food, and Natural Resources: Grades 6-12.
2. Agricultural Science and Technology: Grades 6-12.
3. Any vocational agriculture certificate.
4. Secondary Industrial Arts (Grades 6-12).
5. Secondary Industrial Technology (Grades 6-12).
6. Technology Education: Grades 6-12.
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.

(a) An assignment for Manufacturing Engineering Technology II, Grades 9-12, is allowed with one of the following certificates.

1. Grades 6-12 or Grades 9-12 Mathematics.
2. Master Mathematics Teacher (Grades 8-12).

(5) Mathematics/Physical Science/Engineering: Grades 6-12.

(6) Mathematics/Physical Science/Engineering: Grades 8-12.

(7) Physics/Mathematics: Grades 7-12.

(8) Physics/Mathematics: Grades 8-12.

(9) Secondary Industrial Arts (Grades 6-12).

(10) Secondary Industrial Arts Technology (Grades 6-12).

(11) Secondary Mathematics.

(12) Technology Education: Grades 6-12.

(13) Trade and Industrial Education: Grades 6-12. This assignment requires a bachelor's degree and appropriate work approval.

(14) Trade and Industrial Education: Grades 8-12. This assignment requires a bachelor's degree and appropriate work approval.

(15) Vocational Trades and Industry. This assignment requires a bachelor's degree and appropriate work approval.

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching the course effective with the 2018-2019 school year. Specific details about the required training can be found at tea.texas.gov/cte.

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 23. MARKETING, GRADES 9-12 ASSIGNMENTS
19 TAC §231.541, §231.543

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §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; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.
CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.541. Marketing, Grades 9-12.

(a) An assignment for Social Media Marketing or Sports and Entertainment Marketing, Grades 9-12, is allowed with one of the following certificates.

(1) Any marketing or distributive education certificate.
(2) Marketing: Grades 6-12.
(3) Marketing Education: Grades 8-12.

(b) Subject to the requirements in subsection (c) of this section, an assignment for Advanced Marketing, Practicum in Marketing, or Extended Practicum in Marketing, [Marketing Dynamics or Practicum in Marketing Dynamics,] Grades 9-12, is allowed with one of the following certificates.

(1) Any marketing or distributive education certificate.
(2) Marketing: Grades 6-12.
(3) Marketing Education: Grades 8-12.

(c) The school district is responsible for ensuring that each teacher assigned to Advanced Marketing, Practicum in Marketing, or Extended Practicum in Marketing, [Marketing Dynamics or Practicum in Marketing Dynamics,] Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety.

§231.543. Advertising [and Sales Promotion], Grades 9-12.

An assignment for Advertising [and Sales Promotion], Grades 9-12, is allowed with one of the following certificates.

(1) Any marketing or distributive education certificate.
(2) Marketing: Grades 6-12.
(3) Marketing Education: Grades 8-12.
(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.

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
State Board for Educator Certification
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For further information, please call: (512) 475-1497

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DIVISION 24. SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS, GRADES 9-12 ASSIGNMENTS


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; TEC, §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; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendments and new section implement the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

An assignment for Principles [Concepts of Applied Engineering [and Technology], Grades 9-12, is allowed with one of the following certificates.

1. Agriculture, Food, and Natural Resources: Grades 6-12.

2. Agricultural Science and Technology: Grades 6-12.

3. Any vocational agriculture certificate.

4. Health Science: Grades 6-12.

5. Health Science Technology Education: Grades 8-12.


9. Secondary Industrial Arts (Grades 6-12).

10. Secondary Industrial Technology (Grades 6-12).

11. Technology Education: Grades 6-12.

12. Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.

13. Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.


15. Vocational Health Science Technology.

16. Vocational Trades and Industry. This assignment requires appropriate work approval.

§231.563. Principles of Biosciences [Biotechnology], Grades 9-12.

An assignment for Principles of Biosciences [Biotechnology], Grades 9-12, is allowed with one of the following certificates.

1. Agriculture, Food, and Natural Resources: Grades 6-12.

2. Agricultural Science and Technology: Grades 6-12.

3. Any vocational agriculture certificate.

4. Health Science: Grades 6-12.

5. Health Science Technology Education: Grades 8-12.


9. Secondary Industrial Technology (Grades 6-12).

10. Secondary Industrial Arts (Grades 6-12).

11. Technology Education: Grades 6-12.

12. Vocational Health Occupations.

13. Vocational Health Science Technology.


(a) Subject to the requirements in subsection (b) of this section, an assignment for [Advanced] Biotechnology I or Biotechnology II, Grades 9-12, is allowed with one of the following certificates.

1. Agriculture, Food, and Natural Resources: Grades 6-12.

2. Agricultural Science and Technology: Grades 6-12.

3. Any vocational agriculture certificate.

4. Health Science: Grades 6-12. This assignment requires a bachelor's degree.

5. Health Science Technology Education: Grades 8-12. This assignment requires a bachelor's degree.

6. Life Science: Grades 7-12.

7. Life Science: Grades 8-12.

8. Master Science Teacher (Grades 8-12).


10. Science: Grades 8-12.


12. Secondary Biology (Grades 6-12).

13. Secondary Science (Grades 6-12).


15. Vocational Health Occupations. This assignment requires a bachelor's degree.

16. Vocational Health Science Technology. This assignment requires a bachelor's degree.

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2013-2014 school year. Specific details about the required training can be found at tea.texas.gov/cte.

§231.567. Engineering Design and Presentation, Grades 9-12.

(a) An assignment for Engineering Design and Presentation I or [Advanced] Engineering Design and Presentation II, Grades 9-12, is allowed with one of the following certificates.

1. Mathematics/Physical Science/Engineering: Grades 6-12.


4. Secondary Industrial Arts (Grades 6-12).

5. Secondary Industrial Technology (Grades 6-12).

6. Technology Education: Grades 6-12.

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.

(a) Subject to the requirements in subsection (b) of this section, an assignment for Engineering Mathematics or Robotics II, Grades 9-12, is allowed with one of the following certificates.

(1) Master Mathematics Teacher (Grades 8-12).
(2) Mathematics: Grades 7-12.
(3) Mathematics: Grades 8-12.
(4) Mathematics/Physical Science/Engineering: Grades 6-12.
(5) Mathematics/Physical Science/Engineering: Grades 8-12.
(6) Physics/Mathematics: Grades 7-12.
(7) Physics/Mathematics: Grades 8-12.
(8) Science, Technology, Engineering, and Mathematics: Grades 6-12.
(9) Secondary Mathematics (Grades 6-12).
(10) Secondary Industrial Arts (Grades 6-12).
(11) Secondary Industrial Technology (Grades 6-12).
(12) Technology Education: Grades 6-12.

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2018-2019 school year. Specific details about the required training can be found at tea.texas.gov/cte.

§231.571. AC/DC Electronics; Solid State Electronics for Robotics and Automation, Grades 9-12.

An assignment for Electronics, AC/DC [Advanced] Electronics, or Solid State Electronics [or Robotics and Automation], Grades 9-12, is allowed with one of the following certificates.

(1) Mathematics/Physical Science/Engineering: Grades 6-12.
(2) Mathematics/Physical Science/Engineering: Grades 8-12.
(3) Science, Technology, Engineering, and Mathematics: Grades 6-12.
(4) Secondary Industrial Arts (Grades 6-12).
(5) Secondary Industrial Technology (Grades 6-12).
(6) Technology Education: Grades 6-12.
(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.

§231.573. Principles of Technology, Grades 9-12.

(a) Subject to the requirements in subsection (b) of this section, an assignment for Principles of Technology, 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, Composite (Grades 6-12).
(15) 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. All teachers assigned to these courses shall participate in Texas Education Agency-approved training prior to teaching these courses effective with the 2018-2019 school year. Specific details about the required training can be found at tea.texas.gov/cte.

§231.575. Engineering Design and Problem Solving, Grades 9-12.
(a) Subject to the requirements in subsection (b) of this section, an assignment for Engineering Design and Problem Solving, Grades 9-12, is allowed with one of the following certificates.

1. Master Science Teacher (Grades 8-12).
4. Physical Science: Grades 6-12.
5. Physical Science: Grades 8-12.
8. Science: Grades 7-12.
11. Secondary Industrial Arts (Grades 6-12).
12. Secondary Industrial Technology (Grades 6-12).
13. Secondary Physics (Grades 6-12).
15. Secondary Science, Composite (Grades 6-12).
16. Technology Education: Grades 6-12.

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2013-2014 school year. Specific details about the required training can be found at tea.texas.gov/cte.

§231.577. Scientific Research and Design, Grades 9-12.

(a) Subject to the requirements in subsection (b) of this section, an assignment for Scientific Research and Design, Grades 9-12, is allowed with one of the following certificates.

1. Any vocational or career and technical education classroom teaching certificate with a bachelor's degree and 18 semester credit hours in any combination of sciences.
2. Any science certificate valid for the grade level of the assignment.
3. Master Science Teacher (Grades 8-12).
5. Physical Science: Grades 6-12.
6. Physical Science: Grades 8-12.
7. Physics/Mathematics: Grades 7-12.
10. Science: Grades 8-12.
12. Secondary Industrial Arts (Grades 6-12).
13. Secondary Industrial Technology (Grades 6-12).
14. Secondary Physics (Grades 6-12).
15. Secondary Science (Grades 6-12).
16. Technology Education: Grades 6-12.

(b) All teachers assigned to this course shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2018-2019 school year. Specific details about the required training can be found at tea.texas.gov/cte.


(a) Subject to the requirements in subsection (b) of this section, an assignment for Principles of Engineering Science, Grades 9-12, is allowed with one of the following certificates.

1. Master Science Teacher (Grades 8-12).
4. Physical Science: Grades 6-12.
5. Physical Science: Grades 8-12.
8. Science: Grades 7-12.
11. Secondary Industrial Arts (Grades 6-12).
12. Secondary Industrial Technology (Grades 6-12).
13. Secondary Physics (Grades 6-12).
15. Secondary Science, Composite (Grades 6-12).
16. Technology Education: Grades 6-12.

(b) All teachers assigned to Principles of Engineering Science shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2018-2019 school year. Specific details about the required training can be found at tea.texas.gov/cte.

§231.581. Digital Electronics, Grades 9-12.

(a) Subject to the requirements in subsection (b) of this section, an assignment for Digital Electronics, Grades 9-12, is allowed with one of the following certificates.

1. Master Mathematics Teacher (Grades 8-12).
4. Physics/Mathematics: Grades 7-12.
5. Physics/Mathematics: Grades 8-12.
7. Secondary Industrial Arts (Grades 6-12).
8. Secondary Industrial Technology (Grades 6-12).
9. Secondary Mathematics (Grades 6-12).
10. Technology Education: Grades 6-12.

(b) All teachers assigned to Digital Electronics shall participate in Texas Education Agency-approved training prior to teaching this course effective with the 2018-2019 school year. Specific details about the required training can be found at tea.texas.gov/cte.

§231.583. Robotics I, Grades 9-12.

An assignment for Robotics I, Grades 9-12, is allowed with one of the following certificates.

1. Mathematics/Physical Science/Engineering: Grades 6-12.
Secondary Industrial Arts (Grades 6-12).
Secondary Industrial Technology (Grades 6-12).
Technology Applications: Early Childhood-Grade 12.
Technology Applications: Grades 8-12.
Technology Education: Grades 6-12.
Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
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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DIVISION 25. TRANSPORTATION, DISTRIBUTION, AND LOGISTICS, GRADES 9-12 ASSIGNMENTS
19 TAC §231.591, §231.595

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §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; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.591. Transportation, Distribution, and Logistics, Grades 9-12.

(a) An assignment for Energy, Power, and Transportation Systems; Aircraft Airframe Technology; Aircraft Powerplant Technology; Automotive Basics; Automotive Technology I: Maintenance and Light Repair; Automotive Technology II: Automotive Service; Advanced Transportation Systems Laboratory: Basic Collision Repair and Refinishing; Collision Repair; Paint and Refinishing; Diesel Equipment Technology I; Diesel Equipment Technology II; Introduction to Aircraft Technology; Principles of Distribution and Logistics; Principles of Transportation Systems; Introduction to Transportation Technology; or Management of Transportation Systems [Logistics, Planning, and Management Systems; Principles of Transportation, Distribution, and Logistics; or Transportation Systems Management], 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.
5. Trade and Industrial Education: Grades 8-12.
6. Vocational Trades and Industry. This assignment requires appropriate work approval.
7. Vocational Trades and Industry. This assignment requires appropriate work approval.
8. Vocational Trades and Industry. This assignment requires appropriate work approval.
9. Subject to the requirements in subsection (c) of this section, an assignment for Practicum in Transportation Systems, Extended Practicum in Transportation Systems, Practicum in Distribution and Logistics, or Extended Practicum in Distribution and Logistics, Grades 9-12, is allowed with one of the following certificates.

10. Secondary Industrial Arts (Grades 6-12).
11. Secondary Industrial Technology (Grades 6-12).
12. Technology Education: Grades 6-12.
13. Trade and Industrial Education: Grades 6-12. This assignment requires appropriate work approval.
14. Trade and Industrial Education: Grades 8-12. This assignment requires appropriate work approval.
15. Vocational Trades and Industry. This assignment requires appropriate work approval.

(b) The school district is responsible for ensuring that each teacher assigned to Practicum in Transportation Systems, Extended Practicum in Transportation Systems, Practicum in Distribution and Logistics, or Extended Practicum in Distribution and Logistics, Grades 9-12, has completed appropriate training in state and federal requirements regarding work-based learning and safety [the content for this course].

§231.595. Small Engine Technology, Grades 9-12.

An assignment for Small Engine Technology I or [Advanced] Small Engine Technology II, Grades 9-12, is allowed with one of the following certificates.

1. Agriculture, Food, and Natural Resources: Grades 6-12.
2. Agricultural Science and Technology: Grades 6-12.
3. Any vocational agriculture certificate.
4. Secondary Industrial Arts (Grades 6-12).
5. Secondary Industrial Technology (Grades 6-12).
6. Technology Education: Grades 6-12.
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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19 TAC §231.593

STATUTORY AUTHORITY. The repeal is proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostian, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031(a), which states that the SBEC shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates.

CROSS REFERENCE TO STATUTE. The repeal implements the Texas Education Code, §§21.003(a), 21.031(a), and 21.041(b)(1) and (2).

§231.593. Aircraft Technology, Automotive Technology, or Collision Repair and Refinishing, Grades 9-12.

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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CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

SUBCHAPTER A. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

19 TAC §232.11

The State Board for Educator Certification (SBEC) proposes an amendment to §232.11, concerning certificate renewal and continuing professional education requirements. The proposed amendment would implement changes resulting from the 85th Texas Legislature, Regular Session, 2017, and would add several topics to the continuing professional education (CPE) requirements for all educators, including classroom teachers and principals.

19 TAC Chapter 232, General Certification Provisions, establishes the renewal requirements relating to types and classes of certificates issued, CPE hours to be completed, and the national criminal history record information review. Classroom teachers are required to participate in 150 hours of CPE activities every five years to maintain their standard certificates. Principals are required to participate in 200 hours of CPE activities every five years to maintain their standard certificates. Educators are required to maintain evidence of their CPE activities. When an educator applies to renew his or her certificate, he or she must verify through an affidavit whether he or she is in compliance with renewal requirements, including CPE activities. When an educator is selected for a CPE audit, the educator must provide Texas Education Agency (TEA) staff with documentation that supports certificate renewal.

The proposed amendment to 19 TAC §232.11 would add several topics to the CPE requirements for all educators, including classroom teachers and principals. The proposed changes are designed to fulfill the new statutory requirements required by recent legislation from the 85th Texas Legislature, Regular Session, 2017.

Proposed changes to subsection (c)(4)(C) and (5)(C) would include CPE requirements for classroom teachers and principals that were added by the TEC, §21.054, as amended by Senate Bill (SB) 1839, 85th Texas Legislature, Regular Session, 2017. These changes would require CPE activities regarding digital learning, digital teaching, and integrating technology into classroom instruction (for classroom teachers) and into campus curriculum and instruction (for principals) for the renewal of a standard classroom teacher or principal certificate. Up to 25% of the CPE activities required to renew a standard classroom teacher or principal certificate may include instruction on these topics.

Proposed new subsection (c)(4)(E) would include CPE requirements for classroom teachers that were added by the TEC, §21.054, as amended by SB 7, 85th Texas Legislature, Regular Session, 2017. This new subsection would require CPE activities regarding understanding appropriate relationships, boundaries, and communications between educators and students to renew a standard classroom teacher certificate. Up to 25% of the CPE activities required to renew a standard classroom teacher certificate may include instruction on these topics.

Proposed new subsection (c)(5)(E) would include CPE requirements for principals that were added by the TEC, §21.054, as amended by SB 7, 85th Texas Legislature, Regular Session, 2017. This new subsection would require CPE activities regarding preventing, recognizing, and reporting sexual conduct between an educator and student to renew a standard principal certificate. Up to 25% of the CPE activities required to renew a standard principal certificate may include instruction on these topics.

Proposed new subsection (j) would include CPE requirements for classroom teachers and principals that were added by the TEC, §21.054, as amended by SB 179, 85th Texas Legislature, Regular Session, 2017. This new subsection would allow
CPE requirements for classroom teachers and principals to include instruction regarding how grief and trauma affect student learning and behavior and how evidence-based, grief-informed, and trauma-informed strategies support the academic success of students affected by grief and trauma.

Proposed new subsection (k)(1) would include CPE requirements for all certificate classes that were added by the TEC, §21.0543, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017. This new subsection would allow an educator to receive credit toward CPE requirements for completion of education courses that use technology to increase the educator’s digital literacy. Proposed new subsection (k)(2) would include CPE requirements for all certificate classes that were added by the TEC, §21.0543, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017. This new subsection would allow an educator to receive credit toward CPE requirements for completion of education courses that assist the educator in the use of digital technology in learning activities that improve teaching, assessment, and instructional practices.

The proposed amendment to 19 TAC §232.11 would also include technical edits to conform with Texas Register style and formatting requirements.

The proposed amendment would have no additional procedural and reporting implications. The proposed amendment 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 amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment. There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. The proposed amendment does not impose a cost on regulated persons and, therefore, is not subject to Texas Government Code, §2001.0045.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin 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 would be clarified certificate renewal requirements relating to the content of the required CPE hours. 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 BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins September 1, 2017, and ends October 2, 2017. The SBEC will take registered oral and written comments on the proposed amendment at the October 6, 2017, meeting in accordance with the SBEC board operating policies and procedures. All requests for a public hearing on the proposed amendment 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 September 1, 2017.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.0031(f), which clarifies and places certain limits on provisions authorizing termination of an educator’s contract for failure to maintain a valid certificate; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(4), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(9), which requires the SBEC to propose rules that provide for continuing education requirements; TEC, §21.0543, as added by SB 1839, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to propose rules that provide for CPE credit related to digital technology instruction; TEC, §21.054, as amended by SB 7, SB 179, and SB 1839, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to propose rules establishing a process for identifying continuing education courses and programs that fulfill educators’ continuing education requirements.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code (TEC), §§21.003(a); 21.0031(f); 21.031; 21.041(b)(4), (4), and (9); 21.0543, as added by Senate Bill (SB) 1839, 85th Texas Legislature, Regular Session, 2017; and TEC, §21.054, as amended by SB 7, SB 179, and SB 1839, 85th Texas Legislature, Regular Session, 2017.

§232.11. Number and Content of Required Continuing Professional Education Hours.
(a) The appropriate number of clock-hours of continuing professional education (CPE), as specified in §232.13 of this title (relating to Number of Required Continuing Professional Education Hours by Classes of Certificates), must be completed during each five-year renewal period.

(b) One semester credit hour earned at an accredited institution of higher education is equivalent to 15 CPE clock-hours.

(c) At least 80% of the CPE activities shall be directly related to the certificate(s) being renewed and focus on the standards required for the initial issuance of the certificate(s), including:

(1) content area knowledge and skills;
(2) professional ethics and standards of conduct;
(3) professional development, which should encompass topics such as the following:

(A) district and campus priorities and objectives;
(B) child development, including research on how children learn;
(C) classroom management;
(D) applicable federal and state laws;
(E) diversity and special needs of student populations;
(F) increasing and maintaining parental involvement;
(G) integration of technology into educational practices;
(H) ensuring that students read on or above grade level;
(I) diagnosing and removing obstacles to student achievement; and
(J) instructional practices.

(4) Not more than 25% of the CPE activities for a classroom teacher shall include instruction regarding:

(A) collecting and analyzing information that will improve effectiveness in the classroom;
(B) recognizing early warning indicators that a student may be at risk of dropping out of school;
(C) digital learning, digital teaching, and integrating technology into classroom instruction; and
(D) educating diverse student populations, including:
   (i) students with disabilities, including mental health disorders;
   (ii) students who are educationally disadvantaged;
   (iii) students of limited English proficiency; and
   (iv) students at risk of dropping out of school; and[
(E) understanding appropriate relationships, boundaries, and communications between educators and students.

(5) Not more than 25% of the CPE activities for a principal shall include instruction regarding:

(A) effective and efficient management, including:
   (i) collecting and analyzing information;
   (ii) making decisions and managing time; and
   (iii) supervising student discipline and managing behavior;
(B) recognizing early warning indicators that a student may be at risk of dropping out of school;
(C) digital learning, digital teaching, and integrating technology into campus curriculum and instruction; and
(D) educating diverse student populations, including:
   (i) students with disabilities, including mental health disorders;
   (ii) students who are educationally disadvantaged;
   (iii) students of limited English proficiency; and
   (iv) students at risk of dropping out of school; and[
(E) preventing, recognizing, and reporting any sexual conduct between an educator and student that is prohibited under the Texas Penal Code, §21.12, or for which reporting is required under the Texas Education Code (TEC), §21.006.

(6) Not more than 25% of the CPE activities for a school counselor shall include instruction regarding:

(A) assisting students in developing high school graduation plans;
(B) implementing dropout prevention strategies; and
(C) informing students concerning:
   (i) college admissions, including college financial aid resources and application procedures; and
   (ii) career opportunities.

(d) Educators are encouraged to identify CPE activities based on results of his or her annual appraisal required under the TEC [Texas Education Code], Chapter 21, Subchapter H.

(e) The required CPE for educators who teach students with dyslexia must include training regarding new research and practices in educating students with dyslexia. The required training may be satisfied through an online course approved by Texas Education Agency staff.

(f) An educator eligible to renew multiple classes of certificates issued during the same renewal period may satisfy the requirements specified in §232.13 of this title for any class of certificate issued for less than the full five-year period by completing a prorated number of the required CPE clock-hours. Educators must complete a minimum of one-fifth of the additional CPE clock-hours for each full calendar year that the additional class of certificate is valid.

(g) An educator may fulfill up to 12 clock-hours of required CPE activities by participating in a mental health first aid training program offered by a local mental health authority under the Texas Health and Safety Code, §1001.203. The number of clock-hours of CPE an educator may fulfill under this subsection may not exceed the number of clock-hours the educator actually spends participating in a mental health first aid training program.

(h) An educator may receive credit toward CPE requirements for completion of an instructional course on the use of an automated external defibrillator (AED) that meets the guidelines for AED training approved under Texas Health and Safety Code, §779.002, in accordance with the TEC [Texas Education Code (TEC)], §21.0541.

(i) An educator may receive credit toward CPE requirements for completion of suicide prevention training that meets the guidelines for suicide prevention training approved under the TEC, §21.451.

(j) Continuing education requirements for a classroom teacher and principal may include instruction regarding how grief and trauma affect student learning and behavior and how evidence-based, grief-informed, and trauma-informed strategies support the academic success of students affected by grief and trauma.

(k) An educator may receive credit toward CPE requirements for completion of education courses that:
   (1) use technology to increase the educator's digital literacy; and
   (2) assist the educator in the use of digital technology in learning activities that improve teaching, assessment, and instructional practices.

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

Filed with the Office of the Secretary of State on August 21, 2017. TRD-201703222

PROPOSED RULES September 1, 2017 42 TexReg 4427
CHAPTER 234. MILITARY SERVICE MEMBERS, MILITARY SPOUSES, AND MILITARY VETERANS

19 TAC §234.5, §234.7

The State Board for Educator Certification (SBEC) proposes amendments to §234.5 and §234.7, concerning military service members, military spouses, and military veterans. The proposed amendments would implement the requirement from the 85th Texas Legislature, Regular Session, 2017, to extend a temporary certificate for military spouses to three years and also provide clarification of renewal requirements for military service members, military spouses, and military veterans.

19 TAC Chapter 234 consolidates all military-related provisions into one chapter and streamlines future military-related rulemaking opportunities. The 84th Texas Legislature, Regular Session, 2015, passed Senate Bill (SB) 807, requiring all state licensing agencies to adopt rules that implement the requirements of the Texas Occupations Code (TOC), Chapter 55, regarding the licensing of military service members, military spouses, and military veterans and the waiving of licensing and application fees paid to the state. The 84th Texas Legislature also passed SB 1307, providing clarification to definitions of military spouses and military veterans in key sections of the TOC, allowing for the adoption of rules to establish alternative methods for military groups to meet requirements for licensure, granting the executive director of a state agency authority to review applicant credentials and waive requirements for licensure, and incorporating the use of verified military service to satisfy apprenticeship requirements for licensure.

In addition, the 84th Texas Legislature passed House Bill (HB) 2014, allowing military service members seeking certification in career and technical education to substitute experience in a particular trade for the license or professional credential in the specific trade.

Staff developed and launched a Military Community webpage on the Texas Education Agency (TEA) website effective September 1, 2015, to assist eligible military service members, military spouses, and military veterans with creating online educator accounts and submitting military exemption requests accompanied by the required documentation to qualify for fee exemptions from applicable certification applications and testing fees paid to the state.

Since September 1, 2015, procedures have been in place to allow members of the military community to securely upload documents for review by TEA staff to confirm their status to qualify for legislatively mandated fee exemptions as one of the following:

- Active duty service member—verified by providing a copy (front and back) of the military ID and current state ID.
- Veteran—verified by providing a copy of the current state ID and a DD-214 (member-4) that shows release or separation from active duty was under honorable conditions.
- Military spouse of active duty service member—verified by providing a copy of the spouse's current state and military ID (front and back), the active duty service member's current state and military ID (front and back), and a copy of the marriage license.

Certification applications for members of the military community are placed in a specific queue for expedited processing. Upon receipt of all required information and materials, military community member applications are usually processed within 5 to 10 business days and email notifications are sent to provide a timely update on the status of the request. Processing timeframes may vary slightly during the division's peak summer season.

During the first year of implementation (2015-2016), 302 requests were submitted from potential members of the military community. 283 of those met the requirements to qualify for fee exemptions for certification applications and testing fees. Those fee exemptions saved the military community approximately $43,980.

As of June 22, 2017 of the current year of implementation (2016-2017), there have been 314 requests submitted and 299 of those were approved. To date, fee exemptions have saved the military community approximately $35,468.

The 85th Texas Legislature, Regular Session, 2017, passed HB 1934, which requires the SBEC to establish procedures for identifying and expediting processing of applications from spouses of active duty military service members of the armed forces of the United States. This provision is already in current 19 TAC §234.5(a) and (b), therefore, no rule changes are required to implement this legislative mandate. Effective September 1, 2017, the legislation also requires issuance of a three-year temporary certificate to all eligible military spouses.

Following is a description of the proposed amendments to 19 TAC Chapter 234.

§234.5. Certification of Military Service Members, Military Spouses, and Military Veterans

In subsection (b), the limitation on terms of extensions of one-year certificates issued to military spouses would be removed to comply with HB 1934, 85th Texas Legislature, Regular Session, 2017.

Proposed new subsection (c) would include language to support the extension of one-year certificates of military spouses whose certification applications were processed prior to the September 1, 2017 effective date of HB 1934 and clarify that military spouses are eligible for a maximum of two additional years from the date of issuance to allow them the same opportunity to have three years on a temporary certificate in Texas.

Proposed new subsection (d) would include language to support issuance of a three-year certificate to military spouses who meet requirements for a credentials review. This new subsection would align with the September 1, 2017 effective date specified in HB 1934.

In re-lettered subsection (j), the term military spouses would be removed and included in new subsection (k) to create a new provision to comply with HB 1934 that would issue a three-year temporary certificate to military spouses. Provisions for certification and test fee exemptions authorized by the 84th Texas Legislature in 2015 remain in rule.

All remaining subsections, originally lettered as subsections (c)-(h), would be re-lettered to subsections (e)-(j).
§234.7. Renewal and Continuing Education Requirements for Military Service Members

The title of 19 TAC §234.7 would be updated to add military spouses and military veterans to reflect that this section applies to all of the military community.

Proposed new subsection (a) would provide a clarifying reference to the renewal requirements in 19 TAC Chapter 232, General Certification Provisions, for military service members, military spouses, and military veterans who hold a standard certificate.

The remaining subsections, originally lettered as subsections (a) and (b), would be re-lettered to subsections (b) and (c). The proposed amendments would have no procedural and reporting implications. 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 amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments. There is no effect on local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. The proposed amendments do not impose a cost on regulated persons and, therefore, are not subject to Texas Government Code, §2001.0045.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments would be continuing support to members of the military community, with special provisions to allow military spouses of active duty members to use a three-year temporary credential to maintain employment in Texas. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins September 1, 2017, and ends October 2, 2017. The SBEC will take registered oral and written comments on the proposed amendments at the October 6, 2017 meeting in accordance with the SBEC board operating policies and procedures. 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 September 1, 2017.

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §21.041(b)(2), which requires the State Board for Educator Certification (SBEC) to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.052(b-1), as amended by House Bill (HB) 1934, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to establish procedures to accurately identify military spouses and expedite processing of certification applications that they submit; TEC, §21.052(c), as amended by HB 1934, 85th Texas Legislature, Regular Session, 2017, which states that the SBEC can specify the term of a temporary certificate issued under this subsection; TEC, §21.052(d-1), as amended by HB 1934, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to issue a three-year temporary certificate to eligible military spouses of active duty service members; and Texas Occupations Code (TOC), §55.001, which defines key terms and identifies the individuals relevant to the processing and support of members of the military community; TOC, §55.002, which provides clarification and guidelines for implementing fee exemptions for members of the military community; TOC, §55.003, which states military service members are eligible to receive a two-year extension of time to complete requirements for license renewal; TOC, §55.004, which states agencies adopt rules for issuance of licensure to members of the military community and also provides alternatives to become eligible for licensure; TOC, §55.005, which requires state agencies to establish a process to expedite applications for licensure submitted by members of the military community; TOC, §55.006, which requires state agencies to determine renewal requirements for expedited licenses issued to members of the military community; TOC, §55.007, which provides state agencies authority to credit verified military service, training, or education toward licensing requirements; TOC, §55.008, which authorizes state agencies to credit verified relevant military service, training, or education relevant to the occupation toward the apprenticeship requirements for licensure; and TOC, §55.009, which confirms state agencies that issue licensure shall waive license application and examination fees paid to the state for applicable members of the military community.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §§21.041(b)(2) and (4); 21.044(a); and 21.052(b-1), (c), and (d-1), as amended by House Bill 1934, 85th Texas Legislature, Regular Session, 2017; and Texas Occupations Code, §§55.001, 55.002, 55.003, 55.004, 55.005, 55.006, 55.007, 55.008, and 55.009.

§234.5. Certification of Military Service Members, Military Spouses, and Military Veterans.

(a) The application for certification of a military service member, military veteran, or military spouse, including an application based upon certification by a jurisdiction other than Texas that has certification requirements substantially similar to the Texas certification requirements, shall be processed as soon as practicable.

(b) As soon as practicable after the issuance of a one-year certificate, Texas Education Agency (TEA) staff shall notify, in writing or by email, a military spouse of the requirements for obtaining a standard Texas certificate. [A military spouse whose active duty spouse has been reassigned to another state during the validity period of the first one-year certificate would be eligible for a second one-year certificate.]

(c) A military spouse who has been issued a one-year certificate prior to September 1, 2017, under the provisions of this chapter,
is eligible for two additional years from the date of issuance, not to exceed a total of three years maximum, to align with provisions for a military spouse referenced in subsection (d) of this section.

(d) Effective September 1, 2017, a military spouse shall be issued a three-year temporary certificate upon completion of the review of credentials.

(e) The standard Texas certificate of a military service member, military spouse, or military veteran may be renewed if that certificate has expired within five years preceding the Texas application date.

(f) A military service member or a military veteran shall be entitled to credit verified military service, training, or education toward the training, education, work experience, or related requirements (other than certification examinations) for educator certification. TEA staff and educator preparation programs (EPPs) shall use information from the U.S. Department of Veterans Affairs or other reliable sources to assist in crediting applicable military service, training, or education to certification requirements.

(g) A military service member pursuing certification in career and technical education must meet requirements for the certificate, but for career and technical education certificate areas requiring experience and licensure, the military service member shall be entitled to substitute military experience in the trade for the required license or professional credential for the specific trade.

(h) A military service member, military spouse, and military veteran shall complete educator examination requirements for certificate issuance as outlined in Texas Education Code, Chapter 21, Subchapter B, and rules in the Texas Administrative Code, Title 19, Part 7.

(i) Military service members and military veterans are exempt from certification application fees that are paid to the state that lead to initial certification. These members of the military community are exempt from paying the portion of the examination registration fee that is paid to the TEA.

(j) Military service members and military veterans are exempt from certification application fees that are paid to the state that lead to initial certification resulting from a review of credentials, one-year certificate, or out-of-state standard certificate. These members of the military community are exempt from paying the portion of the examination registration fee that is paid to the TEA.

§234.7. Renewal and Continuing Education Requirements for Military Service Members, Military Spouses, and Military Veterans.

(a) Military service members, military spouses, and military veterans who hold a standard certificate(s) are responsible for certificate renewal and continuing professional education requirements pursuant to Chapter 232 of this title (relating to General Certification Provisions), except where specified in this chapter.

(b) A military service member shall be exempt from any fee or penalty for failing to timely renew his or her Texas educator certificate if the delay occurred because the educator was serving as a military service member.

(c) A military service member is entitled to two years of additional time to complete all continuing education requirements and any other requirements relating to the renewal of his or her Texas educator certificate.

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

Filed with the Office of the Secretary of State on August 21, 2017.

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Earliest possible date of adoption: October 1, 2017
For further information, please call: (512) 475-1497

CHAPTER 239. STUDENT SERVICES CERTIFICATES

The State Board for Educator Certification (SBEC) proposes amendments to §§239.1, 239.10, 239.15, 239.20, 239.25, 239.80, and 239.82-239.85; new §239.30 and §239.86; and the repeal of §239.30 and §239.86, concerning student services certificates. The proposed revisions would update the requirements for the minimum admission, preparation, standards, certificate issuance, and renewal for the School Counselor and Educational Diagnostician certificates. The proposed revisions reflect feedback provided by the SBEC-appointed advisory committees for the School Counselor Certificate and Educational Diagnostician Certificate.


The SBEC-appointed advisory committees for the School Counselor Certificate and Educational Diagnostician Certificate were convened to provide feedback on the current rules and processes related to preparation, testing, certification, and renewal for both certificate areas. Texas Education Agency (TEA) staff updated the SBEC on the activities completed by both advisory committees and provided a high-level overview of key issues relevant to each certificate as part of the discussion item on the March 3, 2017 SBEC meeting agenda. TEA staff presented proposed changes to 19 TAC Chapter 239, Subchapters A and C, as part of the discussion item on the June 9, 2017, SBEC meeting agenda.

Following is a description of the proposed revisions that reflects feedback from the SBEC-appointed advisory committees for the School Counselor Certificate and Educational Diagnostician Certificate.

Subchapter A. School Counselor Certificate

§239.1. General Provisions

The proposed amendment to 19 TAC §239.1(a) would update the language to more fully reflect the scope of preparation required of candidates seeking the School Counselor certificate. The proposed amendment to subsection (b) would specify the expectation that individuals certified as a School Counselor,
Grades EC-12, will participate in counseling-related professional development activities as a way to remain current with best practices and procedures for school counseling and in developing quality, comprehensive school counseling programs. The proposed amendment to subsection (c) would provide additional confirmation that individuals with this certificate are appropriately licensed to provide counseling services to all students in Prekindergarten to Grade 12.

§239.10. Preparation Program Requirements

The proposed amendment to 19 TAC §239.10(a) would update the language to further emphasize the importance of having structured, field-based training experiences in an actual school setting but remove the reference to "campuses" to acknowledge that serving in the role of school counselor within several campus settings is not always possible for each certification candidate. The proposed change to subsection (b) would remove the phrase "and/or experience" directly related to the standards as an option for substituting preparation coursework and other requirements leading to issuance of the school counselor certificate to further emphasize the important role of training through an educator preparation program to ensure successful entry and retention in the critical role of school counselor. Proposed new subsection (c) would specify that educator preparation programs must incorporate processes to ensure certification candidates can understand and implement The Texas Model for Comprehensive School Counseling Programs, which aligns with provisions in the TEC, Chapter 33, Subchapter A, School Counselors and Counseling Programs, and serves as a model for school counselors and school counseling programs across the state.

§239.15. Standards Required for the School Counselor Certificate

Under Standard I, Learner-Centered Knowledge, the proposed amendment to 19 TAC §239.15(b)(1) would update the language to ensure that preparation programs and certification candidates share a common understanding of the thoughts and beliefs that have guided the role of the school counselor and school counseling programs over the years. Proposed new subsection (b)(4) would add an emphasis on the role of college and career readiness standards and the ability of the school counselor to infuse these important knowledge and skills into his or her interactions with students as they explore postsecondary options. With the addition of proposed new subsection (b)(4), the subsequent paragraphs would be renumbered accordingly.

The proposed change to subsection (b)(5) would add "test interpretation" to the list of key assessment principles and procedures important to a school counselor's repertoire to further emphasize the importance of understanding test results and using them effectively to assess and address student needs. The proposed change to subsection (b)(7) would update the language to highlight the various phases of learners' development and would allow the rules to further confirm importance of the breadth and depth of the counseling programs. The proposed change to subsection (b)(9) would update the language to stress the importance of conducting oneself in an ethical manner. The proposed change to subsection (b)(11) would reflect more current and expansive language. The proposed change to subsection (b)(12) would reflect the more current reference to the counseling program and refer to the Texas College and Career Readiness Standards as important components to be blended together with academic curricula to ensure the best preparation for all students. The proposed change to subsection (b)(13) would update the language to better express that the counselor is instrumental in ensuring the comprehensiveness of the school counseling program and its ability to be responsive to the needs of all students.

Proposed new subsection (b)(15)-(19) would expand the list of skills and abilities required of an effective school counselor. These proposed additions would further emphasize the importance of solid preparation to effectively step into the role of school counselor and would address the importance of developing and teaching best practices related to leadership skills. The proposed additions would also focus on the impact that cultural factors and group membership can have on students; stipulate a necessary understanding of the comprehensive school counseling program model; emphasize the importance and use of technology in its various forms and the personal and professional harm of technology misuse; and highlight the importance of understanding systems, with a special emphasis on family dynamics and school environments.

Under Standard II, Learner-Centered Skills, reference to The Texas Model for Comprehensive School Counseling Programs would be included to confirm the important role of this key Texas document and its necessary use in all educator preparation programs. The proposed change to subsection (c)(2) would incorporate updated terminology and add reference to The Texas Model for Comprehensive School Counseling Programs to further confirm the important role of this Texas-specific document to the development and maintenance of a successful school counseling program. The proposed change to subsection (c)(5) would emphasize the important, proactive role of the school counselor in making referrals and following up on his or her effectiveness relating to student needs within the school and community. The proposed change to subsection (c)(8) would highlight the importance of a school counselor taking time to complete a thorough assessment of student needs not only relating to assessment data but also to ensure there is sufficient information available to make informed and effective decisions on the best ways to support that student in any other critical needs areas. The proposed change to subsection (c)(9) would update the types of practices that should be used to address student needs. The proposed change to subsection (c)(10) would incorporate current terminology for school counseling programs.

Proposed new subsection (c)(11) would address the school counselor's role in facilitating learners' ability to achieve their potential. Proposed new subsection (c)(12) would highlight the importance of the school counselor remaining proficient in counseling and campus-related technology to ensure that he or she is readily equipped with the latest tools and technology to successfully address and support the various needs of learners. Proposed new subsection (c)(13) would add a reference to the use of various resources to counsel students about postsecondary college and career readiness opportunities to ensure the school counselor remains knowledgeable about numerous options available and can craft guidance that meets the needs of each learner.

Under Standard III, Learner-Centered Process, the proposed amendment to subsection (d) would emphasize the importance of revising the school counseling program as needed to strengthen the overall program and ensure that it is meeting the needs of all learners and would add reference to The Texas Model for Comprehensive School Counseling Programs to confirm the importance of using the state's model for school counseling programs. The proposed amendment to subsection (d)(2) would clarify the distinction between personal and social
goals. The proposed amendment to subsection (d)(5) would accurately reflect the school counselor's role as a consultant to help learners achieve success inside and outside of school.

Proposed new subsection (d)(6)-(13) would emphasize the school counselor's role as advocate for a comprehensive school counseling program that involves the school and community and utilizes resources within and beyond classrooms to implement and maintain a successful school counseling program that supports all learners, as well as elaborate on the school counselor's extensive role in leading and promoting an effective school counseling program that involves all members of the school community. Proposed new subsection (d)(14) would encourage the school counselor to develop practices to promote learners' knowledge about college and career readiness processes necessary to pursue postsecondary opportunities.

Under Standard IV, Learner-Centered Equity and Excellence for All Learners, the proposed changes to subsection (e)(1)-(3) would update language to reflect the importance of the school counselor to create and maintain a positive school environment that is inclusive of and responsive to all learners.

Proposed new subsection (e)(4)-(9) would specify the need for school counselors to build on commonalities versus differences in all learners; understand the impact of environment and behavior on individual learners; ensure equitable access to programs and services for all students; understand how family values, group membership, and culture intersect; acknowledge learners' gifts, strengths, and extracurricular talents when considering programs and services; and increase students' awareness and include their voice regarding educational and individualized plans as this type of environment affords every learner an opportunity for growth and success. Proposed new subsection (e)(10) would emphasize the important role of the school counselor in ensuring all students and their parents/guardians have equitable access to information about postsecondary opportunities and use available resources to become college and career ready.

Under Standard V, Learner-Centered Communications, proposed new subsection (f)(9)-(11) would be added to illustrate the school counselor's opportunity to take a positive, strength-based approach to the development of a school counseling program that verbalizes commonalities versus differences in all learners; highlight the importance of effectively communicating the school counselor's roles and responsibilities to all stakeholders; and emphasize the need for school counselors to adhere to best practices connected to ethical and legal considerations related to appropriate use of technology and email, documentation, record keeping, privileged communication, and informed consent process as these are all principles that align with the statewide model for school counseling programs. Proposed new subsection (f)(12) would highlight the role of the school counselor in facilitating learners' and parent/guardians' access to school and community resources related to postsecondary opportunities and college and career readiness.

Under Standard VI, Learner-Centered Professional Development, the proposed changes to subsection (g)(5) and (6) would show the importance of school counselors engaging in active professional development on a regular basis, as well as the important role of professional development in a school counselor's ability to increase college and career readiness and the promotion of postsecondary opportunities and preparation for all learners.

§239.20. Requirements for the Issuance of the Standard School Counselor Certificate

The proposed amendment to 19 TAC §239.20(3) would change the minimum degree requirement for issuance of the School Counselor Certificate from a master's degree to a 48-hour master's degree in counseling. TEA staff discussed this suggested change with the Board during the June 9, 2017 SBEC meeting and explained that this was the more rigorous of the two options discussed with the advisory committee. Staff also shared that while all members of the advisory committee agreed on the importance of strong preparation to become certified as a school counselor, several members also supported use of an already established master's degree to meet one of the requirements for issuance of the standard certificate. Based on the Board's discussion in June, TEA staff retained the requirement of a 48-hour master's degree in counseling as part of the proposed amendment.

§239.25. Requirements to Renew the Standard School Counselor Certificate

The proposed amendment to 19 TAC §239.25 would remove outdated references to renewal requirements for certificates issued from September 1, 1999, to August 31, 2000, and would add language to confirm it is necessary for individuals issued the standard school counselor certificate to comply with renewal requirements in place for the certificate. A technical edit would also be made to update a cross reference.

§239.30. Transition and Implementation Dates

Section 239.30 would be repealed to remove outdated language, and new §239.30 would be proposed to include an implementation date of September 1, 2018, for the proposed changes to apply to candidates being admitted into an approved Texas educator preparation program for the School Counselor Certificate. The title of proposed new §239.30 would be updated to clearly reflect the contents of the section.

Subchapter C. Educational Diagnostician Certificate

§239.80. General Provisions

The proposed amendment to 19 TAC §239.80(b) would update the language to emphasize the importance of the educational diagnostician remaining current in the area of assessment as it has a direct impact on student learning. The proposed amendment to subsection (c) would more accurately reflect the student grade range served by educational diagnosticians.

§239.82. Preparation Program Requirements

The proposed amendment to 19 TAC §239.82(b) would allow flexibility in educator preparation program design.

§239.83. Standards Required for the Educational Diagnostician Certificate

The proposed changes to 19 TAC §239.83(b)-(k) would remove the word "beginning" from every reference to the educational diagnostician since the standards apply to all educational diagnosticians and not just individuals entering the profession upon completion of a preparation program and issuance of certification.

Under Standard I, the proposed amendment to subsection (b)(1)(D) would specify that an educational diagnostician knows and understands the importance and impact of placement of special education students in the least restrictive environment.
Under Standard IV, the proposed amendment to subsection (e)(1)(A) would specify that an educational diagnostician knows and understands placement of individual students in the least restrictive environment, and the proposed amendment to subsection (e)(2)(A) would specify that an educational diagnostician is able to establish measurable annual goals and objectives.

Under Standard VI, the proposed amendment to subsection (g)(1)(I) would add the response to intervention or RTI to further explain what is meant by use of the term prereferral, and the proposed amendment to subsection (g)(1)(L) would add "transition" to the examples of methods of academic and nonacademic assessment and evaluation.

Under Standard VII, the proposed amendment to subsection (h)(1)(D) would specify that an educational diagnostician knows and understands the ways in which native language may affect evaluation.

Under Standard IX, the proposed amendment to subsection (j)(1)(A) would add language to emphasize the type of support that will have the most appropriate impact on student behavior.

Under Standard X, the proposed amendment to subsection (k)(1)(D) would update language to show the need for the educational diagnostician to be able to distinguish between techniques and apply them as necessary to positively impact student living.

§239.84. Requirements for the Issuance of the Standard Educational Diagnostician Certificate

The proposed amendment to 19 TAC §239.84(5) would change the required number of creditable years of teaching experience as a classroom teacher from two to three years. The committee was unanimous in favor of this recommendation and felt that returning to three years of experience would allow the individual interested in pursuing the educational diagnostician certificate to gain a much-needed additional year in the classroom before becoming an educational diagnostician.

§239.85. Requirements to Renew the Standard Educational Diagnostician Certificate

Technical edits would be made to update cross references.

§239.86. Transition and Implementation Dates

Section 239.86 would be repealed to remove outdated language, and new §239.86 would be proposed to include an implementation date of September 1, 2018, for the proposed changes to apply to candidates being admitted into an approved Texas educator preparation program for the Educational Diagnostician Certificate. The title of proposed new §239.86 would be updated to clearly reflect the contents of the section.

The proposed revisions would have no additional procedural and reporting implications. The proposed revisions 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 revisions are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the revisions. There is no effect on local economy for the first five years that the proposed revisions are in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022. The proposed revisions do not impose a cost on regulated persons and, therefore, are not subject to Texas Government Code, §2001.0045.

PUBLIC BENEFIT/COST NOTE. Mr. Franklin has determined that for each year of the first five years the revisions are in effect the public benefit anticipated as a result of enforcing the revisions will be more rigorous requirements for the preparation, certification, testing, and renewal of School Counselor and Educational Diagnostician certificates that result in highly effective certified school counselors and educational diagnosticians upon entry into the profession and retention of these qualified professionals. There is no anticipated economic cost to persons who are required to comply with the proposed revisions.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. There is no direct adverse economic impact for small businesses, microbusinesses, and rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins September 1, 2017, and ends October 2, 2017. The SBEC will take registered oral and written comments on the proposed revisions at the October 6, 2017 meeting in accordance with the SBEC board operating policies and procedures. 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 September 1, 2017.

SUBCHAPTER A. SCHOOL COUNSELOR CERTIFICATE

19 TAC §§239.1, 239.10, 239.15, 239.20, 239.25, 239.30

STATUTORY AUTHORITY. The amendments and new section are proposed under the Texas Education Code (TEC), §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.040(4), which states that the SBEC shall, for each class of educator certificate, appoint an advisory committee composed of members of that class to recommend standards for that class to the board; TEC, §21.041(a), which authorizes the SBEC to adopt rules as necessary to implement its procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which require the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(5) and (9), which require the SBEC to propose rules that provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to the TEC, §21.052, and continuing education requirements; TEC, §21.044, which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship,
or enter an induction-year program; TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC and requires the commissioner of education to determine the satisfactory level of performance required for each certification examination and each core subject covered by the generalist certification examination; TEC, §21.054, which requires classroom teachers, principals, and school counselors to earn continuing professional education units in specific areas and directs the SBEC to propose rules relating to continuing education courses and programs for educators; and TEC, §§22.0831(f), which authorizes the SBEC to propose rules to implement the national criminal history record information review of certified educators.


(a) Because the school counselor plays a critical role in campus effectiveness and student achievement, the rules adopted by the State Board for Educator Certification in this subchapter ensure that each candidate for the School Counselor Certificate is of the highest caliber and possesses the knowledge, [and] skills, and credentials necessary to improve the performance of the diverse student population of this state.

(b) An individual serving as a school counselor is expected to actively participate in counseling-related professional development activities to continually update his or her knowledge, [and] skills, and credentials. Currency in best practices and research [as] related to developing a quality, comprehensive school counseling program, which includes both campus leadership and student learning, is essential for all students [both campus leadership and student learning is essential].

(c) The holder of the School Counselor Certificate issued under the provisions of this subchapter is certified to [may] provide counseling services to all students in Prekindergarten-Grade 12.

§239.10. Preparation Program Requirements.

(a) Structured, field-based training must be focused on actual school-based experiences with each of the standards identified in §239.15 of this title (relating to Standards Required for the School Counselor Certificate) to include experiences with diverse types of students and grade levels and campuses.

(b) An educator preparation program must develop and implement specific criteria and procedures that allow a candidate to substitute related professional counselor training [and/or experience] directly related to the standards identified in §239.15 of this title for part of the preparation coursework or other program requirements.

(c) An educator preparation program for the school counselor certificate must prepare students to understand and implement The Texas Model for Comprehensive School Counseling Programs (Texas Education Code, Chapter 33, Subchapter A).

§239.15. Standards Required for the School Counselor Certificate.

(a) School Counselor Certificate Standards. The knowledge and skills identified in this section must be used by an educator preparation program in the development of curricula and coursework and by the State Board for Educator Certification as the basis for developing the examination required to obtain the School Counselor Certificate. The standards also serve as the foundation for the professional growth plan and continuing professional education activities required by §239.25 of this title (relating to Requirements to Renew the Standard School Counselor Certificate).

(b) Standard I. Learner-Centered Knowledge: The certified school counselor has a broad knowledge base. The certified school counselor must know and understand:

(1) the history and philosophy of counseling;
(2) counseling and consultation theories and practices;
(3) career development theories and practices;
(4) the roles and responsibilities of a comprehensive school counseling program that emphasizes college and career readiness and postsecondary options for all students, including college admissions, college financial aid resources, application procedures, and workforce and career opportunities;
(5) [4] assessment principles and procedures, including the appropriate use of tests, test interpretation, and test results;
(6) [5] changing societal trends, including demographic, economic, and technological tendencies, and their relevance to school counseling;
(7) [6] environmental, social, and cultural factors that affect learners' development and the relevance of those factors to educational, career, personal, and social development, along with comprehensive school [guidance and] counseling programs;
(8) [7] learners' development characteristics and needs and their relevance to educational and career choices;
(9) [8] legal and ethical standards, practices, and issues and the importance of commitment to and implementation of ethical principles;
(10) [9] the characteristics and educational needs of special populations;
(11) [40] [theories and] techniques and behavioral interventions to assist teachers with [in pedagogy and] classroom management;
(12) [44] the integration of a school counseling program, the Texas College and Career Readiness Standards, [the guidance] and academic curricula;
(13) [12] the roles and responsibilities of a comprehensive school [the counselor in a developmental guidance and] counseling program that is responsive to all students; [and]
(14) [13] counseling-related research techniques and practices; [and]
(15) developing and teaching best practices on leadership skills;
(16) how cultural factors and group membership impact individual students;
(17) the comprehensive school counseling program model;
(18) how to utilize various forms of technology and how inappropriate use could be professionally and personally harmful; and
(19) an understanding of systems, including family dynamics and school environments.

(c) Standard II. Learner-Centered Skills: The certified school counselor applies the knowledge base to promote the educational, personal, social, and career development of the learner as outlined in The Texas Model for Comprehensive School Counseling Programs. The certified school counselor must:
(1) develop processes and procedures for planning, designing, implementing, and evaluating The Texas Model for Comprehensive School Counseling Programs [a developmental guidance and counseling program];

(2) provide a proactive, comprehensive, developmental school counseling [guidance] program based on the needs of students, as set forth in The Texas Model for Comprehensive School Counseling Programs;

(3) counsel individuals and small groups using appropriate counseling theories and techniques in response to students' needs;

(4) consult with parents/guardians, teachers, administrators, and other individuals as appropriate to enhance his or her [their] work with students;

(5) coordinate resources, referrals, and follow-up procedures for students within the school and community;

(6) demonstrate proficiency in teaching small and large groups by actively engaging students in the learning process;

(7) participate in the selection, use, and interpretation of assessments and assessment results;

(8) use multiple sets [varied sources] of information and data to make decisions about students, programs, and services [for assessment purposes];

(9) use counseling-related research techniques and evidence-based practices to address student needs; [and]

(10) advocate for a comprehensive school [developmental guidance and] counseling program that is responsive to all students;

(11) facilitate learners' ability to achieve their potential by helping them set and attain challenging educational, career, personal, and social goals based on various types of information;

(12) maintain proficiency in counseling and campus-related technology; and

(13) use varied sources of information, resources, and practices to counsel students about postsecondary opportunities and college and career readiness.

(d) Standard III. Learner-Centered Process: The certified school counselor participates in the development, monitoring, revision, and evaluation of a campus based on The Texas Model for Comprehensive School Counseling Programs [developmental school guidance and counseling program] that promotes learners' knowledge, skills, motivation, and personal growth. The certified school counselor must:

(1) collaborate with others in the school and community to implement a guidance curriculum that promotes learners' development in all domains, including cognitive, social, and emotional areas;

(2) facilitate learners' ability to achieve their potential by helping them set and attain challenging educational, career, personal, and social [personal/social] goals based on various types of information;

(3) use both preventive and intervening strategies to address the concerns of learners and to help them clarify problems and situations, set goals, explore options, and implement change;

(4) implement effective referral procedures to facilitate the use of special programs and services; [and]

(5) act as a consultant [and/or coordinator] to help learners achieve success inside and outside of school;

(6) advocate for a comprehensive school counseling program and recognize the required time commitment to fully apply the program implementation cycle;

(7) create a program mission, goal, and services in alignment with the school mission and campus improvement plan;

(8) create and disseminate literature or newsletters to all stakeholders that describe the comprehensive school counseling program and reduce negative stigmas associated with receiving counseling services in a school-based program;

(9) establish an advisory council or board with membership of all stakeholders (student, parent, teacher, administrator, community member, other personnel, and support specialists);

(10) increase public relations and awareness through community outreach, such as fundraising, grant writing, donations, volunteerism, local businesses, and use of public or guest speakers;

(11) provide school-wide professional development and parent workshops throughout the school year;

(12) support participation in fair-share responsibilities versus non-counseling related duties;

(13) know district, state, and federal initiatives that are to be reflected in a comprehensive school counseling program; and

(14) develop practices to promote learners' knowledge about college and career readiness processes necessary to pursue postsecondary opportunities.

(e) Standard IV. Learner-Centered Equity and Excellence for All Learners: The certified school counselor promotes academic success for all learners by acknowledging, respecting, and responding to diversity while building on similarities that bond all people. The certified school counselor must:

(1) understand learner differences, including those related to cultural background, gender, race, ethnicity, socio-economic levels, academic ability, and learning styles, and know ways to create and maintain a positive school environment that is responsive to all learners;

(2) advocate for a school environment in which diversity is acknowledged and respected, resulting in positive interactions across all cultures, genders, ethnicities, and learning styles; [and]

(3) facilitate learning and achievement for all students to ensure services that cover an array of exceptionalities, including special populations, by promoting a cooperative, inclusive, [and] purposeful learning environment;

(4) take a positive, strength-based approach that builds on commonalities versus differences in all learners;

(5) understand how environment and behavior may impact or influence individual learners;

(6) ensure equitable access to programs and services for all students;

(7) understand how family values, group membership, and culture intersect;

(8) acknowledge learners' gifts, strengths, and extracurricular talents when considering programs and services;

(9) increase students' awareness and include their voices regarding educational and individualized plans; and
(10) ensure equitable access and exposure to postsecondary opportunities and college and career readiness information and resources for students and parents/guardians.

(f) Standard V. Learner-Centered Communications: The certified school counselor, an advocate for all students and the school, demonstrates effective professional and interpersonal communication skills. The certified school counselor must:

1. demonstrate effective communication through oral, written, and nonverbal expression;
2. use knowledge of group dynamics and productive group interaction;
3. support responsive interventions by effectively communicating with parents/guardians, teachers, administrators, and community members;
4. facilitate learners' access to community resources;
5. develop and implement strategies for effective internal and external communications;
6. facilitate parent/guardian involvement in their children's education;
7. develop partnerships with parents/guardians, businesses, and other groups in the community to facilitate learning; [and]
8. work effectively as a team member to promote positive change for individuals, groups, and the school community; [and]
9. take a positive, strength-based approach that verbalizes commonalities versus differences in all learners;
10. effectively communicate his or her role and responsibility and counselor identity to all stakeholders to reduce confusion about the duties of a school counselor;
11. adhere to best practices connected to ethical and legal considerations around appropriate use of technology and email, documentation, record keeping, privileged communication, and informed consent process; and
12. facilitate access to and use of school and community information and resources related to postsecondary opportunities and college and career readiness by learners, parents/guardians, teachers, administrators, and community members.

(g) Standard VI. Learner-Centered Professional Development: The certified school counselor continues professional development, demonstrating a commitment to learn, to improve the profession, and to model professional ethics and personal integrity. The certified school counselor must:

1. use reflection, self-assessment, and interactions with colleagues to promote personal professional development;
2. use counseling-related research techniques and practices as well as technology and other resources to facilitate continued professional growth;
3. strive toward the highest level of professionalism by adhering to and modeling professional, ethical, and legal standards;
4. apply research-based practice to improve the school guidance and counseling program; [and]
5. engage in ongoing [continue] professional development to improve the school guidance and counseling program; [and]
6. engage in continued professional development experiences to learn and apply concepts, skills, and practices related to increasing college and career readiness and promoting postsecondary opportunities and preparation for all learners.


To be eligible to receive the standard School Counselor Certificate, a candidate must:

1. successfully complete a school counselor preparation program that meets the requirements of §239.10 of this title (relating to Preparation Program Requirements) and §239.15 of this title (relating to Standards Required for the School Counselor Certificate);
2. successfully complete the examination based on the standards identified in §239.15 of this title;
3. hold, at a minimum, a 48-hour master's degree in counseling 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. have two creditable years of teaching experience as a classroom teacher, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service) and the Texas Education Code, §5.001(2).

§239.25. Requirements to Renew the Standard School Counselor Certificate.

(a) An individual issued a standard counselor certificate under this title from September 1, 1999, to August 31, 2000, is subject to Chapter 232, Subchapter B, of this title (relating to Certificate Renewal and Continuing Professional Education Requirements), except that only 150 clock-hours of continuing professional education must be completed during the first five-year renewal period. During subsequent renewal periods, the holder of such an active standard counselor certificate must satisfy the most current requirements for renewal.

(b) An individual issued the standard School Counselor Certificate on or after September 1, 2000, is subject to Chapter 232, Subchapter A [B], of this title (relating to Certificate Renewal and Continuing Professional Education Requirements) and must satisfy the most current requirements for renewal.

§239.30. Implementation Date.

The provisions of this subchapter apply to an applicant who is admitted to an educator preparation program for the School Counselor Certificate on or after September 1, 2018.

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

Filed with the Office of the Secretary of State on August 21, 2017.
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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Earliest possible date of adoption: October 1, 2017
For further information, please call: (512) 475-1497

Texas Register
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42 TexReg 4436
19 TAC §239.30

STATUTORY AUTHORITY. The repeal is proposed under the Texas Education Code (TEC), §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.040(4), which states that the SBEC shall, for each class of educator certificate, appoint an advisory committee composed of members of that class to recommend standards for that class to the board; TEC, §21.041(a), which authorizes the SBEC to adopt rules as necessary to implement its procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which require the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(5) and (9), which require the SBEC to propose rules that provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to the TEC, §21.052, and continuing education requirements; TEC, §21.044, which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC and requires the commissioner of education to determine the satisfactory level of performance required for each certificate examination and each core subject covered by the generalist certification examination; TEC, §21.054, which requires classroom teachers, principals, and school counselors to earn continuing professional education units in specific areas and directs the SBEC to propose rules relating to continuing education courses and programs for educators; and TEC, §22.0831(f), which authorizes the SBEC to propose rules to implement the national criminal history record information review of certified educators.


§239.30. Transition and Implementation Dates.

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

Filed with the Office of the Secretary of State on August 21, 2017.

TRD-201703227
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Earliest possible date of adoption: October 1, 2017
For further information, please call: (512) 475-1497

SUBCHAPTER C. EDUCATIONAL DIAGNOSTICIAN CERTIFICATE

19 TAC §§239.80, 239.82 - 239.86

STATUTORY AUTHORITY. The amendments and new section are proposed under the Texas Education Code (TEC), §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.041(a), which authorizes the SBEC to adopt rules as necessary to implement its procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2)-(4), which require the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate.

CROSS REFERENCE TO STATUTE. The amendments and new section implement the Texas Education Code, §§21.031(a), 21.041(a), and 21.041(b)(1)-(4).

§239.80. General Provisions.

(a) Because the educational diagnostician plays a critical role in campus effectiveness and student achievement, the rules adopted by the State Board for Educator Certification in this subchapter ensure that each candidate for the Educational Diagnostician Certificate is of the highest caliber and possesses the knowledge and skills necessary to improve the performance of the diverse student population of this state.

(b) An individual serving as an educational diagnostician is expected to actively participate in professional development activities to continually update his or her knowledge and skills. Currency in best practices and research as related to both assessment [counselor leadership] and student learning is essential.

(c) The holder of the Educational Diagnostician Certificate issued under the provisions of this subchapter may serve as an educational diagnostician, including providing educational assessment and evaluation, as required by the Individuals with Disabilities Education Act (IDEA) or other applicable law, for students from birth through adulthood [Early Childhood-Grade 12].

§239.82. Preparation Program Requirements.

(a) Structured, field-based training must be focused on actual experiences with each of the standards identified in §239.83 of this title (relating to Standards Required for the Educational Diagnostician Certificate) to include experiences with diverse types of students, grade levels, and campuses.

(b) An educator preparation program may [must] develop and implement specific criteria and procedures that allow a candidate to substitute related professional educational diagnostician training and/or experience directly related to the standards identified in §239.83 of this title for part of the preparation coursework or other program requirements.

§239.83. Standards Required for the Educational Diagnostician Certificate.

(a) Educational Diagnostician Certificate Standards. The knowledge and skills identified in this section must be used by an educator preparation program in the development of curricula and coursework and by the State Board for Educator Certification as the basis for developing the examination required to obtain the standard Educational Diagnostician Certificate. The standards also serve as the foundation for the professional growth plan and continuing professional education activities required by §239.85 of this title (relating to Requirements to Renew the Standard Educational Diagnostician Certificate).
(b) Standard I. The educational diagnostician understands and applies knowledge of the purpose, philosophy, and legal foundations of evaluation and special education.

(1) The [beginning] educational diagnostician knows and understands:

(A) state and federal regulations relevant to the role of the educational diagnostician;

(B) laws and legal issues related to the assessment and evaluation of individuals with educational needs;

(C) models, theories, and philosophies that provide the basis for special education evaluations;

(D) issues, assurances, and due process rights related to evaluation, eligibility, and placement in the least restrictive environment within a continuum of services; and

(E) rights and responsibilities of parents/guardians, schools, students, and teachers and other professionals in relation to individual learning needs.

(2) The [beginning] educational diagnostician is able to:

(A) articulate the purpose of evaluation procedures and their relationship to educational programming; and

(B) conduct evaluations and other professional activities consistent with the requirements of laws, rules and regulations, and local district policies and procedures.

(c) Standard II. The educational diagnostician understands and applies knowledge of ethical and professional practices, roles, and responsibilities.

(1) The [beginning] educational diagnostician knows and understands:

(A) ethical practices regarding procedural safeguards (e.g., confidentiality issues, informed consent) for individuals with disabilities;

(B) ethical practices related to assessment and evaluation;

(C) qualifications necessary to administer and interpret various instruments and procedures; and

(D) organizations and publications relevant to the field of educational diagnosis.

(2) The [beginning] educational diagnostician is able to:

(A) demonstrate commitment to developing quality educational opportunities appropriate for individuals with disabilities;

(B) demonstrate positive regard for the culture, gender, and personal beliefs of individual students;

(C) promote and maintain a high level of competence and integrity in the practice of the profession;

(D) exercise objective professional judgment in the practice of the profession;

(E) engage in professional activities that benefit individuals with exceptional learning needs, their families, and/or colleagues;

(F) comply with local, state, and federal monitoring and evaluation requirements;

(G) use copyrighted educational materials in an ethical manner; and

(H) participate in the activities of professional organizations in the field of educational diagnosis.

(d) Standard III. The educational diagnostician develops collaborative relationships with families, educators, the school, the community, outside agencies, and related service personnel.

(1) The [beginning] educational diagnostician knows and understands:

(A) strategies for promoting effective communication and collaboration with others, including parents/guardians and school and community personnel, in a culturally responsive manner;

(B) concerns of parents/guardians of individuals with exceptional learning needs and appropriate strategies to help parents/guardians address these concerns;

(C) strategies for developing educational programs for individuals through collaboration with team members;

(D) roles of individuals with disabilities, parents/caregivers, teachers, and other school and community personnel in planning educational programs for individuals; and

(E) family systems and the role of families in supporting student development and educational progress.

(2) The [beginning] educational diagnostician is able to:

(A) use collaborative strategies in working with individuals with disabilities, parents/caregivers, and school and community personnel in various learning environments;

(B) communicate and consult effectively with individuals, parents/guardians, teachers, and other school and community personnel;

(C) foster respectful and beneficial relationships between families and education professionals;

(D) encourage and assist individuals with disabilities and their families to become active participants in the educational team;

(E) plan and conduct collaborative conferences with individuals who have exceptional learning needs and their families or primary caregivers;

(F) collaborate with classroom teachers and other school and community personnel in including individuals with exceptional learning needs in various learning environments;

(G) communicate with classroom teachers, administrators, and other school personnel about characteristics and needs of individuals with disabilities;

(H) use appropriate communication skills to report and interpret assessment and evaluation results;

(I) provide assistance to others who collect informal and observational data;

(J) effectively communicate to parents/guardians and professionals the purposes, methods, findings, and implications of assessments; and

(K) keep accurate and detailed records of assessments, evaluations, and related proceedings (e.g., admission, review, and dismissal/individualized education program (ARD/IEP) meetings, parent/guardian communications and notifications).

(e) Standard IV. The educational diagnostician understands and applies knowledge of student assessment and evaluation, program planning, and instructional decision making.
(1) The [beginning] educational diagnostician knows and understands:

(A) the characteristics, needs, and rights of individual students in relation to assessment and evaluation for placement in the least restrictive environment within a continuum of services;

(B) the relationship between evaluation and placement decisions; and

(C) the role of team members, including the student when appropriate, in planning an individualized program.

(2) The [beginning] educational diagnostician is able to:

(A) use assessment and evaluation information to plan individualized programs, establish measurable annual goals and objectives, and make instructional decisions that result in appropriate services for individuals with disabilities, including those from culturally and/or linguistically diverse backgrounds;

(B) interpret and use assessment and evaluation data for targeted instruction and ongoing review; and

(C) assist in identifying realistic expectations for educationally relevant behavior (e.g., vocational, functional, academic, social) in various settings.

(f) Standard V. The educational diagnostician knows eligibility criteria and procedures for identifying students with disabilities and determining the presence of an educational need.

(1) The [beginning] educational diagnostician knows and understands:

(A) characteristics of individuals with disabilities, including those with different levels of severity and with multiple disabilities;

(B) educational implications of various disabilities; and

(C) the variation in ability exhibited by individuals with particular types of disabilities.

(2) The [beginning] educational diagnostician is able to:

(A) access information on the cognitive, communicative, physical, social, and emotional characteristics of individuals with disabilities and the assistive technology needs of those students;

(B) gather background information regarding the academic, medical, and family history of individuals with disabilities; and

(C) use various types of assessment and evaluation procedures appropriately to identify students with disabilities and to determine the presence of an educational need.

(g) Standard VI. The educational diagnostician selects, administers, and interprets appropriate formal and informal assessments and evaluations.

(1) The [beginning] educational diagnostician knows and understands:

(A) basic terminology used in assessment and evaluation;

(B) standards for test reliability;

(C) standards for test validity;

(D) procedures used in standardizing assessment instruments;

(E) possible sources of test error;

(F) the meaning and use of basic statistical concepts used in assessment and evaluation (e.g., standard error of measurement, mean, standard deviation);

(G) uses and limitations of each type of assessment instrument;

(H) uses and limitations of various types of assessment data;

(I) procedures for screening, prereferral, including RTI (e.g., response to intervention/multi-tiered support), referral, and eligibility;

(J) the appropriate application and interpretation of derived scores (e.g., standard scores, percentile ranks, age and grade equivalents, stanines);

(K) the necessity of monitoring the progress of individuals with disabilities;

(L) methods of academic and nonacademic (e.g., vocational, transition, developmental, assistive technology) assessment and evaluation; and

(M) methods of motor skills assessment.

(2) The [beginning] educational diagnostician is able to:

(A) collaborate with families and other professionals in the assessment and evaluation of individuals with disabilities;

(B) select and use assessment and evaluation materials based on technical quality and individual student needs;

(C) score assessment and evaluation instruments accurately;

(D) create and maintain assessment reports;

(E) select or modify assessment procedures to ensure nonbiased results;

(F) use a variety of observation techniques;

(G) assess and interpret information using formal/informal instruments and procedures in the areas of cognitive/adaptive behavior and academic skills;

(H) determine the need for further assessment in the areas of language skills, physical skills, social/emotional behavior, and assistive technology;

(I) determine a student's needs in various curricular areas [1] and make intervention, instructional, and transition planning recommendations based on assessment and evaluation results;

(J) make recommendations based on assessment and evaluation results;

(K) prepare assessment reports; and

(L) use performance data and information from teachers, other professionals, individuals with disabilities, and parents/guardians to make or suggest appropriate modifications and/or accommodations within learning environments.

(h) Standard VII. The educational diagnostician understands and applies knowledge of ethnic, linguistic, cultural, and socioeconomic diversity and the significance of student diversity for evaluation, planning, and instruction.

(1) The [beginning] educational diagnostician knows and understands:
(A) issues related to definition and identification procedures for individuals with disabilities, including individuals from culturally and/or linguistically diverse backgrounds;

(B) characteristics and effects of the cultural and environmental backgrounds of students and their families, including cultural and linguistic diversity, socioeconomic diversity, abuse/neglect, and substance abuse;

(C) issues related to the representation in special education of populations that are culturally and linguistically diverse;

(D) ways in which native language and diversity may affect evaluation; and

(E) strategies that are responsive to the diverse backgrounds and particular disabilities of individuals in relation to evaluation, programming, and placement.

(2) The [beginning] educational diagnostician is able to:

(A) apply knowledge of cultural and linguistic factors to make appropriate evaluation decisions and instructional recommendations for individuals with disabilities; and

(B) recognize how student diversity and particular disabilities may affect evaluation, programming, and placement [i] and use procedures that ensure nonbiased results.

(i) Standard VIII. The educational diagnostician knows and demonstrates skills necessary for scheduling, time management, and organization.

(1) The [beginning] educational diagnostician knows and understands:

(A) time-management strategies and systems appropriate for various educational situations and environments;

(B) legal and regulatory timelines, schedules, deadlines, and reporting requirements; and

(C) methods for organizing, maintaining, accessing, and storing records and information.

(2) The [beginning] educational diagnostician is able to:

(A) select, adapt, or design forms to facilitate planning, scheduling, and time management;

(B) maintain eligibility folders; and

(C) use technology appropriately to organize information and schedules.

(j) Standard IX. The educational diagnostician addresses students' behavioral and social interaction skills through appropriate assessment, evaluation, planning, and instructional strategies.

(1) The [beginning] educational diagnostician knows and understands:

(A) requirements and procedures for functional behavioral assessment, manifestation determination review, and behavioral intervention plans that incorporate positive behavioral supports and interventions;

(B) applicable laws, rules and regulations, and procedural safeguards regarding the planning and implementation of behavioral intervention plans for individuals with disabilities;

(C) ethical considerations inherent in behavior interventions;

(D) teacher attitudes and behaviors that influence the behavior of individuals with disabilities;

(E) social skills needed for school, home, community, and work environments;

(F) strategies for crisis prevention, intervention, and management;

(G) strategies for preparing individuals to live productively in a multiclass, multiethnic, multicultural, and multinational world; and

(H) key concepts in behavior intervention (e.g., least intrusive accommodations/mmodifications within the learning environment, reasonable expectations for social behavior, social skills curricula, cognitive behavioral strategies).

(2) The [beginning] educational diagnostician is able to:

(A) conduct functional behavioral assessments;

(B) assist in the development of behavioral intervention plans; and

(C) participate in manifestation determination review.

(k) Standard X. The educational diagnostician knows and understands appropriate curricula and instructional strategies for individuals with disabilities.

(1) The [beginning] educational diagnostician knows and understands:

(A) instructional strategies, technology tools and applications, and curriculum materials for students with disabilities within the continuum of services;

(B) varied learning styles of individuals with disabilities;

(C) curricula for the development of motor, cognitive, academic, social, language, affective, career, and functional skills for individuals with disabilities;

(D) techniques for accommodating and/or modifying instructional methods and materials for individuals with disabilities;

(E) functional skills instruction relevant to transitioning across environments (e.g., preschool to elementary school, school to work);

(F) supports needed for integration into various program placements; and

(G) individualized assessment strategies for instruction (e.g., authentic assessment, contextual assessment, curriculum-based assessment).

(2) The [beginning] educational diagnostician is able to:

(A) interpret and use assessment and evaluation data for instructional planning; and

(B) use assessment and evaluation, planning, and management procedures that are appropriate in relation to student needs and the instructional environment.

§239.84. Requirements for the Issuance of the Standard Educational Diagnostician Certificate.

To be eligible to receive the standard Educational Diagnostician Certificate, a candidate must:

(1) successfully complete an educational diagnostician preparation program that meets the requirements of §239.82 of this ti-
title (relating to Preparation Program Requirements) and §239.83 of this title (relating to Standards Required for the Educational Diagnostician Certificate):

(2) successfully complete the examination based on the standards identified in §239.83 of this title;

(3) hold, at a minimum, a master'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;

(4) hold a valid classroom teaching certificate; and

(5) have three [***] creditable years of teaching experience as a classroom teacher, as defined in Chapter 153, Subchapter CC, of this title (relating to Commissioner's Rules on Creditable Years of Service) and the Texas Education Code, §5.001(2).

§239.85. Requirements to Renew the Standard Educational Diagnostician Certificate.

(a) An individual issued the standard Educational Diagnostician Certificate under this title is subject to Chapter 232, Subchapter A [***], of this title (relating to Certificate Renewal and Continuing Professional Education Requirements).

(b) An individual who holds a valid Texas educational diagnostician certificate issued prior to September 1, 1999, may voluntarily comply with the requirements of this section under procedures implemented by the Texas Education Agency staff under §232.3 [§232.310] of this title (relating to Voluntary Renewal of Current Texas Educators).

§239.86. Implementation Date.
The provisions of this subchapter apply to an applicant who is admitted to an educator preparation program for the Educational Diagnostician Certificate on or after September 1, 2018.

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

Filed with the Office of the Secretary of State on August 21, 2017.

TRD-201703229
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Earliest possible date of adoption: October 1, 2017
For further information, please call: (512) 475-1497

19 TAC §239.86

STATUTORY AUTHORITY. The repeal is proposed under the Texas Education Code (TEC), §21.031(a), which charges the SBEC with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.041(a), which authorizes the SBEC to adopt rules as necessary to implement its procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and TEC, §21.041(b)(2)-(4), which require the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate.

CROSS REFERENCE TO STATUTE. The repeal implements the Texas Education Code, §§21.031(a), 21.041(a), and 21.041(b)(1)-(4).

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

Filed with the Office of the Secretary of State on August 21, 2017.

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Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
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For further information, please call: (512) 475-1497

† † †

TITLE 22 EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §157.7

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §157.7, Denial of a License; Adverse Action Against a License Holder. The proposed amendments align this section with statutory changes adopted by the 85th Legislature.

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

Ms. Worman has also determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be requirements that are consistent with the statute and easier to understand, apply and process.

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses, §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board.
and §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104.

The statute affected by these amendments are Chapters 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§157.7. Denial of a License, Renewal or Reinstatement: Adverse Action Against a License Holder:

(a) Denial of a License, Renewal or Reinstatement.

(1) If the Board denies the issuance, renewal or reinstatement of a license, [a certification, license, trainee approval, or registration,] the Board shall promptly give written notice of denial to the applicant. If the applicant is supervised by another license holder, the Board shall send a copy of the notice of denial to the supervisory appraiser.

(2) The notice of denial shall include:

(A) a statement of the Board's action;

(B) a summary of the facts and laws on which the action is based;

(C) a statement of the right of the person to request a hearing; and

(D) the following language in capital letters in boldface type: IF YOU FAIL TO REQUEST A HEARING IN WRITING WITHIN 30 DAYS, THIS DETERMINATION WILL BECOME FINAL.

(3) If a person fails to request a hearing in writing within 30 days of receiving the notice, the Board's determination will become final.

(b) Adverse Action Against a License Holder.

(1) If the Board proposes to take adverse action against a license holder, former license holder, or registrant, the Board shall promptly give written notice to the person against whom the action is proposed to be taken. If an appraiser trainee is the respondent, the Board shall send a copy of the notice to the supervisory appraiser.

(2) The notice of adverse action shall include:

(A) a summary of the facts and laws on which the proposed action is based;

(B) a statement of the action proposed by the Board, including the proposed sanction and/or the amount of any administrative penalties; and

(C) a statement of the right of the person to a hearing.

(c) A license holder who has agreed in writing to suspension or revocation for failure to comply with the terms of a consent order, consent agreement, or agreed order in connection with an application or a previous disciplinary matter is deemed to have had notice and an opportunity for a hearing in a subsequent action resulting from failure to comply with an administrative requirement of probation, such as payment of a fee or completion of coursework.

(d) Notices sent under this section are complete and effective if sent in the manner described in §157.9.

(e) The mailbox rule described in §157.9 applies to notices sent under this section if the notice was sent to the respondent's or applicant's mailing address or email address as shown in the Board's records in the manner described in §157.9.

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

Filed with the Office of the Secretary of State on August 15, 2017.
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Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 936-3652

SUBCHAPTER B. CONTESTED CASE HEARINGS

22 TAC §157.9

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §157.9, Notice of Hearing. The proposed amendments align this section with statutory changes adopted by the 85th Legislature.

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

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

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses, and §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104.

The statute affected by these amendments are Chapters 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.


(a) The notice of hearing must comply with Chapter 2001, Texas Government Code.

(b) The notice of hearing shall be served not later than the 30th day before the hearing date.

(c) Service of notice of hearing must be made in the manner prescribed by Chapter 2001, Texas Government Code, and the rules of the State Office of Administrative Hearings. Notice to a person who is a current license holder or applicant of the Board is [shall be] complete
and effective if sent by certified mail, return receipt requested, to the respondent's [respondent] or applicant's mailing or email [applicant at his or her most recent] address as shown in the Board's records and sent by: [by the records of the Board.]

1. electronic mail;
2. first class mail; or
3. certified mail, return receipt requested.

(d) Mailbox rule.

1. Service by mail is [shall be] complete upon deposit of the notice [document in question] in a prepaid, [post paid] properly addressed envelope in a post office or [at] official depository under the care and custody of the United States Postal Service.

2. Service by electronic mail is complete upon sending an email to the respondent's or applicant's email address as shown in the Board's records.

3. Presumption of receipt. Unless proven by evidence submitted to the contrary, a rebuttable presumption that respondent or applicant received proper notice from the Board will arise:

(A) immediately after sending electronic mail to the respondent's or applicant's email address as shown in the Board's records;

(B) three business days after the date the notice is deposited with the United States Postal Service as required in this section.

4. Failure to claim or refusal of properly addressed certified or registered mail does not support a finding of nonreceipt.

(e) The notice must [shall] include the following language in capital letters in boldface type: FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ALLEGATIONS AGAINST YOU SET OUT IN THE COMPLAINT BEING ADMITTED AS TRUE AND A DEFAULT JUDGMENT BEING TAKEN AGAINST YOU.

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

Filed with the Office of the Secretary of State on August 15, 2017.

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Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board

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For further information, please call: (512) 936-3652

22 TAC §157.12

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §157.12, Failure to Attend Hearing; Default. The proposed amendments align this section with statutory changes adopted by the 85th Legislature.

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

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

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses, and §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104.

The statute affected by these amendments are Chapters 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§157.12. Failure to Attend Hearing; Default.

(a) - (c) (No change.)

(d) The administrative law judge may award reasonable costs to the Board as authorized in §1103.523 and §1104.2132, Texas Occupations Code.

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

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Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board

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SUBCHAPTER C. POST HEARING

22 TAC §157.15

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §157.15, Decision. The proposed amendments align this section with statutory changes adopted by the 85th Legislature and conform this rule with changes made to §157.9 of this chapter.

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

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

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses, and §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104.

The statute affected by these amendments are Chapters 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§157.15. Decision.

(a) The administrative law judge shall serve on the parties a proposal for decision which shall contain:

(1) a statement of the administrative law judge's proposed reasons for the decision; and

(2) findings of fact and conclusions of law, separately stated, that are necessary to the proposed decision.

(b) Service. When a decision is prepared, a copy of the decision shall be served by the administrative law judge on each party, the respondent's attorney of record or representative, and the Board. Service of the decision shall be in accordance with §157.9 (relating to Notice of Hearings) of this chapter.

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

Filed with the Office of the Secretary of State on August 15, 2017.
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Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 936-3652

22 TAC §157.17
The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §157.17, Final Decisions and Orders. The proposed amendments clarify the process to be followed if the Board grants oral argument to a party when considering a contested case.

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

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

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses, and §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104.

The statute affected by these amendments are Chapters 1103 and 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.


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

(e) Any party may request oral arguments before the Board prior to the final disposition of the contested case. If the Board grants oral argument, oral argument [Oral arguments] will be conducted in accordance with this subsection.

(1) The chairperson or the Board member designated by the chairperson to preside (the presiding member) shall announce the case. Upon the request of any party, the presiding member may conduct a prehearing conference with the parties and their attorneys of record. The presiding member may announce reasonable time limits for any oral arguments to be presented by the parties.

(2) The hearing on the proposal for decision shall be limited to the record. New evidence may not be presented on the substance of the case unless the party submitting the evidence can establish that the new evidence was not reasonably available at the time of the original hearing or the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

(3) In presenting oral arguments, the party bearing the burden of proof shall open and close. The party responding may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal subject to the discretion of the presiding member.

(4) After being recognized by the presiding member, the members of the Board may ask questions of the parties. If a party is represented by counsel, the questions must be directed to the party's attorney. Questions must be limited to the record and to the arguments made by the parties.

(5) Upon the conclusion of oral arguments, questions by the members of the Board, and any discussion by the member of the Board, the presiding member shall call for a motion regarding disposition of the contested case. The presiding member may vote on the motion. A motion may be granted only if a majority of the members present and voting vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled.

(f) - (k) (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.
CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

22 TAC §159.1

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §159.1, Definitions. The proposed amendments align this section with statutory changes adopted by the 85th Legislature.

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

Ms. Worman has also determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be requirements that are consistent with the statute and easier to understand, apply and process.

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§159.1. Definitions.

(a) AMC--Appraisal management company.

(b) AMC Act--Chapter 1104, Texas Occupations Code, Texas Appraiser Management Company Registration and Regulation Act.

(c) Administrative law judge--A judge employed by the State Office of Administrative Hearings (SOAH).

(d) Advertising--A written or oral statement or communication by or on behalf of an AMC that induces or attempts to induce a member of the public to use the services of the AMC, including but not limited to all publications, radio or television broadcasts, all electronic media including email, text messages, social networking websites, and the Internet, business stationery, business cards, signs and billboards.

(e) Applicant--A person seeking to become registered under the AMC Act. This term also includes a person seeking to renew a registration under the AMC Act.

(f) Appraisal firm--An entity that employs appraisers on an exclusive basis and receives compensation for performing appraisals and issuing appraisal reports in its own name.

(g) Appraiser contact--A person designated by an AMC pursuant to §1104.103(b)(6) of the AMC Act to respond to and communicate with appraisers on the AMC’s appraisal panel regarding appraisal assignments.

(h) Board--The Texas Appraiser Licensing and Certification Board.

(i) Commissioner--The Commissioner of the Board.

(j) Day--A calendar day unless clearly indicated otherwise.

(k) Federally Regulated Appraisal Management Company--an appraisal management company as defined in section 1104.003(b) of the AMC Act.

(l) [(q)] License--The whole or a part of any Board permit, certificate, approval, registration or similar form of permission required by Chapter 1103 or 1104, Texas Occupations Code.

(m) [(u)] License holder--A person licensed or registered by the Board under the AMC Act.

(n) [(m)] Party--The Board and each person named or admitted as a party.

(o) [(q)] Person--Any individual, partnership, corporation, or legal entity.

(p) [(u)] Primary contact--A person who meets the definition of “controlling person” in §1104.003 of the AMC Act and is designated by an AMC pursuant to §1104.104 of the AMC Act as the primary contact for all communication between the Board and the AMC.

(q) [(q)] Respondent--Any person subject to the jurisdiction of the Board, registered or unregistered, against whom any complaint has been made.

(f) [(q)] SOAH--State Office of Administrative Hearings.

(s) [(q)] USPAP--Uniform Standards of Professional Appraisal Practice.

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

Filed with the Office of the Secretary of State on August 16, 2017.

TRD-201703170

Kristen Worman
General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: October 1, 2017

For further information, please call: (512) 936-3652
the caption of this section to eliminate duplicity and confusion with §159.3 of this chapter, which has the exact same caption.

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

Ms. Worman has also determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be requirements that are consistent with the statute and easier to understand, apply and process.

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§159.4. Exemptions [Appraisal Management Company Advisory Committee].
(a) - (d) (No change.)

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

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Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 936-3652

22 TAC §159.52
The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §159.52, Fees. The proposed amendments align this section with statutory changes adopted by the 85th Legislature.

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

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

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§159.52. Fees.
(a) The Board will charge and the Commissioner will collect the following fees:
(1) a fee of $3,300 for an application for a two-year registration;
(2) a fee of $3,000 for a timely renewal of a two-year registration;
(3) a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a registration within 90 days of expiration; a fee equal to two times the timely renewal fee for the late renewal of a registration more than 90 days but less than six months after expiration;
(4) the national registry fee in the amount charged by the Appraisal Subcommittee for the AMC registry;
(5) a fee of $10 for each appraiser on a panel at the time of renewal of a registration;
(6) a fee of $5 to add an appraiser to a panel in the Board's records;
(7) a fee of $5 for the termination of an appraiser from a panel;
(8) a fee of $25 to request a registration be placed on inactive status;
(9) a fee of $50 to return to active status;
(10) a fee of $40 for preparing a certificate of licensure history or active licensure;
(11) a fee for a returned check equal to that charged for a returned check by the Texas Real Estate Commission;
(12) a fee of $20 for filing any request to change an owner, primary contact, appraiser contact, registered business name or place of business;
(13) a fee of $50 for evaluation of an owner or primary contact's background history not submitted with an original application or renewal;
(14) a fee of $20 for filing any application, renewal, change request, or other record on paper when the person may otherwise file electronically by accessing the Board's website and entering the required information online; [and]
(15) any fee required by the Department of Information Resources for establishing and maintaining online applications; and[

(16) a fee in the amount necessary to administer section 1104.052(c) of the AMC Act.

(b) Fees must be submitted in U.S. funds payable to the order of the Texas Appraiser Licensing and Certification Board. Fees are not refundable once an application has been accepted for filing. Persons who have submitted a check which has been returned, and who have not made good on that check within 30 days, for whatever reason, must submit all future fees in the form of a cashier's check or money order.

(c) AMCs registered with the Board must pay any annual registry fee as required under federal law. All registry fees collected by the Board will be deposited in the Texas Treasury Safekeeping Trust Company to the credit of the appraiser registry fund. The Board will send the fees to the Appraisal Subcommittee as required by federal law.

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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Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 936-3652

22 TAC §159.102
The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §159.102, Eligibility for Registration; Ownership. The proposed amendments align this section with statutory changes adopted by the 85th Legislature.

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

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

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§159.102. Eligibility for Registration; Ownership.

(a) For the purpose of certifying to the Board that an applicant has reviewed the owners of the entity as required by the AMC Act and that no such owner has had a license to act as an appraiser denied, revoked, or surrendered in lieu of revocation unless the license was subsequently granted or reinstated, the applicant may rely on the Appraisal Subcommittee’s online National Registry database.

(b) If an owner of the applicant has had a license to act as an appraiser denied, revoked, or surrendered, the Board may require the applicant to demonstrate that the owner's license was denied, revoked, or surrendered for a nonsubstantive reason as determined by the Board.

(c) For purposes of this Chapter, a nonsubstantive reason may include, but is not limited to:

1. mistake; or
2. failure to comply with technical requirements for renewal.

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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Kristen Worman
General Counsel
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For further information, please call: (512) 936-3652

22 TAC §159.104
The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §159.104, Primary Contact; Appraiser Contact. The proposed amendments align this section with statutory changes adopted by the 85th Legislature and conform this section with changes made to §157.7 and §157.9 of this chapter.

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

Ms. Worman has also determined that for each year of the first five years the subsections as proposed are in effect the public benefit anticipated as a result of enforcing the section as proposed will be requirements that are consistent with the statute and easier to understand, apply and process.

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov.
The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§159.104. Primary Contact; Appraiser Contact; Contact Information.

(a) Contact Information. For purposes of conducting business with the Board and receiving correspondence, service of documents, or notices from the Board, each applicant or license holder must provide the Board with the following contact information for its primary contact and appraiser contact:

(1) mailing address;
(2) phone number; and
(3) email address.

(b) [æ] An applicant or [A] license holder must give the Board written notice of any change to the contact information for its primary contact or appraiser contact within 10 [45] days of the change.

(c) [â] If a license holder's primary contact or appraiser contact changes, the license holder must give the Board written notice of the change, including all information required by this section and §1104.103(b)(4) and (6) of the AMC Act, and, if appropriate, documentation that the person is qualified to serve under §1104.104(b) of the AMC Act, within 10 [45] days of the change.

(d) [ç] A license holder must give the Board written notice within 10 [45] days if its primary contact or appraiser contact ceases to serve in that role and a qualified replacement is not immediately named. If a license holder's primary contact or appraiser contact ceases to serve in that role and the license holder does not give the Board written notice of a replacement, the license holder will be placed on inactive status.

(e) [ê] A primary contact who assumes that role during the term of the registration must provide the Board with consent to a criminal history background check, as required by §1104.102 of the AMC Act. If the person does not satisfy the Board's moral character requirements, the Board will remove the person from its records and the license holder will be placed on inactive status. Such a decision by the Board may be reviewed and reconsidered by the Commissioner if the license holder submits a written request for reconsideration within 10 [100] days of notice that the person does not qualify to serve as primary contact. The license holder will remain on inactive status while the request for reconsideration is pending.

(f) [ë] The appraiser contact must hold an active, current license issued by an appraiser regulatory agency within the jurisdiction of the Appraisal Subcommittee.

(g) The Board will send all correspondence and serve all required notices and documents by sending such items to the mailing or email address of the applicant's or license holder's primary contact as shown in the Board's records.

(h) If an applicant or license holder fails to update the contact information for its primary contact or appraiser contact, the contact information for these individuals is the last known contact information provided to the Board and shown in the Board's records.

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

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22 TAC §159.105

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §159.105, Denial of Registration. The proposed amendments align this section with statutory changes adopted by the 85th Legislature.

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

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

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov.

The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§159.105. Denial of Registration or Renewal of Registration.

(a) AMCs, persons who own any interest in [more than 10%] ef] an AMC; and individuals who act as the primary contact for an AMC must be honest, trustworthy, and reliable. Accordingly, such persons must satisfy the Board of their honesty, integrity, and trustworthiness before a registration may be issued or renewed.

(b) The board deems the following felonies and misdemeanors directly related to the field of appraisal management and suggestive of a lack of the requisite moral character:

(1) offenses involving fraud or misrepresentation;
(2) offenses against real or personal property belonging to another, if committed knowingly or intentionally;
(3) offenses against public administration;
(4) offenses involving the sale or other disposition of real or personal property belonging to another without authorization of law;

(5) offenses involving moral turpitude; and

(6) offenses of attempting or conspiring to commit any of the foregoing offenses.

(c) In determining whether a criminal offense by an applicant, the primary contact, or an owner of any interest in, the AMC prevents the issuance or renewal of a registration, the Board will consider the following factors:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a registration to provide appraisal management services;

(3) the extent to which a registration might offer an opportunity to engage in further criminal activity of the same type as that which the person had previously been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to be involved, directly or indirectly, in performing the duties and discharge the responsibilities of AMC.

(d) In determining the present fitness of a person who has committed an offense under this section, the Board will consider the following evidence:

(1) the extent and nature of the person’s past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person’s last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person’s rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person’s present fitness including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the person.

(e) A person is presumed to lack the requisite moral character if less than two years has elapsed since the offense was committed.

(f) An applicant is presumed to be unfit to perform appraisal management services if the person has violated the appraiser independence standards of Section 129E of the Truth in Lending Act (15 U.S.C. §1601 et seq.). This presumption may be rebutted by credible evidence to the contrary.

(g) It is the responsibility of the applicant to the extent possible to secure and provide the Board the recommendations of the prosecution, law enforcement, and correctional authorities, as well as evidence, in the form required by the Board, relating to whether the applicant has maintained a record of steady employment, has maintained a record of good conduct, and is current on the payment of any outstanding court costs, supervision fees, fines, and restitution.

(h) A currently incarcerated individual does not possess the required good moral character.

(i) The primary contact and each owner of more than 10% of the AMC must consent in writing to a criminal history background check at the time the AMC [company] submits an application for registration or renewal.

(j) An applicant must certify it has reviewed each owner of any interest in the applicant and has verified that no person who owns an interest in the applicant has:

(1) had a license or certification to act as an appraiser denied, revoked, or surrendered in lieu of revocation;

(2) the license or certification to act as an appraiser has not been subsequently granted or reinstated; and

(3) the license or certification to act as an appraiser was denied, revoked, or surrendered in lieu of revocation for a nonsubstantive reason as determined by the Board under §159.102 of this chapter.

(k) [§159.104] An application for registration or renewal of registration that is [proposed to be] denied by Standards and Enforcement Services Division staff may be reviewed and reconsidered by the Commissioner if the applicant submits a written request for reconsideration within 10 [ten] days of notice of the [proposed] denial. The right to request reconsideration is distinct from, and in addition to, an applicant’s right to appeal an application [a proposed] denial before SOAH. The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency’s legal authority to adopt.

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22 TAC §159.154

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §159.154, Competency of Appraisers. The proposed amendments clarify the meaning of the term “assignment” in §1104.154 of Chapter 1104, Texas Occupations Code.

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

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

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.
The amendments are proposed under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§159.154. Competency of Appraisers.

(a) For purposes of §1104.154 of the AMC Act and this section, the term "assignment" means an appraisal assignment. This term does not include an appraisal review assignment.

(b) [Repealed]

(c) [Repealed]

(d) [Repealed]


(a) A license holder must review the work of appraisers performing appraisal services on 1-4 family unit properties collateralizing mortgage obligations by performing a review in accordance with Standard 3 of USPAP of:

(1) one of the first five appraisals performed for the license holder by each appraiser, prior to making a sixth assignment; and

(2) a total of five percent, randomly selected, of the appraisals performed for the AMC for each twelve-month period following the date of the AMC's registration.

(b) Appraisals performed pursuant to subsection (a)(1) of this section will be counted toward the calculation of five percent for the purposes of subsection (a)(2) of this section.

(c) A review pursuant to subsection (a)(1) of this section is not required if the first five appraisals by an appraiser were completed before the AMC was required by the AMC Act to be registered with the Board.

(d) In addition to satisfying the requirements of §1104.153 of the AMC Act, the review appraiser must have access to appropriate data sources for the appraisal being reviewed.

(e) An appraiser is qualified to perform an appraisal review within the meaning of §1104.153 of the AMC Act if the appraiser conducting the review:

(1) is licensed or certified to act as an appraiser in Texas or another jurisdiction;

(2) holds the appropriate credential to have performed the appraisal being reviewed; and

(3) does not develop an opinion of value.

(f) A certified residential appraiser may perform a review of a residential real estate appraisal completed by a certified general appraiser if the review appraiser is otherwise permitted by the Texas Appraiser Licensing and Certification Act to perform the assignment.

(g) An appraiser conducting a review under §1104.155 of the AMC Act and this rule must ensure compliance with:
(1) [true] USPAP; and
(2) [with] §1104.154 of the AMC Act.
(g) - (h) (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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22 TAC §159.156

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §159.156, Business Records. The proposed amendments align this section with statutory changes adopted by the 85th Legislature.

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

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

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§159.156. Business Records.
(a) For the purposes of the requirement in §1104.156(c) of the AMC Act regarding retention of written records of substantive communications between an AMC and an appraiser, a communication is substantive if it relates to the appraiser’s qualifications or to the scope of work of an assignment.
(b) An AMC may not require an appraiser to keep confidential the existence of the appraiser’s business relationship with an AMC or the fact that the appraiser has received any specific assignment from the AMC to perform an appraisal.

(c) A business entity required to register [registered] as an AMC must maintain documentation showing that it has complied with the requirements contained in its governing documents for changing officers or managers. The business entity must promptly provide to the Board upon request all business formation, ownership and representative authorization records and changes thereto required to be kept by the business entity by law.

(d) Written records include electronic records.

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

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22 TAC §159.201

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to §159.201, Guidelines for Revocation, Suspension, or Denial of a License. The proposed amendments align this section with statutory changes adopted by the 85th Legislature.

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

Ms. Worman has also determined that for each year of the first five years the section as proposed US in effect the public benefit anticipated as a result of enforcing the section as proposed will be requirements that are consistent with the statute and easier to understand, apply and process.

Comments on the proposed amendments may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§159.201. Guidelines for Revocation, Suspension, or Denial of a License.
(a) The Board may suspend or revoke a license issued under provisions of the AMC Act, or deny issuing or renewing a license to
an applicant, any time it is determined that the person applying for, renewing, or holding the license or the AMC's primary contact:

(1) disregards or violates a provision of the AMC Act or Board rules;
(2) is convicted of a felony;
(3) fails to notify the Board not later than the 30th day after the date of the final conviction if the person, in a court of this or another state or in a federal court, has been convicted of or entered a plea of guilty or nolo contendere to a felony or a criminal offense involving fraud or moral turpitude;
(4) fails to notify the Board not later than the 30th day after the date of incarceration if the person, in this or another state, has been incarcerated for a criminal offense involving fraud or moral turpitude;
(5) fails to notify the Board of the following with regard to any professional or occupational license held by the person in Texas or another jurisdiction not later than the 30th day after the date:

(A) disciplinary action becomes final against the person; or [with regard to any occupational license the person holds in Texas or any other jurisdiction;]
(B) the person voluntarily surrenders any professional or occupational license;
(6) fails to comply with the USPAP edition in effect at the time of the appraisal or appraisal practice;
(7) acts or holds any person out as a registered AMC under the AMC Act or another state's act when not so licensed or certified;
(8) accepts payment for appraisal management services but fails to deliver the agreed service in the agreed upon manner;
(9) refuses to refund payment received for appraisal management services when he or she has failed to deliver the appraiser service in the agreed upon manner;
(10) accepts payment for services contingent upon a minimum, maximum, or pre-agreed value estimate;
(11) offers to perform appraisal management services or agrees to perform such services when employment to perform such services is contingent upon a minimum, maximum, or pre-agreed value estimate;
(12) makes a material misrepresentation or omission of material fact;
(13) has had a registration as an AMC revoked, suspended, or otherwise acted against by any other jurisdiction for an act which is an offense under Texas law;
(14) procures a registration pursuant to the AMC Act by making false, misleading, or fraudulent representation;
(15) has had a final civil judgment entered against him or her on any one of the following grounds:

(A) fraud;
(B) intentional or knowing misrepresentation; or
(C) grossly negligent misrepresentation in the making of real estate appraiser services;
(16) fails to make good on a payment issued to the Board within 30 days after the Board has mailed a request for payment by certified mail to the license holder's primary contact as reflected in the Board's records;
(17) knowingly or willfully engages in false or misleading conduct or advertising with respect to client solicitation;
(18) uses any title, designation, initial or other insignia or identification that would mislead the public as to that person's credentials, qualifications, competency, or ability to provide appraisal management services;
(19) requires an appraiser to pay for or reimburse the AMC for a criminal history check;
(20) fails to comply with a final order of the Board; or
(21) fails to answer all inquiries concerning matters under the jurisdiction of the Board within 20 days of notice to said person's or primary contact's address of record, or within the time period allowed if granted a written extension by the Board.

(b) The Board has discretion in determining the appropriate penalty for any violation under subsection (a) of this section.

(c) The Board may probate a penalty or sanction, and may impose conditions of the probation, including, but not limited to:

(1) the type and scope of appraisal management practice;
(2) requirements for additional education by the AMC's controlling persons;
(3) monetary administrative penalties; and
(4) requirements for reporting appraisal management activity to the Board.

(d) A person applying for reinstatement after revocation or surrender of a registration must comply with all requirements that would apply if the registration had instead expired.

(e) The provisions of this section do not relieve a person from civil liability or from criminal prosecution under the AMC Act or under the laws of this State.

(f) The Board may not investigate under this section a complaint submitted either more than two years after the date of discovery or more than two years after the completion of any litigation involving the incident, whichever event occurs later, involving the AMC that is the subject of the complaint.

(g) Except as provided by [Texas Government Code §402.031(b) and] Texas Penal Code §32.32(d), there will be no undercover or covert investigations conducted by authority of the AMC Act.

(h) The Board may report to the Appraisal Subcommittee any disciplinary action taken by the Board against an AMC required to register under the AMC Act.

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

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22 TAC §159.205

22 TAC §159.205

42 TexReg 4452  September 1, 2017  Texas Register
The Texas Appraiser Licensing and Certification Board (TALCB) proposes new §159.205, Identity Theft. The proposed rule implements provisions regarding identity theft related to appraisal management companies.

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

Ms. Worman has also 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 section as proposed will be requirements that are consistent with the statute and provide a mechanism for appraisal management companies to address identity.

Comments on the proposal may be submitted to Kristen Worman, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the Texas Register.

The amendments are proposed under Texas Occupations Code §1104.051, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statute affected by these amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§159.205. Identity Theft.

(a) For purposes of this subchapter, “identity theft” means any of the following activities occurring in connection with the rendition of appraisal management services:

1. Unlawfully obtaining, possessing, transferring or using a license or license number issued by the Board; or

2. Unlawfully obtaining, possessing, transferring or using a person’s electronic or handwritten signature.

(b) A license holder shall implement and maintain reasonable procedures to protect and safeguard the license holder against identity theft.

(c) A license holder must notify the Board if the license holder is the victim of identity theft within 90 days of discovering such theft. Effective notice may be provided by filing a signed, written complaint on a form prescribed by the Board.

(d) The Board may invalidate a current license and issue a new one to a license holder the Board determines is a victim of identity theft. Any license holder seeking the invalidation of a current license and issuance of a new one must submit a written, signed request on a form provided by the Board for the invalidation of a current license and issuance of a new one. The basis for the request must be identity theft, and the requestor must submit credible evidence that the license holder is a victim of identity theft. Without limiting the type of evidence a license holder may submit to the Board to support a claim of identity theft, a court order issued in accordance with Texas Business and Commerce Code Chapter 521, Subchapter C, declaring the license holder is a victim of identity theft constitutes credible evidence. Any such court order must relate to identity theft as defined in this section.

(e) Engaging in identity theft to perform unauthorized appraisal management services is a violation of this subchapter, which may result in disciplinary action under §159.201. In addition to any disciplinary action taken by the Board, persons engaging in identity theft may also be referred to the appropriate law enforcement agency for criminal prosecution.

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

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TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §703.13, §703.26

The Cancer Prevention and Research Institute of Texas (Institute) proposes amendments to §703.13 and §703.26. The proposed changes clarify how long a grant recipient must maintain grant records, how long a grant recipient must allow inspection of grant records, and expand the list of unallowable costs to include payments by a grant recipient to a subcontractor that employs a relative of the grant recipient.

Background and Justification

The proposed change to §703.13(a) clarifies that a grant recipient must maintain records related to a grant project for a period of three years following the date of the last disbursement of grant funds made by the Institute or when all reports are submitted to and approved by the Institute, whichever is later. Currently, the Institute’s administrative rules are silent on the grant recipient’s record retention obligations and the rule provides needed guidance for grant recipients. Section 703.13 is further amended to require a grant recipient to allow inspection of grant records for a period of three years following the date the last disbursement of grant funds is made by the Institute and all reports are submitted to and approved by the Institute, whichever is later. Currently, the audit period is up to three years following the end of the grant recipient’s fiscal year during which the grant contract was terminated. This proposed change will provide uniformity between the inspection period and the proposed term for grant recipient’s records retention obligations.

The proposed change to §703.26(e) prohibits payment by a grant recipient to a subcontractor if the subcontractor employs an individual who is a relative of the grant recipient as defined by Texas Administrative Code §701.3(57). A grant recipient may request that the Institute’s Chief Executive Officer allow an exception to allow payment to a subcontractor that employs a relative. If the Chief Executive Officer grants an exception, he must notify the
Oversight Committee in writing. If a grant recipient has stricter internal policies concerning this issue then this proposed amendment will not supersede those policies. The purpose of this proposed rule change is to reduce potential conflicts of interest between a grant recipient and a subcontractor.

Fiscal Note

Kristen Pauling Doyle, General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule changes are in effect, there will be no foreseeable implications relating to costs or revenues for state or local government due to enforcing or administering the rules.

Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule changes are in effect the public benefit anticipated due to enforcing the rules will be clarification of policies and procedures the Institute will follow to implement its statutory duties.

Small Business and Micro-business Impact Analysis

Ms. Doyle has determined that the rule changes shall not have an effect on small businesses or on micro businesses.

Written comments on the proposed rule changes may be submitted to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711 no later than October 2, 2017. CPRIT asks parties filing comments to indicate whether or not they support the rule revisions proposed by the Institute and, if a change is requested, to provide specific text proposed to be included in the rule. Comments may be submitted electronically to kdoyle@cprit.texas.gov. Comments may be submitted by facsimile transmission to (512) 475-2563.

Statutory Authority

The amendments are proposed under the authority of the Texas Health and Safety Code Annotated, §102.108, which provide the Institute with broad rule-making authority to administer the chapter. Kristen Pauling Doyle, the Institute’s General Counsel, has reviewed the proposed amendments, and certifies the proposal to be within the Institute’s authority to adopt.

There is no other statute, article, or code affected by the proposal.

§703.13. Audits and Investigations.

(a) Upon request and with reasonable notice, an entity receiving Grant Award funds directly under the Grant Contract or indirectly through a subcontract under the Grant Contract shall allow, or shall cause the entity that is maintaining such items to allow the Institute, or auditors or investigators working on behalf of the Institute, including the State Auditor and/or the Comptroller of Public Accounts for the State of Texas, to review, inspect, audit, copy or abstract its records pertaining to the specific Grant Contract during the term of the Grant Contract and for the three year period following the date the last disbursement of funds is made by the Institute or all reports required pursuant to the Grant Contract are submitted and approved, whichever date is later [end of the Grant Recipient’s fiscal year during which the Grant Contract was terminated].

(1) A Grant Recipient shall maintain its records pertaining to the specific Grant Contract for a period of three years following the date the last disbursement of funds is made by the Institute or all reports required pursuant to the Grant Contract are submitted and approved, whichever date is later.

(2) The Grant Recipient may maintain its records in either electronic or paper format.

(b) Notwithstanding the foregoing, the Grant Recipient shall submit a single audit determination form within 60 days of the anniversary date of the Grant Contract effective date. The Grant Recipient shall report whether the Grant Recipient has expended $750,000 or more in state awards during the Grant Recipient’s fiscal year. If the Grant Recipient has expended $750,000 or more in state awards in its fiscal year, the Grant Recipient shall obtain either an annual single independent audit, a program specific independent audit, or an agreed upon procedures engagement as defined by the American Institute of Certified Public Accountants and pursuant to guidance provided in subsection (e).

(1) The audited time period is the Grant Recipient’s fiscal year.

(2) The audit must be submitted to the Institute within 30 days of receipt by the Grant Recipient but no later than 270 days following the close of the Grant Recipient’s fiscal year and shall include a corrective action plan that addresses any weaknesses, deficiencies, wrongdoings, or other concerns raised by the audit report and a summary of the action taken by the Grant Recipient to address the concerns, if any, raised by the audit report.

(A) The Grant Recipient may seek additional time to submit the required audit and corrective action plan by providing a written explanation for its failure to timely comply and providing an expected time for the submission.

(B) The Grant Recipient’s request for additional time must be submitted on or before the due date of the required audit and corrective action plan. For purposes of this rule, the “due date of the required audit” is no later than the 270th day following the close of the Grant Recipient’s fiscal year.

(C) Approval of the Grant Recipient’s request for additional time is at the discretion of the Institute. Such approval must be granted by the Chief Executive Officer.

(c) No reimbursements or advances of Grant Award funds shall be made to the Grant Recipient if the Grant Recipient is delinquent in filing the required audit and corrective action plan. A Grant Recipient that has received approval from the Institute for additional time to file the required audit and corrective action plan may receive reimbursements or advances of Grant Award funds during the pendency of the delinquency unless the Institute’s approval declines to permit reimbursements or advances of Grant Award funds until the delinquency is addressed.

(d) A Grant Recipient that is delinquent in submitting to the Institute the audit and corrective action plan required by this section is not eligible to be awarded a new Grant Award or a continuation Grant Award until the required audit and corrective action plan are submitted. A Grant Recipient that has received approval from the Institute for additional time to file the required audit and corrective action plan may remain eligible to be awarded a new Grant Award or a continuation Grant Award unless the Institute’s approval declines to continue eligibility during the pendency of the delinquency.

(e) For purposes of this rule, an agreed upon procedures engagement is one in which an independent certified public accountant is hired by the Grant Recipient to issue a report of findings based on specific procedures to be performed on a subject matter.

(1) The option to perform an agreed upon procedures engagement is intended for a non-profit or for-profit Grant Recipient that is not subject to Generally Accepted Government Audit Standards (also
known as the Yellow Book) published by the U.S. Government Accountability Office.

(2) The agreed upon procedures engagement will be conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants.

(3) The certified public accountant is to perform procedures prescribed by the Institute and to report his or her findings attesting to whether the Grant Recipient records is in agreement with stated criteria.

(4) The agreed upon procedures apply to all current year expenditures for Grant Awards received by the Grant Recipient. Nothing herein prohibits the use of a statistical sample consistent with the American Institute of Certified Public Accountants’ guidance regarding government auditing standards and 2 CFR Part 200, Subpart F, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

(5) At a minimum, the agreed upon procedures report should address:

(A) Processes and controls;
(B) The Grant Contract;
(C) Indirect Costs;
(D) Matching Funds, if appropriate;
(E) Grant Award expenditures (payroll and non-payroll related transactions);
(F) Equipment;
(G) Revenue Sharing and Program Income;
(H) Reporting; and
(I) Grant Award closeout.

(6) The certified public accountant should consider the specific Grant Mechanism and update or modify the procedures accordingly to meet the requirements of each Grant Award and the Grant Contract reviewed.


(a) A cost is an Allowable Cost and may be charged to the Grant Award if it is reasonable, allocable, and adequately documented.

(1) A cost is reasonable if the cost does not exceed that which would be incurred by a prudent individual or organization under the circumstances prevailing at the time the decision was made to incur the cost; and is necessary for the performance of the Grant Award defined in the Scope of Work in the Grant Contract.

(2) A cost is allocable if the cost:

(A) Benefits the Grant Award either directly or indirectly, subject to Indirect Cost limits stated in the Grant Contract;
(B) Is assigned the Grant Award in accordance with the relative benefit received;
(C) Is allowed or not prohibited by state laws, administrative rules, contractual terms, or applicable regulations;
(D) Is not included as a cost or used to meet Matching Fund requirements for any other Grant Award in either the current or a prior period; and
(E) Conforms to any limitations or exclusions set forth in the applicable cost principles, administrative rules, state laws, and terms of the Grant Contract.

(3) A cost is adequately documented if the cost is supported by the organization's accounting records and documented consistent with §703.24.

(b) Grant Award funds must be used for Allowable Costs as provided by the terms of the Grant Contract, Chapter 102, Texas Health and Safety Code, the Institute's administrative rules, and the Uniform Grant Management Standards (UGMS) adopted by the Comptroller's Office. If guidance from the Uniform Grant Management Standards on a particular issue conflicts with a specific provision of the Grant Contract, Chapter 102, Texas Health and Safety Code or the Institute's administrative rules, then the Grant Contract, statute, or Institute administrative rule shall prevail.

(c) An otherwise Allowable Cost will not be eligible for reimbursement if the Grant Recipient incurred the expense outside of the Grant Contract term, unless the Grant Recipient has received written approval from Institute's Chief Executive Officer to receive reimbursement for expenses incurred prior to the effective date of the Grant Contract.

(d) An otherwise Allowable Cost will not be eligible for reimbursement if the benefit from the cost of goods or services charged to the Grant Award is not realized within the applicable term of the Grant Award. The Grant Award should not be charged for the cost of goods or services that benefit another Grant Award or benefit a period prior to the Grant Contract effective date or after the termination of the Grant Contract.

(e) Grant Award funds shall not be used to reimburse unallowable expenses, including, but not limited to:

(1) Bad debt, such as losses arising from uncollectible accounts and other claims and related costs.
(2) Contributions to a contingency reserve or any similar provision for unforeseen events.
(3) Contributions and donations made to any individual or organization.
(4) Costs of entertainment, amusements, social activities, and incidental costs relating thereto, including tickets to shows or sports events, meals, alcoholic beverages, lodging, rentals, transportation and gratuities.
(5) Costs relating to food and beverage items, unless the food item is related to the issue studied by the project that is the subject of the Grant Award.
(6) Fines, penalties, or other costs resulting from violations of or failure to comply with federal, state, local or Indian tribal laws and regulations.
(7) An honorary gift or a gratuitous payment.
(8) Interest and other financial costs related to borrowing and the cost of financing.
(9) Legislative expenses such as salaries and other expenses associated with lobbying the state or federal legislature or similar local governmental bodies, whether incurred for purposes of legislation or executive direction.
(10) Liability insurance coverage.
(11) Benefit replacement pay or legislatively-mandated pay increases for eligible general revenue-funded state employees at Grant Recipient state agencies or universities.
(12) Professional association fees or dues for the Grant Recipient or an individual.
(13) Promotional items and costs relating to items such as T-shirts, coffee mugs, buttons, pencils, and candy that advertise or promote the project or Grant Recipient.

(14) Fees for visa services.

(15) Payments to a subcontractor if the subcontractor employs an individual that is a Relative of the Grant Recipient. For exceptional circumstances, the Institute's Chief Executive Office may grant an exception to allow payment of Grant Award funds to a subcontractor who employs a Relative of a Grant Recipient if the Grant Recipient notifies the Institute prior to finalizing a subcontract with such a circumstance. The Chief Executive Officer must notify the Oversight Committee in writing of his decision to allow reimbursement for the otherwise unallowable expense. Nothing herein is intended to supersede a Grant Recipient's internal policies, to the extent that such policies are stricter.

(f) The Institute is responsible for making the final determination regarding whether an expense shall be considered an Allowable Cost.

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

Filed with the Office of the Secretary of State on August 17, 2017.

TRD-201703187
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Earliest possible date of adoption: October 1, 2017
For further information, please call: (512) 305-8487

Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Earliest possible date of adoption: October 1, 2017
For further information, please call: (512) 305-8487
WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8201

The Texas Health and Human Services Commission withdraws the proposed amendments to §355.8201, concerning Waiver Payments to Hospitals for Uncompensated Care, which appeared in the June 23, 2017, issue of the Texas Register (42 TexReg 3218).

Filed with the Office of the Secretary of State on August 18, 2017.

TRD-201703198
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: August 18, 2017
For further information, please call: (512) 707-6088

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.25

Proposed amended §139.25, published in the February 17, 2017, issue of the Texas Register (42 TexReg 647), is automatically withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on August 18, 2017.

TRD-201703192

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §21.10

The Texas Higher Education Coordinating Board withdraws the proposed amended §21.10, which appeared in the August 4, 2017, issue of the Texas Register (42 TexReg 3856).

Filed with the Office of the Secretary of State on August 17, 2017.

TRD-201703181
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 17, 2017
For further information, please call: (512) 427-6104
ADMITTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the Texas Register does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 7. TEXAS FINANCIAL EDUCATION ENDOWMENT FUND

7 TAC §§7.101 - 7.105


The commission adopts the new §§7.101 - 7.105 without changes to the proposed text as published in the June 30, 2017, issue of the Texas Register (42 TexReg 3327).

In general, the purpose of the adopted new rules is to provide rules for the administration of the Texas Financial Education Endowment (TFEE) fund created by Texas Finance Code, §393.628. The new rules place into regulation existing commission policy, including the TFEE Grant Administration and Advisory Policy Manual, and commission approval of award amounts and grantees for each grant cycle. Additionally, certain rules provide clarification and guidance regarding gifts, donations, and fund management.

The TFEE was enacted by the 82nd Texas Legislature in 2011 to support statewide financial capability and consumer credit building activities and programs. The Office of Consumer Credit Commissioner (OCCC) and grant coordinator, assisted by the Grant Advisory Committee (GAC), have developed policies and procedures approved by the commission to administer the TFEE fund. These policies have been continually updated and refined to provide more efficiency in the TFEE grant program and in fund management. This adoption codifies the core policies into regulation, while maintaining the commission's flexibility to approve particular award amounts, grantees, and policy improvements for each grant cycle.

The individual purposes of each adopted new rule are outlined in the following paragraphs.

Section 7.101 specifies the applicability and purpose of Chapter 7 to govern the administration of the TFEE fund, and also outlines the components of the fund. The TFEE fund consists of assessments paid by credit access business applicants and licensees, as well as gifts and donations contributed for financial education or consumer credit educational purposes.

Section 7.102 explains the responsibilities of the parties that administer and manage the TFEE fund, including the commission, the OCCC and its commissioner, the GAC, and the grant coordinator.

Section 7.103 outlines the TFEE grant program, with provisions regarding grant cycle timing, eligible grant applicants, the grant application, commission approval of award amounts and grantees, the grant agreement, and grantee compliance. Additional subsections describe reporting and monitoring requirements, as well as reimbursement procedure. Adopted new §7.103 maintains the TFEE Grant Administration and Advisory Policy Manual, while providing further clarity for applicants and grantees.

Section 7.104 details the gifts and donations that may be made to the TFEE fund, as currently authorized by statute. TFEE gifts and donations must be either for a purpose provided by Texas Finance Code, §393.628(c) ("TFEE purpose"), or for a consumer credit education purpose under Texas Finance Code, §14.105(b). Gifts and donations may come from state agencies or other parties as approved by the commission.

Section 7.105 provides guiding principles for the management of the TFEE fund. Adopted new §7.105 references the statutory location and manner of investment for the TFEE fund.

The commission received no written comments on the proposal. The new rules are adopted under Texas Finance Code, §393.628(f), which authorizes the commission to adopt rules to administer the Texas Financial Education Endowment.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14 and 393.

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

Filed with the Office of the Secretary of State on August 18, 2017.

TRD-201703201
Leslie L. Pettjohn
Consumer Credit Commissioner
Finance Commission of Texas
Effective date: September 7, 2017
Proposal publication date: June 30, 2017
For further information, please call: (512) 936-7621

CHAPTER 9. RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS, APPEALS, AND RULEMAKINGS

The Finance Commission of Texas (commission) adopts amendments to §9.1, concerning Application, Construction, and Definitions, and §9.12, concerning Default, in 7 TAC, Chapter 9, con-
The adopted amendments also add a new subsection (b) to §9.12. Subsection (b) specifies the default procedures that apply to hearings conducted by SOAH. The amendments: (1) specify how an agency may notify a party of a contested case hearing, (2) require the agency to prove that it provided proper notice to the defaulting party, and (3) provide procedures for agencies to follow when resolving default cases. The amendments do not affect a party’s right to a hearing or impose additional requirements on the party.

Subsection (b) states that an agency may request that an administrative law judge make a finding of default in a hearing conducted by SOAH. Subsection (b)(1) describes the mailing address and method of service that the agency must use to serve the notice of hearing. Subsection (b)(2) requires the agency to present adequate proof that it properly served the opposing party with the notice of hearing. Subsection (b)(3) describes the effect of default, which includes deeming admitted the allegations in the notice of hearing and granting the relief sought in the notice.

Subsection (b)(4) states that the agency may request that a defaulted case be dismissed and remand to the agency for informal disposition. Subsection (b)(5) describes the content of the final order that the agency may issue, after a default case is dismissed and remanded to the agency.

The official commenter recommended adding a provision stating that “(a) an order issued by an agency after default has no precedential or evidentiary value in a subsequent action against another licensee alleging the same, or similar, violations.” The commission disagrees with this suggestion for the following reasons.

The commenter cites to a 1996 Texas Supreme Court case regarding the use of an uncontested judgment against a third party insurance company. See State Farm Fire & Cas. Co. v. Gandy, 925 S.W.2d 696 (Tex. 1996). The commenter summarizes the Gandy holding as “a default judgment against licensee A has no precedential or evidentiary value against Licensee B in a subsequent, similar case.” The agencies disagree with the commenter’s interpretation of the Gandy case. The agencies believe the Gandy case supports a different, more narrow conclusion: that it would violate public policy to allow a defendant to enter into an uncontested judgment with a plaintiff and assign to the plaintiff the defendant’s cause of action against his insurance company, using the judgment as evidence against the insurance company. Id. at 710 (citing International Proteins Corp. v. Ralston-Purina Co., 744 S.W.2d 932, 934 (Tex. 1988)).

The commenter also states that it would be unfair to give precedential value to default orders because they are not published and cannot be discovered or reviewed by licensees. In fact, a list of all OCCC and SML orders are published on their respective websites, and a copy of each order may be obtained by written request. Therefore, it is fair and consistent to give all final orders proper effect. It is the role of the administrative law judge, and reviewing courts, to determine the proper evidentiary and precedential value of individual orders.

Finally, the commenter states: “A case prepared, and a final order issued, without a fully adversarial trial should not be admissible as evidence against another licensee at a later date.” The OCCC and SML issue hundreds of orders each year, but only a few after a full adversarial trial. Again, it is fair and consistent to give all final orders proper effect, which should be determined by an administrative law judge and reviewing courts.
Allowing a court to recognize the precedential or evidentiary value of default orders reduces the need to use substantial agency resources to re-litigate facts and issues. This is consistent with the purpose of the default rule, which is to best utilize agency resources by efficiently disposing of defaulted cases.

Therefore, for the reasons outlined in the preceding paragraphs, the commission maintains the proposed language for this adoption and declines to add the commenter’s suggestion.

**SUBCHAPTER A. GENERAL**

**7 TAC §9.1**

The amendments are adopted under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The amendments are also adopted under specific rulemaking authority in the substantive statutes administered by the agencies. Texas Finance Code, §11.301 and §31.003(a)(5) authorize the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission. Texas Finance Code, §151.102(a)(1) authorizes the finance commission to adopt rules necessary to implement and clarify Chapter 151. Texas Finance Code, §154.051(b) authorizes the Department of Banking to adopt rules concerning matters incidental to the enforcement and orderly administration of Chapter 154.

Texas Finance Code, §11.302 authorizes the finance commission to adopt rules applicable to state savings associations or to savings banks. Texas Finance Code, §96.002(a)(2) authorizes the savings and mortgage lending commissioner and the finance commission to adopt procedural rules for deciding applications filed with the savings and mortgage lending commissioner or the Department of Savings and Mortgage Lending.

Texas Finance Code, §11.304 authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Texas Finance Code, Chapter 14 and Title 4. Texas Finance Code, §371.006 authorizes the consumer credit commissioner to adopt rules necessary for the enforcement of Texas Finance Code, Chapter 371. Texas Finance Code, §11.306 authorizes the commission to adopt residential mortgage loan origination rules as provided by Chapter 156. Texas Finance Code, §180.004 authorizes the commission to adopt rules to enforce Chapter 180. Texas Finance Code, §393.622 authorizes the commission to adopt rules to enforce Chapter 393. Texas Occupations Code, §1956.0611 authorizes the commission to adopt rules to enforce Subchapter B, Chapter 1956.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 154, 156, 157, 180, 393, 394, and Title 4, and Texas Occupations Code, Chapter 1956.

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

Filed with the Office of the Secretary of State on August 18, 2017.

**SUBCHAPTER B. CONTESTED CASE HEARINGS**

**7 TAC §9.12**

The amendments are adopted under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The amendments are also adopted under specific rulemaking authority in the substantive statutes administered by the agencies. Texas Finance Code, §11.301 and §31.003(a)(5) authorize the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission. Texas Finance Code, §151.102(a)(1) authorizes the finance commission to adopt rules necessary to implement and clarify Chapter 151. Texas Finance Code, §154.051(b) authorizes the Department of Banking to adopt rules concerning matters incidental to the enforcement and orderly administration of Chapter 154.

Texas Finance Code, §11.302 authorizes the finance commission to adopt rules applicable to state savings associations or to savings banks. Texas Finance Code, §96.002(a)(2) authorizes the savings and mortgage lending commissioner and the finance commission to adopt procedural rules for deciding applications filed with the savings and mortgage lending commissioner or the Department of Savings and Mortgage Lending.

Texas Finance Code, §11.304 authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Texas Finance Code, Chapter 14 and Title 4. Texas Finance Code, §371.006 authorizes the consumer credit commissioner to adopt rules necessary for the enforcement of Texas Finance Code, Chapter 371. Texas Finance Code, §11.306 authorizes the commission to adopt residential mortgage loan origination rules as provided by Chapter 156. Texas Finance Code, §180.004 authorizes the commission to adopt rules to enforce Chapter 180. Texas Finance Code, §393.622 authorizes the commission to adopt rules to enforce Subchapter B, Chapter 1956.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 154, 156, 157, 180, 393, 394, and Title 4, and Texas Occupations Code, Chapter 1956.

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

Filed with the Office of the Secretary of State on August 18, 2017.

Leslie L. Pettijohn
Consumer Credit Commissioner
Finance Commission of Texas
Effective date: September 7, 2017
Proposal publication date: June 30, 2017
For further information, please call: (512) 936-7621

TRD-201703199

ADOPTED RULES September 1, 2017 42 TexReg 4461
PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

The Finance Commission of Texas (commission) adopts amendments to §§84.203 - 84.205, 84.302, 84.308, 84.309, 84.707 - 84.709, 84.804, and 84.808 in 7 TAC, Chapter 84, concerning Motor Vehicle Installment Sales.

The commission adopts the amendments to §§84.203 - 84.205, 84.302, 84.308, 84.309, 84.707 - 84.709, 84.804, and 84.808 without changes to the proposed text as published in the June 30, 2017, issue of the Texas Register (42 TexReg 3332).

The commission received one supportive written comment on the proposal from the Texas Independent Automobile Dealers Association (TIADA). The comment solely relates to amended §84.205, Documentary Fee, and supports the adopted changes stating that the "language accurately reflects the intent of HB 2949."

In general, the purpose of the rule changes in 7 TAC, Chapter 84 is to implement four bills that the Texas Legislature passed in the 2017 legislative session: HB 2339, HB 2949, SB 1052, and SB 1199. The adopted rule changes relate to the following issues: trade-in credit agreements, documentary fees, debt cancellation agreements, deferments, and depreciation benefit service contracts.

HB 2339 adds new §348.125 to the Texas Finance Code, authorizing a retail seller to provide a trade-in credit agreement in connection with a motor vehicle retail installment transaction. The bill defines a trade-in credit agreement as "a contractual arrangement under which a retail seller agrees to provide a specified amount as a motor vehicle trade-in credit for the diminished value of the motor vehicle that is the subject of the retail installment contract in connection with which the trade-in credit agreement is offered if the motor vehicle is damaged but not rendered a total loss as a result of a collision accident, with the credit to be applied toward the purchase or lease of a different motor vehicle from the retail seller or an affiliate of the retail seller." The bill includes disclosure requirements, refunding requirements, a limitation on the amount charged, and a requirement that the seller be insured under a contractual liability reimbursement policy approved by the Texas Department of Insurance.

HB 2949 amends Texas Finance Code, §348.006, to specify that a retail seller is not required to notify the agency of an increased documentary fee if the seller charges a documentary fee that is less than or equal to an amount presumed reasonable by rule of the commission.

SB 1052 moves provisions regarding debt cancellation agreements that require insurance from Chapter 348 to a new Chapter 354 of the Texas Finance Code. The bill allows these agreements to be provided in a Chapter 345 retail installment transac-
An adopted amendment to §84.204 adds a new subsection (j), providing that a retail seller may not include a benefit under a trade-in credit agreement in the "Dealership Allowance for Trade-In" section of the disclosure of equity standard form. This amendment is intended to avoid confusion in the calculation of the trade-in allowance, which is limited to the value of the trade-in vehicle. Under Texas Tax Code, §152.002(b)(5), "the value of a motor vehicle taken by a seller as all or a part of the consideration for sale of another motor vehicle, including any cash payment to the buyer under Section 348.404 or 353.402, Finance Code" is excluded from the total consideration for sales tax purposes. The Texas Comptroller of Public Accounts uses the term "trade-in allowance" to refer to the value of the vehicle for purposes of this exclusion from sales tax. Texas Comptroller of Public Accounts, Motor Vehicle Tax Guidebook at x, II-2 (2011). The benefit under a trade-in credit agreement is separate from the value of the trade-in vehicle itself. For this reason, the benefit under a trade-in credit agreement should not be included in the trade-in allowance shown on the disclosure of equity.

An adopted amendment to §84.205(b)(1) specifies that a documentary fee of $150 or less is presumed reasonable under Texas Finance Code, §348.006(f). In addition, throughout §84.205, the adoption deletes references to the requirement to provide a notification for a documentary fee that is greater than $50 but less than or equal to $150. These amendments implement HB 2949, which specifies that a retail seller is not required to notify the agency of an increased documentary fee if the seller charges a documentary fee that is less than or equal to an amount presumed reasonable by rule of the commission. $150 is the same amount that the agency presumes reasonable under §84.205(b)(2) prior to this adoption. The commission adopted $150 as a reasonable documentary fee amount in 2016. This amount was based on the agency’s ongoing review of documentary fee cost analyses, as well as document-related costs for Texas motor vehicle dealerships. The rule’s current requirement to provide both a notification and a cost analysis for a documentary fee over $150 would remain in place.

Until HB 2949 goes into effect on September 1, 2017, sellers are required to continue complying with current law, and may not charge a documentary fee over $50 without first notifying the agency.

Adopted amendments to §84.302, §84.308, and §84.309 contain updated citations to the new Chapter 354 of the Texas Finance Code, as added by SB 1052. In addition, an amendment to §84.309(d) acknowledges that the agency may agree to extend the normal 45-day approval period for debt cancellation agreements for an additional 45 days. This amendment implements SB 1052, which permits the agency to agree to these deadline extensions in new Texas Finance Code, §354.005(b).

In §84.707, the adoption amends the recordkeeping requirements for retail sellers that assign retail installment contracts. The amended recordkeeping requirements relate to trade-in credit agreements and depreciation benefit service contracts.

In §84.707(d)(2), adopted new subparagraphs (N) and (O) identify records that a seller must maintain for trade-in credit agreements, including a copy of the agreement, refunding records, and documentation used to process a claim. These amendments ensure that the agency can verify the seller’s compliance with Texas Finance Code, §348.125, as added by HB 2339. These recordkeeping requirements are generally similar to requirements for other ancillary products. If any claims are administered by a party other than the seller, the seller should be able to obtain these records from the administrator.

In §84.707(d)(2), adopted new subparagraph (P) requires the seller to maintain records relating to depreciation benefit service contracts, including evidence of the amount of any credit, and any documentation obtained by the seller to process a benefit. This amendment ensures that the agency can verify that any benefit under a depreciation benefit service contract is accurately reflected on the retail installment contract.

During the stakeholder meeting, attendees asked several questions about the recordkeeping requirements for depreciation benefit service contracts. One attendee asked how long records must be maintained. The depreciation benefit service contract records will be subject to the general requirement in Texas Finance Code, §348.517(b), and current §84.707(d)(6) and §84.708(e)(9) to maintain records for the later of four years from the date of the retail installment contract, or two years from the date of the final entry. Another attendee asked whether records are required to be maintained in electronic or paper form. The depreciation benefit service contract records will be subject to the general provisions in current §84.707(c) and §84.708(c), which allow a licensee to maintain records using a legible paper or manual recordkeeping system, an electronic recordkeeping system, an optically imaged recordkeeping system, or a combination of these. Another attendee asked which party is the "seller" for purposes of the recordkeeping rules. Throughout §84.707 and §84.708, the term "seller" refers to the seller of the motor vehicle, which is not necessarily the provider of the service contract. Service contract providers are subject to separate recordkeeping requirements under Texas Occupations Code, §1304.155.

In §84.707(d), adopted new paragraph (6) requires the seller to maintain a copy of any contractual liability reinsurance policy required for trade-in credit agreements under new Texas Finance Code, §348.125(c), as added by HB 2339. This new paragraph also requires the seller to maintain a register or be able to generate a report reflecting agreements that were satisfied or denied. These amendments ensure that the agency can verify the seller’s compliance with Texas Finance Code, §348.125, as added by HB 2339.

In §84.708, the adoption amends the recordkeeping requirements for retail sellers that collect installments on retail installment contracts. The amended recordkeeping requirements relate to deferments, trade-in credit agreements, and depreciation benefit service contracts. In §84.708(e)(2), adopted new subparagraph (R) requires sellers to maintain written deferment agreements and deferment notices. These amendments ensure that the licensee can verify the seller’s compliance with Texas Finance Code, §348.114, as amended by SB 1052. Other amendments throughout §84.708 conform to the previously discussed amendments to §84.707 relating to trade-in credit agreements and depreciation benefit service contracts.

In §84.709, the adoption amends the recordkeeping requirements for holders taking assignment of retail installment contracts. The amended recordkeeping requirements relate to deferments and debt cancellation agreements. In §84.709(e)(2),
adopted new subparagraph (J) conforms to the previously discussed amendment to §84.708(e)(2) relating to deferments. In addition, an adopted amendment to §84.709(e)(3)(A)(v) specifies that a holder must maintain refunding records if it receives or issues a refund for certain ancillary products, including debt cancellation agreements.

In §84.804, the adoption amends a list of authorized itemized charges to include a charge for a trade-in credit agreement and a charge for a depreciation benefit service contract.

In §84.808(8), adopted new subparagraphs (F) and (G) specify that a benefit provided under a trade-in credit agreement or depreciation benefit service contract must be included in the downpayment and included in the line of the retail installment contract labeled "other (describe)." As discussed previously, the benefit under a trade-in credit agreement is separate from the value of the trade-in vehicle itself, and should not be included in the trade-in allowance. Disclosing the trade-in credit agreement benefit on the "other" line of the downpayment section helps ensure that the buyer understands the benefit amount and is not misled into believing that the benefit is part of the trade-in allowance. Similarly, disclosing a depreciation benefit on the "other" line of the downpayment section helps ensure that the buyer understands the benefit amount.

During the stakeholder meeting, one attendee asked how the initial charge for the trade-in credit agreement should be disclosed, and asked whether §84.808(8)(F) applies only to the transaction where the buyer receives a benefit under the agreement. To clarify, there are two retail installment transactions relevant to the trade-in credit agreement: the first transaction in which the buyer purchases the agreement, and the second transaction in which the buyer trades in the vehicle and receives a benefit under the agreement. In the first transaction, the initial charge for the trade-in credit agreement should be listed in the retail installment contract's itemization of amount financed, in the itemized charges not included in the cash price. This requirement is specified by Texas Finance Code, §348.005(4), as amended by HB 2339, and adopted §84.804(4)(R). For example, the seller may list the initial charge on line 4.O., "Other charges," of the model itemization of amount financed at §84.808(8)(A). In the second transaction, the benefit under the agreement should be disclosed in the retail installment contract's itemization of amount financed, on the "other" line of the downpayment section. Adopted §84.808(8)(F) applies only to the transaction where the buyer receives a benefit under the agreement.

During the stakeholder meeting, one attendee asked when licensees may start offering depreciation benefit service contracts. Trade-in credit agreements in connection with retail installment transactions are not authorized until HB 2339 goes into effect on September 1, 2017. Before offering a trade-in credit agreement, a seller must ensure that it is insured under a contractual liability reimbursement policy, as required by Texas Finance Code §348.125(c), as added by HB 2339.

SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

7 TAC §§84.203 - 84.205

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The rule changes in §84.205 concerning documentary fees are adopted under Texas Finance Code, §348.006(f), as amended by HB 2949, which authorizes the commission to adopt a rule establishing a documentary fee amount presumed to be reasonable, and Texas Finance Code, §348.006(h), which authorizes the commission to adopt rules necessary to enforce §348.006.

The statutory provisions affected by the adopted rule changes are contained in Texas Finance Code, Chapters 345, 348, and 354.

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

Filed with the Office of the Secretary of State on August 18, 2017.

TRD-201703203
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: September 7, 2017
Proposal publication date: June 30, 2017
For further information, please call: (512) 936-7621

SUBCHAPTER C. INSURANCE AND DEBT CANCELLATION AGREEMENTS

7 TAC §§84.302, 84.308, 84.309

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the adopted rule changes are contained in Texas Finance Code, Chapters 345, 348, and 354.

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

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

SUBCHAPTER G. EXAMINATIONS

7 TAC §§84.707 - 84.709

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code.
Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the adopted rule changes are contained in Texas Finance Code, Chapters 345, 348, and 354.

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

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Leslie L. Pettijohn
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For further information, please call: (512) 936-7621

SUBCHAPTER H. RETAIL INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §84.804, §84.808

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code.

Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the adopted rule changes are contained in Texas Finance Code, Chapters 345, 348, and 354.

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

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Leslie L. Pettijohn
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Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7621

CHAPTER 86. RETAIL CREDITORS

SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

7 TAC §86.202

The Finance Commission of Texas (commission) adopts new §86.202 in 7 TAC, Chapter 86, concerning Retail Creditors.

The commission adopts new §86.202, without changes to the proposed text as published in the June 30, 2017, issue of the Texas Register (42 TexReg 3340).

The commission received no written comments on the proposed new rule.

In general, the purpose of the rule changes in 7 TAC, Chapter 86 is to implement a bill that the Texas Legislature passed in the 2017 legislative session: SB 1052. The adopted new rule relates to debt cancellation agreements for Chapter 345, Retail Installment Transactions.

SB 1052 moves provisions regarding debt cancellation agreements that require insurance from Chapter 348 to a new Chapter 354 of the Texas Finance Code. The bill allows these agreements to be provided in a Chapter 345 retail installment transaction for certain covered vehicles, including a motorcycle, all-terrain vehicle, snowmobile, camper, boat, or personal watercraft trailer. The bill also allows the OCCC to agree to extend the 45-day approval period for debt cancellation agreements by an additional 45 days, and it specifies refunding and recordkeeping requirements when a debt cancellation agreement terminates due to early payoff of a retail installment contract.

Prior to proposal, the agency circulated an early draft of these changes to interested stakeholders. The agency then held an online stakeholder meeting where attendees asked questions through a webinar. The agency did not receive any informal written precomments other than the questions received through the webinar.

The purpose of the new rule is provided in the following paragraphs.

Adopted new §86.202 provides that a debt cancellation agreement for a retail installment contract involving the purchase of a covered vehicle described by Texas Finance Code, §354.001(2), including a motorcycle, recreational vehicle, all-terrain vehicle, camper, boat, personal watercraft, or personal watercraft trailer, is subject to the submission requirements and appeal procedures of §84.309. This new rule implements SB 1052, which allows debt cancellation agreements to be provided in a Chapter 345 retail installment transaction for certain covered vehicles, including a motorcycle, all-terrain vehicle, snowmobile, camper, boat, or personal watercraft trailer. The agency began accepting submissions of debt cancellation agreements for these Chapter 345 covered vehicles as of July 1, 2017.

During the stakeholder meeting, one attendee asked when registrants may start offering debt cancellation agreements for Chapter 345 covered vehicles. These agreements are not authorized until SB 1052 goes into effect on September 1, 2017. In addition, any Chapter 345 debt cancellation agreement must be approved by the agency before a seller uses it.

Under adopted new §86.202, a person submitting a debt cancellation agreement for a Chapter 345 covered vehicle will be required to pay a filing fee under current §84.309(c).

The new rule is adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

This new rule is authorized under Texas Finance Code, §14.107, which authorizes the commission to establish reasonable and necessary fees for carrying out the commissioner’s powers and duties under Chapter 348. The statutory provisions affected by the adopted new rule are contained in Texas Finance Code, Chapters 345, 348, and 354.
The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: September 7, 2017
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For further information, please call: (512) 936-7621

TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.16

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §153.16, License Reinstatement, without changes to the proposed text as published in the May 19, 2017, issue of the Texas Register (42 TexReg 2643). The amendments clarify the requirements for applicants who apply for license reinstatement and explain when an applicant for license reinstatement is eligible for an examination waiver.

The reasoned justification for the amendments is to provide clarity for license reinstatement applicants and a requirement that is easier to understand and consistent with state and federal law.

No comments were received on the amendments as proposed. The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses, and §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the AQB.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the amendments.

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

Filed with the Office of the Secretary of State on August 15, 2017.
TRD-201703144
Kristen Worman
General Counsel
Texas Appraiser Licensing and Certification Board
Effective date: September 4, 2017
Proposal publication date: May 19, 2017
For further information, please call: (512) 936-3652

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §§291.32 - 291.34

The Texas State Board of Pharmacy adopts amendments to §291.32, concerning Personnel; §291.33, concerning Operational Standards; and §291.34, concerning Records. These amendments are adopted without changes to the proposed text as published in the June 16, 2017, issue of the Texas Register (42 TexReg 3066).

The amendments clarify what shall be included in the dispensing process of a dispensing pharmacist; update the categories of references required to be maintained in the reference library of Class A pharmacies and require pharmacies that provide veterinary medications to keep a veterinary drug reference; add a requirement that orally or telephonically communicated prescriptions identify the transcribing pharmacist and the prescriber or agent communicating the prescription; clarify the requirements regarding the transfer of prescription drug order information between pharmacies to be consistent with DEA requirements; and clarify who may transfer prescriptions.

The Coalition for Nurses in Advanced Practice commented that references to physician in §291.32 and §291.34 should be changed to practitioner to make the rule more consistent with other rules. The Board agrees with the comments but will make the changes in a future proposal of the rule. The National Association of Chain Drugs Stores commented that the transfer requirements in §291.34 should reflect the federal Drug Enforcement Administration (DEA) citation to ensure that the Board rules continue to align with the DEA rules. The Board disagrees with the comment and did not change the language as suggested.

The amendments are adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on August 17, 2017.
TRD-201703183
Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: September 6, 2017
Proposal publication date: June 16, 2017
For further information, please call: (512) 305-8028

42 TexReg 4466  September 1, 2017  Texas Register
SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.76, §291.77

The Texas State Board of Pharmacy adopts amendments to §291.76, concerning Class C Pharmacies Located in a Free-standing Ambulatory Surgical Center, and §291.77, concerning Pharmacies Compounding Sterile Preparations (Class C-S). These amendments are adopted without changes to the proposed text as published in the June 16, 2017, issue of the Texas Register (42 TexReg 3090).

The amendments to §291.76 clarify the requirements regarding the withdrawal of drugs from the ambulatory surgical center pharmacy. The amendments to §291.77 remove licensing requirements specific to Class C-S pharmacies owned or operated by hospital management or consulting firms, and correct a grammatical error.

No comments were received.

The amendments are adopted under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

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Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: September 6, 2017
Proposal publication date: June 16, 2017
For further information, please call: (512) 305-8028

SUBCHAPTER E. CLINIC PHARMACY (CLASS D)

22 TAC §291.93

The Texas State Board of Pharmacy adopts amendments to §291.93, concerning Operational Standards. These amendments are adopted without changes to the proposed text as published in the June 16, 2017, issue of the Texas Register (42 TexReg 3100).

The amendments to §291.93 clarify the requirements regarding individuals who may initiate therapy and examine patients.

The Coalition for Nurses in Advanced Practice commented in support of the changes.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on August 17, 2017.

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Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: September 6, 2017
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For further information, please call: (512) 305-8028

TITLE 25. HEALTH SERVICES
PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §703.24

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts the amendment to §703.24 without changes to the proposed text as published in the June 23, 2017, issue of the Texas Register (42 TexReg 3248). The proposed change would allow grant awards with contract initiation dates in the last quarter of the state fiscal year to have an initial financial reporting period beginning the following fiscal year.

Reasoned Justification

The proposed amendment addresses a procedural issue for Institute grant contracts with an effective date in the fourth quarter of the state fiscal year, typically August 31. Oversight Committee action on grant awards recommended by a Review Council Chair in a particular fiscal year must have a contract effective date in the same fiscal year to be funded with general obligation bond proceeds appropriated in that fiscal year. For awards approved by the Oversight Committee in the last quarter of a fiscal year, the contract effective date results in a partial quarter, often only one day. The Institute's electronic grant management system generates a financial status report that covers the partial fiscal quarter. The system maintains the partial financial status report filing requirement for the remainder of the grant. As a result, these grants appear to have five quarters in the Institute's electronic grant management system for financial reporting purposes. This "fifth quarter" issue creates confusion and imposes a logistical burden on grantees. The proposed rule change addresses the fifth quarter issue by allowing grant awards with a contract effective date in the last quarter of a state fiscal year to have an initial financial reporting period beginning September 1 of the following state fiscal year. Grantees may submit any
expenses for the partial quarter in the initial reporting period beginning September 1.

Summary of Public Comments and Staff Recommendation

CPRIT received no public comments regarding the proposed amendments.

The amendments are adopted under the authority of the Texas Health and Safety Code Annotated, §102.108 and §102.251, which provides the Institute with broad rule-making authority to administer the chapter, including rules for awarding grants.

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

Filed with the Office of the Secretary of State on August 17, 2017.

TRD-201703186
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Effective date: September 6, 2017
Proposal publication date: June 23, 2017
For further information, please call: (512) 305-8487

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION


BACKGROUND AND JUSTIFICATION

The adopted rules clarify the difference between rehabilitative services, which may be provided to any resident in a nursing facility, and nursing facility specialized services, which may be provided only to a nursing facility resident who is a Medicaid recipient with an intellectual or developmental disability and over 21 years of age, also referred to as a "designated resident."

The adopted rules remove references to specialized services in Chapter 19, Subchapter N, which governs rehabilitative services, and add requirements for nursing facility specialized services in Subchapter BB, which governs nursing facility responsibilities related to preadmission screening and resident reviews, which include providing specialized services to designated residents.

COMMENTS

The 30-day comment period ended April 23, 2017. During this period, DADS and HHSC received comments regarding the proposed rules from two commenters, Disability Rights Texas and the Coalition for Nurses in Advanced Practice. A summary of the comments and HHSC’s responses follows.

Comment: Regarding the proposed amendment of §19.101, Definitions, a commenter noted that the definition of "MN," or "medical necessity" has been moved and reworded slightly. The commenter requested confirmation that the changes will not affect nursing facility admission criteria.

Response: The term was moved to be in alphabetical order, according to the acronym "MN" and the definition was reworded. The changes to the definition are not substantive and will not affect nursing facility admission criteria. No change was made in response to the comment.

Comment: Regarding §19.101, Definitions, a commenter suggested amending the definition of "therapeutic diet" to provide that the term includes a diet ordered by a clinical nurse specialist, nurse practitioner, physician assistant, or dietician, if the task of ordering a diet is delegated to one of those professionals by a resident’s attending physician.

Response: Physicians are permitted to delegate tasks to certain health care professionals in accordance with 42 CFR §483.30(e). In addition, Texas Health and Safety Code §242.151(b) allows an advanced practice registered nurse or a physician assistant to perform certain responsibilities of an attending physician pursuant to protocols developed with the physician; and

Texas Occupations Code, Chapter 157, authorizes a physician to delegate medical actions to another person under certain circumstances. Therefore, HHSC has concluded it is not necessary to specify in rule that a physician may delegate specific responsibilities. No change was made in response to the comment.

Comment: Regarding §19.1301, Provision of Rehabilitative Services, a commenter suggested amending subsection (b)(1) to provide that rehabilitative services may be based on a diagnosis and orders of a clinical nurse specialist, nurse practitioner, or physician assistant if the task is delegated to one of those professionals by a resident’s attending physician.

Response: Physicians are permitted to delegate tasks to certain health care professionals in accordance with 42 CFR §483.30(e). In addition, Texas Health and Safety Code §242.151(b) allows an advanced practice registered nurse or a physician assistant to perform certain responsibilities of an attending physician pursuant to protocols developed with the physician; and

Texas Occupations Code, Chapter 157, authorizes a physician to delegate medical actions to another person under certain circumstances. Therefore, HHSC has concluded it is not necessary to specify in rule that a physician may delegate specific re-
Comment: Regarding proposed §19.1306, Fee-for-Service Payment for Rehabilitative Services, a commenter suggested amending subsection (b)(1) to provide that rehabilitative services may be ordered by a clinical nurse specialist, nurse practitioner, or physician assistant if the task is delegated to one of those professionals by a resident's attending physician.

Response: Physicians are permitted to delegate tasks to certain health care professionals in accordance with 42 CFR §483.30(e). In addition, Texas Health and Safety Code §242.151(b) allows an advanced practice registered nurse or a physician assistant to perform certain responsibilities of an attending physician pursuant to protocols developed with the physician; and

Texas Occupations Code, Chapter 157, authorizes a physician to delegate medical actions to another person under certain circumstances. Therefore, HHSC has concluded it is not necessary to specify in rule that a physician may delegate specific responsibilities. No change was made in response to the comment.

Comment: Regarding §19.1306, Fee-for-Service Payment for Rehabilitative Services, a commenter suggested amending subsection (c) to require DADS to respond within a specified period of time to a request for precertification of an evaluation for rehabilitative services to ensure a nursing facility resident receives a new evaluation when needed.

Response: A nursing facility must comply with rules in Chapter 19 to be licensed and certified to participate in the Medicaid program. The rules do not typically include deadlines by which DADS or HHSC must complete certain actions. For that reason, no change was made in response to the comment. However, HHSC acknowledges the importance of acting on requests for precertification of an evaluation for rehabilitative services in a timely manner.

Comment: Regarding §19.2709, Incident and Complaint Reporting, a commenter suggested adding a requirement for a nursing facility to notify the local intellectual and developmental disability authority (LIDDA) of an incident or complaint involving a designated resident.

Response: Section 19.2709 requires a nursing facility to report an incident or complaint involving a designated resident to the designated resident's service coordinator immediately after the nursing facility learns of the incident or complaint. Because a service coordinator is an employee of a LIDDA, adding a requirement for the nursing facility to notify the LIDDA would be duplicative. No change was made in response to the comment.

Comment: Regarding §19.2751, Requesting Authorization to Provide Therapy Services, a commenter suggested amending subsection (b) to require DADS to respond within a specified period of time to a request for a therapy service for a designated resident.

Response: A nursing facility must comply with rules in Chapter 19 to be licensed and certified to participate in the Medicaid program. The rules do not typically include deadlines by which HHSC or DADS must complete certain actions. However, to address the concern of the commenter about the timeliness of a designated resident receiving specialized service, §19.2704(i) has been amended to require a nursing facility to request authorization for specialized services within 20 business days after the date of the interdisciplinary team meeting at which specialized services were agreed to, start providing a therapy service within 3 business days after receiving approval from HHSC in the LTC Online Portal, and provide on-going therapy services as approved by HHSC.

Comment: Regarding §19.2751, Requesting Authorization to Provide Therapy Services, one commenter suggested amending subsection (a)(3) to provide that therapy services may be ordered by a clinical nurse specialist, nurse practitioner, or physician assistant if the task is delegated to one of those professionals by a resident's attending physician.

Response: Physicians are permitted to delegate tasks to certain health care professionals in accordance with 42 CFR §483.30(e). In addition, Texas Health and Safety Code §242.151(b) allows an advanced practice registered nurse or a physician assistant to perform certain responsibilities of an attending physician pursuant to protocols developed with the physician; and

Texas Occupations Code, Chapter 157, authorizes a physician to delegate medical actions to another person under certain circumstances. Therefore, HHSC has concluded it is not necessary to specify in rule that a physician may delegate specific responsibilities. No change was made in response to the comment.

Comment: Regarding new proposed §19.2753, Payment for Therapy Services, a commenter suggested amending subsection (d), because the commenter does not support HHSC not paying for an assessment of a designated resident conducted within 180 days after the previous assessment.

Response: The proposed rules clarify that an occupational or physical therapist may assess a designated resident for therapy services at any time, but HHSC will pay for an assessment only once every 180 days. A nursing facility is responsible for identifying a resident's needs and addressing those needs in the resident's plan of care at all times, which may require another assessment before 180 days have elapsed. No change was made in response to the comment.

Comment: Regarding §19.2753, Payment for Therapy Services, a commenter suggested amending subsection (d) to include the right to appeal the denial of an assessment or a reassessment, or the denial, reduction, or suspension of a therapy service.

Response: Proposed new §19.2751(b), Requesting Authorization to Provide Therapy Services, allows a designated resident to request a fair hearing if a request for a therapy service is denied. There is no requirement to get authorization to assess or reassess a designated resident for a therapy service. Because there is no approval required, there is no reason to offer a fair hearing. No change was made in response to the comment.

Comment: Regarding §19.2754, Requesting Authorization to Provide Durable Medical Equipment and Customized Manual Wheelchairs, a commenter suggested amending subsection (d)(1) to require DADS to respond within a specified period of time to a request for durable medical equipment (DME) or a customized manual wheelchair (CMWC).

Response: A nursing facility must comply with rules in Chapter 19 to be licensed and certified to participate in the Medicaid program. The rules do not typically include deadlines by which DADS or HHSC must complete certain actions. However, to address the concern of the commenter about the timeliness of a designated resident receiving specialized services, §19.2704(i)
has been amended to require a nursing facility to request authorization for specialized services within 20 business days after the date of the interdisciplinary team meeting at which specialized services were agreed to, and order DME or CMWC in accordance with §19.2754(e), which requires it to be ordered within 5 business days after receiving approval from HHSC in the LTC Online Portal.

Comment: Regarding §19.2754, Requesting Authorization to Provide Durable Medical Equipment and Customized Manual Wheelchairs, a commenter suggested amending subsection (f) to allow a fair hearing to be requested for denial of a request for an assessment or reassessment.

Response: A designated resident may request a fair hearing in accordance with §19.2754(f), if HHSC denies a request for durable medical equipment or a customized manual wheelchair. The proposed rules at §19.2755(b)(2) clarify an assessment may be conducted at any time and there is no requirement to receive approval to conduct an assessment or a reassessment. Because there is no approval required, there is no reason to offer a fair hearing under those circumstances. No change was made in response to the comment.

Comment: Regarding §19.2755, Payment for Durable Medical Equipment and Customized Manual Wheelchairs, a commenter suggested amending subsection (b)(2) to allow a nursing facility to complete an assessment for DME and CMWC when there is a change in the resident's condition, not just within 180 days of the previous assessment.

Response: The proposed rules clarify that an occupational or physical therapist may assess a designated resident for durable medical equipment or a customized manual wheelchair any time, but HHSC will pay for an assessment only once every 180 days. A nursing facility is responsible for identifying a resident's needs and addressing those needs in the resident's plan of care at all times, which may require another assessment before 180 days have elapsed. No change was made in response to the comment.

Comment: Regarding §19.2755, Payment for Durable Medical Equipment and Customized Manual Wheelchairs, a commenter suggested including a right to appeal a decision to deny an assessment or reassessment or the denial, reduction, or suspension of DME or CMWC through a fair hearing.

Response: A designated resident may request a fair hearing in accordance with §19.2754(f) if HHSC denies a request for durable medical equipment or a customized manual wheelchair. Section §19.2755(b)(2) clarifies an assessment may be conducted at any time and there is no requirement to receive approval to conduct an assessment or reassessment. Because there is no approval required, there is no reason to offer a fair hearing under those circumstances. No change was made in response to the comment.

SUBCHAPTER B. DEFINITIONS

40 TAC §19.101

STATUTORY AUTHORITY

The amended section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.


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

1. Abuse--Negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including involuntary or nonconsensual sexual conduct that would constitute an offense under Penal Code §21.08 (indecent exposure) or Penal Code Chapter 22 (assaultive offenses), sexual harassment, sexual coercion, or sexual assault.


3. Activities assessment--See Comprehensive Assessment and Comprehensive Care Plan.

4. Activities director--The qualified individual appointed by the facility to direct the activities program as described in §19.702 of this chapter (relating to Activities).

5. Addition--The addition of floor space to an institution.

6. Administrator--Licensed nursing facility administrator.

7. Admission MDS assessment--An MDS assessment that determines a recipient's initial determination of eligibility for medical necessity for admission into the Texas Medicaid Nursing Facility Program.

8. Advanced practice registered nurse--A person licensed by the Texas Board of Nursing as an advanced practice registered nurse.

9. Affiliate--With respect to a:

   (A) partnership, each partner thereof;

   (B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;

   (C) natural person, which includes each:

      (i) person's spouse;

      (ii) partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

      (iii) corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

10. Agent--An adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.

11. Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

12. Applicant--A person or governmental unit, as those terms are defined in the Texas Health and Safety Code, Chapter 242, applying for a license under that chapter.


14. Attending physician--A physician, currently licensed by the Texas Medical Board, who is designated by the resident or re-
sponsible party as having primary responsibility for the treatment and care of the resident.

(15) Authorized electronic monitoring--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(16) Barrier precautions--Precautions including the use of gloves, masks, gowns, resuscitation equipment, eye protectors, aprons, face shields, and protective clothing for purposes of infection control.

(17) Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and reasonable safety, all consistent with the preferences of the resident.

(18) Certification--The determination by DADS that a nursing facility meets all the requirements of the Medicaid or Medicare programs.


(20) CMS--Centers for Medicare & Medicaid Services, formerly the Health Care Financing Administration (HCFA).

(21) Complaint--Any allegation received by DADS other than an incident reported by the facility. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.

(22) Completion date--The date an RN assessment coordinator signs an MDS assessment as complete.

(23) Comprehensive assessment--An interdisciplinary description of a resident's needs and capabilities including daily life functions and significant impairments of functional capacity, as described in §19.801(2) of this chapter (relating to Resident Assessment).

(24) Comprehensive care plan--A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs developed for each resident after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, as described in §19.802(b)(2) of this chapter (relating to Comprehensive Care Plans), consistent with the physician's prescribed plan of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

(A) goal setting;

(B) establishing priorities for management of care;

(C) making decisions about specific measures to be used to resolve the resident's problems; and

(D) assisting in the development of appropriate coping mechanisms.


(26) Controlling person--A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;

(B) any person who is a controlling person of a management company or other business entity that operates a nursing facility or that contracts with another person for the operation of a nursing facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(27) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(28) DADS--The Department of Aging and Disability Services or the Health and Human Services Commission, as its successor agency.

(29) Dangerous drugs--Any drug as defined in the Texas Health and Safety Code, Chapter 483.

(30) Dentist--A practitioner licensed by the Texas State Board of Dental Examiners.

(31) The Department of Aging and Disability Services or the Health and Human Services Commission, as its successor agency.

(32) DHS--This term referred to the Texas Department of Human Services; it now refers to DADS, unless the context concerns an administrative hearing. Administrative hearings were formerly the responsibility of DHS; they now are the responsibility of the Texas Health and Human Services Commission (HHSC).

(33) Dietitian--A qualified dietitian is one who is qualified based upon either:

(A) registration by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics; or

(B) licensure, or provisional licensure, by the Texas State Board of Examiners of Dietitians. These individuals must have one year of supervisory experience in dietetic service of a health care facility.

(34) Direct care by licensed nurses--Direct care consonant with the physician's planned regimen of total resident care includes:

(A) assessment of the resident's health care status;

(B) planning for the resident's care;

(C) assignment of duties to achieve the resident's care;

(D) nursing intervention; and

(E) evaluation and change of approaches as necessary.
(35) Distinct part--That portion of a facility certified to participate in the Medicaid Nursing Facility program.
(36) Drug (also referred to as medication)--Any of the following:
(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;
(C) any substance (other than food) intended to affect the structure or any function of the body of man; and
(D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this paragraph. It does not include devices or their components, parts, or accessories.
(37) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.
(38) Emergency--A sudden change in a resident's condition requiring immediate medical intervention.
(39) Executive Commissioner--The executive commissioner of the Health and Human Services Commission.
(40) Exploitation--The illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with a resident using the resources of the resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.
(41) Exposure (infections)--The direct contact of blood or other potentially infectious materials of one person with the skin or mucous membranes of another person. Other potentially infectious materials include the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, and body fluid that is visibly contaminated with blood and all body fluids when it is difficult or impossible to differentiate between body fluids.
(42) Facility--Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Texas Health and Safety Code, Chapter 242.
(A) For Medicaid, a facility is a nursing facility which meets the requirements of §1919(a) - (d) of the Social Security Act. A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in Chapter 17 of this title (relating to Preadmission Screening and Resident Review (PASRR)).
(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution.
(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.
(43) Family council--A group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.
(44) Family representative--An individual appointed by the resident to represent the resident and other family members, by formal or informal arrangement.
(45) Fiduciary agent--An individual who holds in trust another's monies.
(46) Free choice--Unrestricted right to choose a qualified provider of services.
(47) Goals--Long-term: general statements of desired outcomes. Short-term: measurable time-limited, expected results that provide the means to evaluate the resident's progress toward achieving long-term goals.
(48) Governmental unit--A state or a political subdivision of the state, including a county or municipality.
(49) HCFA--Health Care Financing Administration, now the Centers for Medicare & Medicaid Services (CMS).
(50) Health care provider--An individual, including a physician, or facility licensed, certified, or otherwise authorized to administer health care, in the ordinary course of business or professional practice.
(51) Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter 1 (relating to Hearings Under the Administrative Procedure Act) and Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act).
(52) HIV--Human Immunodeficiency Virus.
(53) Incident--An abnormal event, including accidents or injury to staff or residents, which is documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to DADS.
(54) Infection control--A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.
(55) Inspection--Any on-site visit to or survey of an institution by DADS for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.
(56) Interdisciplinary care plan--See the definition of "comprehensive care plan."
(57) Involuntary seclusion--Separation of a resident from others or from the resident's room or confinement to the resident's room, against the resident's will or the will of a person who is legally authorized to act on behalf of the resident. Monitored separation from other residents is not involuntary seclusion if the separation is a therapeutic intervention that uses the least restrictive approach for the minimum amount of time, not exceed to 24 hours, until professional staff can develop a plan of care to meet the resident's needs.
(58) IV--Intravenous.
(59) Legend drug or prescription drug--Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.
(60) Licensed health professional--A physician; physician assistant; advanced practice registered nurse; physical, speech, or occupational therapist; pharmacist; physical or occupational therapy assistant; registered professional nurse; licensed vocational nurse; licensed dietitian; or licensed social worker.

(61) Licensed nursing home (facility) administrator--A person currently licensed by DADS in accordance with Chapter 18 of this title (relating to Nursing Facility Administrators).

(62) Licensed vocational nurse (LVN)--A nurse who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.


(64) Life safety features--Fire safety components required by the Life Safety Code, including, but not limited to, building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, and sprinkler systems.

(65) Life support--Use of any technique, therapy, or device to assist in sustaining life. (See §19.419 of this chapter (relating to Advance Directives)).

(66) Local authorities--Persons, including, but not limited to, local health authority, fire marshal, and building inspector, who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(67) Local health authority--The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Texas Health and Safety Code, §121.021.

(68) Long-term care-regulatory--DADS Regulatory Services Division, which is responsible for surveying nursing facilities to determine compliance with regulations for licensure and certification for Title XIX participation.

(69) Manager--A person, other than a licensed nursing home administrator, having a contractual relationship to provide management services to a facility.

(70) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, or food service.

(71) MDS--Minimum data set. See Resident Assessment Instrument (RAI).

(72) MDS nurse reviewer--A registered nurse employed by HHSC to monitor the accuracy of the MDS assessment submitted by a Medicaid-certified nursing facility.

(73) Medicaid applicant--A person who requests the determination of eligibility to become a Medicaid recipient.

(74) Medicaid nursing facility vendor payment system--Electronic billing and payment system for reimbursement to nursing facilities for services provided to eligible Medicaid recipients.

(75) Medicaid recipient--A person who meets the eligibility requirements of the Title XIX Medicaid program, is eligible for nursing facility services, and resides in a Medicaid-participating facility.

(76) Medical director--A physician licensed by the Texas Medical Board, who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care.

(77) Medical power of attorney--The legal document that designates an agent to make treatment decisions if the individual designator becomes incapable.

(78) Medical-social care plan--See Interdisciplinary Care Plan.

(79) Medically related condition--An organic, debilitating disease or health disorder that requires services provided in a nursing facility, under the supervision of licensed nurses.

(80) Medication aide--A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 95 of this title (relating to Medication Aides--Program Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(81) Misappropriation of funds--The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(82) MN--Medical necessity. A determination, made by physicians and registered nurses who are employed by or contract with the state Medicaid claims administrator, that a recipient requires the services of a licensed nurse in an institutional setting to carry out a physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute medical necessity.

(83) Neglect--The failure to provide goods or services, including medical services that are necessary to avoid physical or emotional harm, pain, or mental illness.

(84) NHIC--This term referred to the National Heritage Insurance Corporation. It now refers to the state Medicaid claims administrator.

(85) Nonnursing personnel--Persons not assigned to give direct personal care to residents; including administrators, secretaries, activities directors, bookkeepers, cooks, janitors, maids, laundry workers, and yard maintenance workers.

(86) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This definition does not include an individual who is a licensed health professional, a registered dietitian, or someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing or nursing-related services for which a license or registration is required under state law. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants.

(87) Nurse aide trainee--An individual who is attending a program teaching nurse aide skills.

(88) Nurse practitioner--An advanced practice registered nurse.
(89) Nursing assessment--See definition of "comprehensive assessment" and "comprehensive care plan."

(90) Nursing care--Services provided by nursing personnel which include, but are not limited to, observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(91) Nursing facility/home--An institution that provides organized and structured nursing care and service, and is subject to licensure under Texas Health and Safety Code, Chapter 242. The nursing facility may also be certified to participate in the Medicaid Title XIX program. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care to the residents; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(92) Nursing facility/home administrator--See the definition of "licensed nursing home (facility) administrator."

(93) Nursing personnel--Persons assigned to give direct personal and nursing services to residents, including registered nurses, licensed vocational nurses, nurse aides, and medication aides. Unlicensed personnel function under the authority of licensed personnel.

(94) Objectives--See definition of "goals."

(95) OBRA--Omnibus Budget Reconciliation Act of 1987, which includes provisions relating to nursing home reform, as amended.

(96) Ombudsman--An advocate who is a certified representative, staff member, or volunteer of the DADS Office of the State Long Term Care Ombudsman.

(97) Optometrist--An individual with the profession of examining the eyes for defects of refraction and prescribing lenses for correction who is licensed by the Texas Optometry Board.

(98) Paid feeding assistant--An individual who meets the requirements of §19.1113 of this chapter (relating to Paid Feeding Assistants) and who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization.

(99) PASARR or PASRR--Preadmission Screening and Resident Review.

(100) Palliative Plan of Care--Appropriate medical and nursing care for residents with advanced and progressive diseases for whom the focus of care is controlling pain and symptoms while maintaining optimum quality of life.

(101) Patient care-related electrical appliance--An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

(102) Person--An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

(103) Person with a disclosable interest--A person with a disclosable interest is any person who owns at least a 5.0 percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 242. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the facility.

(104) Pharmacist--An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a practitioner.

(105) Physical restraint--See Restraints (physical).

(106) Physician--A doctor of medicine or osteopathy currently licensed by the Texas Medical Board.

(107) Physician assistant (PA)--

(A) A graduate of a physician assistant training program who is accredited by the Committee on Allied Health Education and Accreditation of the Council on Medical Education of the American Medical Association;

(B) A person who has passed the examination given by the National Commission on Certification of Physician Assistants. According to federal requirements (42 CFR §491.2) a physician assistant is a person who meets the applicable state requirements governing the qualifications for assistant to primary care physicians, and who meets at least one of the following conditions:

(i) is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or

(ii) has satisfactorily completed a program for preparing physician assistants that:

(I) was at least one academic year in length;

(II) consisted of supervised clinical practice and at least four months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(III) was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation; or

(C) A person who has satisfactorily completed a formal educational program for preparing physician assistants who does not meet the requirements of paragraph (d)(2), 42 CFR §491.2, and has been assisting primary care physicians for a total of 12 months during the 18-month period immediately preceding July 14, 1978.

(108) Podiatrist--A practitioner whose profession encompasses the care and treatment of feet who is licensed by the Texas State Board of Podiatric Medical Examiners.

(109) Poison--Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally that contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a practitioner, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

(110) Practitioner--A physician, podiatrist, dentist, or an advanced practice registered nurse or physician assistant to whom a physician has delegated authority to sign a prescription order, when relating to pharmacy services.

(111) PRN (pro re nata)--As needed.

(112) Provider--The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with DADS.
(113) Psychoactive drugs--Drugs prescribed to control mood, mental status, or behavior.

(114) Qualified mental health professional - community services--Has the meaning given in 25 TAC §412.303 (relating to Definitions).

(115) Qualified surveyor--An employee of DADS who has completed state and federal training on the survey process and passed a federal standardized exam.

(116) Quality assessment and assurance committee--A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

(117) Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by DADS who is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of DADS Regulatory Services Division.

(118) Quality measure report--A report that provides information derived from an MDS that provides a numeric value to quality indicators. This data is available to the public as part of the Nursing Home Quality Initiative (NHQI), and is intended to provide objective measures for consumers to make informed decisions about the quality of care in a nursing facility.

(119) Recipient--Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

(120) Rehabilitative services--Rehabilitative therapies and devices provided to help a person regain, maintain, or prevent deterioration of a skill or function that has been acquired but then lost or impaired due to illness, injury, or disabling condition. The term includes physical and occupational therapy, speech-language pathology, and psychiatric rehabilitation services.

(121) Reimbursement methodology--The method by which HHSC determines nursing facility per diem rates.

(122) Remodeling--The construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems) or the conversion of space in a facility to a different use.

(123) Renovation--The restoration to a former better state by cleaning, repairing, or rebuilding, including, but not limited to, routine maintenance, repairs, equipment replacement, painting.

(124) Representative payee--A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(125) Resident--Any individual residing in a nursing facility.

(126) Resident group--A group or council of residents who meet regularly to:

(A) discuss and offer suggestions about the facility policies and procedures affecting residents' care, treatment, and quality of life;

(B) plan resident activities;

(C) participate in educational activities; or

(D) for any other purpose.

(127) Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

(128) Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(129) Restraints (chemical)--Psychoactive drugs administered for the purposes of discipline, or convenience, and not required to treat the resident's medical symptoms.

(130) Restraints (physical)--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. The term includes a restraint hold.

(131) RN--Registered nurse. An individual currently licensed by the Texas Board of Nursing as a registered nurse.

(132) RN assessment coordinator--A registered nurse who signs and certifies a comprehensive assessment of a resident's needs, using the RAI, including the MDS, as specified by DADS.

(133) RUG--Resource Utilization Group. A categorization method, consisting of 34 categories based on the MDS, that is used to determine a recipient's service and care requirements and to determine the daily rate DADS pays a nursing facility for services provided to the recipient.

(134) Secretary--Secretary of the U.S. Department of Health and Human Services.

(135) Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

(136) SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(137) Social Security Administration--Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.

(138) Social worker--A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by the Texas Occupations Code, Chapter 505, and who has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year
experience met by employment providing social services in a health care setting.

(139) Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

(140) State Medicaid claims administrator--The entity under contract with HHSC to process Medicaid claims in Texas.

(141) State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the U.S. Department of Health and Human Services.

(142) State survey agency--DADS is the agency, which through contractual agreement with CMS is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(143) Stay agreement--An agreement between a license holder and the executive commissioner that sets forth all requirements necessary to lift a stay and rescind a license revocation proposed under §19.2107 of this chapter (relating to Revocation of a License by the Executive Commissioner).

(144) Substandard quality of care violation--One or more violations of §19.601 of this chapter (relating to Resident Behavior and Facility Practices), §19.701 of this chapter (relating to Quality of Life), or §19.901 of this chapter (relating to Quality of Care) that constitute:
   (A) an immediate threat to resident health or safety;
   (B) a pattern of or actual harm that is not an immediate threat; or
   (C) a widespread potential for more than minimal harm, but less than an immediate threat, with no actual harm.

(145) Supervising physician--A physician who assumes responsibility and legal liability for services rendered by a physician assistant (PA) and has been approved by the Texas Medical Board to supervise services rendered by specific PAs. A supervising physician may also be a physician who provides general supervision of an advanced practice registered nurse providing services in a nursing facility.

(146) Supervision--General supervision, unless otherwise identified.

(147) Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(148) Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. The person being supervised must have access to the qualified person providing the supervision.

(149) Supervision (intermittent)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing the function or activity. The person being supervised must have access to the qualified person providing the supervision.

(150) Texas Register--A publication of the Texas Register Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies. The Texas Register was established by the Administrative Procedure and Texas Register Act of 1975.

(151) Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(152) Therapy week--A seven-day period beginning the first day rehabilitation therapy or restorative nursing care is given. All subsequent therapy weeks for a particular individual will begin on that day of the week.

(153) Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

(154) Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act.

(155) Title XVI--Supplemental Security Income (SSI) of the Social Security Act.

(156) Title XVIII--Medicare provisions of the Social Security Act.

(157) Title XIX--Medicaid provisions of the Social Security Act.

(158) Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

(159) UAR--HHSC's Utilization and Assessment Review Section.

(160) Uniform data set--See RAI (Resident Assessment Instrument).

(161) Universal precautions--The use of barrier and other precautions to prevent the spread of blood-borne diseases.

(162) Unreasonable confinement--Involuntary seclusion.

(163) Vaccine preventable diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(164) Vendor payment--Payment made by DADS on a daily-rate basis for services delivered to recipients in Medicaid-certified nursing facilities. Vendor payment is based on the nursing facility's approved-to-pay claim processed by the state Medicaid claims administrator. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

(165) Widespread--When the problem causing a violation is pervasive in a facility or represents systemic failure that affected or has the potential to affect a large portion or all of a facility's residents.

(166) Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

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

Filed with the Office of the Secretary of State on August 21, 2017.
SUBCHAPTER N. REHABILITATIVE SERVICES

40 TAC §§19.1300, 19.1302, 19.1304, 19.1306

STATUTORY AUTHORITY

The new and amended sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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

Filed with the Office of the Secretary of State on August 21, 2017.

Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: September 10, 2017
Proposal publication date: March 24, 2017
For further information, please call: (210) 619-8292

40 TAC §19.1303

STATUTORY AUTHORITY

The repealed section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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

Filed with the Office of the Secretary of State on August 21, 2017.

Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: September 10, 2017
Proposal publication date: March 24, 2017
For further information, please call: (210) 619-8292

DIVISION 1. GENERAL PROVISIONS

40 TAC §19.2701, §19.2703

STATUTORY AUTHORITY

The amended sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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

Filed with the Office of the Secretary of State on August 21, 2017.

Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: September 10, 2017
Proposal publication date: March 24, 2017
For further information, please call: (210) 619-8292

DIVISION 2. NURSING FACILITY RESPONSIBILITIES

40 TAC §§19.2704, 19.2706, 19.2709

STATUTORY AUTHORITY

The amended sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.
§19.2704. Nursing Facility Responsibilities Related to PASRR.

(a) If an individual seeks admission to a nursing facility, the nursing facility:

(1) must coordinate with the referring entity to ensure the referring entity conducts a PL1; and

(2) may provide assistance in completing the PL1, if the referring entity is a family member, LAR, other personal representative selected by the individual, or a representative from an emergency placement source and requests assistance in completing the PL1.

(b) A nursing facility must not admit an individual who has not had a PL1 conducted before the individual is admitted to the facility.

(c) If an individual's PL1 indicates the individual is not suspected of having MI, ID, or DD, a nursing facility must enter the PL1 from the referring entity into the LTC Online Portal. The nursing facility may admit the individual into the facility through the routine admission process.

(d) For an individual whose PL1 indicates the individual is suspected of having MI, ID, or DD, a nursing facility:

(1) must enter the PL1 into the LTC Online Portal if the individual's admission category is:
   (A) expedited admission; or
   (B) exempted hospital discharge; and

(2) must not enter the PL1 into the LTC Online Portal if the individual's admission category is pre-admission.

(e) Except as provided by subsection (f) of this section, a nursing facility must not admit an individual whose PL1 indicates a suspicion of MI, ID, or DD without a complete PE and PASRR determination.

(f) A nursing facility may admit an individual whose PL1 indicates a suspicion of MI, ID, or DD without a complete PE and PASRR determination only if the individual:

(1) is admitted as an expedited admission;

(2) is admitted as an exempted hospital discharge; or

(3) has not had an interruption in continuous nursing facility residence other than for acute care lasting fewer than 30 days and is returning to the same nursing facility.

(g) A nursing facility must check the LTC Online Portal daily for messages related to admissions and directives related to the PASRR process.

(h) Within seven calendar days after the LIDDA or LMHA has entered a PE or resident review into the LTC Online Portal for an individual or resident who has MI, ID, or DD, a nursing facility must:

(1) review the recommended list of nursing facility specialized services, LIDDA specialized services, and LMHA specialized services; and

(2) certify in the LTC Online Portal whether the individual's or resident's needs can be met in the nursing facility.

(i) After an individual or resident who is determined to have MI, ID, or DD from a PE or resident review has been admitted to a nursing facility, the facility must:

(1) contact the LIDDA or LMHA within two calendar days after the individual's admission or, for a resident, within two calendar days after the LTC Online Portal generated an automated notification to the LIDDA or LMHA, to schedule an IDT meeting to discuss nursing facility specialized services, LIDDA specialized services, and LMHA specialized services;

(2) convene an IDT meeting within 14 calendar days after admission or, for a resident review, within 14 calendar days after the LTC Online Portal generated an automated notification to the LIDDA or LMHA;

(3) participate in the IDT meeting:
   (A) identify which of the nursing facility specialized services, LIDDA specialized services, and LMHA specialized services recommended for the resident that the resident, or LAR on the resident's behalf, wants to receive; and
   (B) determine whether the resident is best served in a facility or community setting.

(4) provide staff from the LIDDA and LMHA access to the resident and the resident's clinical facility records upon request from the LIDDA or LMHA;

(5) enter into the LTC Online Portal within 3 business days after the IDT meeting for a resident:
   (A) the date of the IDT meeting;
   (B) the name of the persons who participated in the IDT meeting;
   (C) the nursing facility specialized services, LIDDA specialized services, and LMHA specialized services that were agreed to in the IDT meeting; and
   (D) the determination of whether the resident is best served in a facility or community setting;

(6) include in the comprehensive care plan:
   (A) the nursing facility specialized services agreed to by the resident or LAR; and
   (B) the nursing facility PASRR support activities;

(7) submit a complete and accurate request for nursing facility specialized services in the LTC Online Portal within 20 business days after the date of the IDT meeting;

(8) start providing a therapy service within 3 business days after receiving approval from HHSC in the LTC Online Portal;

(9) order DME or CMWC in accordance with §19.2754(e) of this subchapter (relating to Requesting Authorization to Provide Durable Medical Equipment and Customized Manual Wheelchairs);

(10) provide on-going therapy services as approved by HHSC; and

(11) for a designated resident, annually document in the LTC Online Portal all nursing facility specialized services, LIDDA specialized services, and LMHA specialized services being provided to the designated resident.

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

Filed with the Office of the Secretary of State on August 21, 2017.
TRD-201703242
DIVISION 3. NURSING FACILITY SPECIALIZED SERVICES FOR DESIGNATED RESIDENTS

40 TAC §§19.2750 - 19.2756

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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

Filed with the Office of the Secretary of State on August 21, 2017.

TRD-201703245
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: September 10, 2017
Proposal publication date: March 24, 2017
For further information, please call: (210) 619-8292

♦ ♦ ♦ ♦
Proposed Rule Reviews

State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 227, Provisions for Educator Preparation Candidates, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBEC in 19 TAC Chapter 227 are organized under the following subchapters: Subchapter A, Admission to Educator Preparation Programs; and Subchapter B, Preliminary Evaluation of Certification Eligibility.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 227 continue to exist.

The comment period on the review of 19 TAC Chapter 227 begins September 1, 2017, and ends October 2, 2017. The SBEC will take registered oral and written comments on the review of 19 TAC Chapter 227 at the October 6, 2017, meeting in accordance with the SBEC board operating policies and procedures. Comments regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494. Comments may also be submitted electronically to sbecredules@tea.texas.gov. Comments should be identified as "SBEC Rule Review."

TRD-201703223
Cristina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Filed: August 21, 2017

The State Board for Educator Certification (SBEC) proposes the review of Title 19, Texas Administrative Code (TAC), Chapter 228, Requirements for Educator Preparation Programs, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBEC will accept comments as to whether the reasons for adopting 19 TAC Chapter 228 continue to exist.

The comment period on the review of 19 TAC Chapter 228 begins September 1, 2017, and ends October 2, 2017. The SBEC will take registered oral and written comments on the review of 19 TAC Chapter 228 at the October 6, 2017, meeting in accordance with the SBEC board operating policies and procedures. Comments regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemak-
In §89.207(3)(H), one commenter recommends clarifying that the requirement to maintain a copy of the release of lien does not apply to a lien that has been foreclosed. In response to this comment, the commission is proposing an amendment to §89.207(3)(H), published elsewhere in this issue of the Texas Register; specifying that if a property tax lien is satisfied through a foreclosure, the property tax lender must maintain the foreclosure deed.

In §89.208, one commenter recommends changes regarding advertisements and solicitations. First, the commenter recommends amending §89.208(b)(3) and (c) to allow the advertisement to state the name of a licensed affiliate of the property tax lender. The commission disagrees with this recommendation. These provisions currently require a property tax loan advertisement to state the name of the property tax lender. The name of the property tax lender is an important piece of information that helps to avoid confusion on the part of the borrower, and the advertisement is misleading if it does not state the property tax lender's name. Second, the commenter recommends amending §89.208(b)(9), which prohibits a property tax lender from representing that the borrower will be sued by the taxing unit unless the property tax lender has verified this fact. The commenter states that "delinquent taxpayers will be sued 100% of the time if they never pay their taxes." The commission disagrees with this recommendation. Property tax lender advertisements should not contain unverified information, particularly information that will intimidate or confuse borrowers.

In §89.310, one commenter recommends an 18% increase in licensing fees charged by the Office of Consumer Credit Commissioner (OCCC), given the inflation index and increased costs of living. This is outside the scope of the amendments proposed elsewhere in this issue of the Texas Register, but the agency will consider re-evaluating the licensing fees as part of a future rule action.

In §89.312, two commenters recommend specifying that certain activities do not require an individual to be licensed as a residential mortgage loan originator. One of these commenters requests that the commission "clarify that person processing account need not be licensed if renewal is processed under the same terms at the original account and the application is completed online." The other commenter requests that the commission "clarify that an unlicensed individual may deliver a quote/term to prospective borrowers if those term have been prepared by a licensed individual. In this scenario, the non-licensed person is simply delivering quotes/term that have been prepared by a licensed agent and the non-licensed person cannot negotiate further." The commission disagrees with these recommendations. Under Texas Finance Code, §180.002(19), a residential mortgage loan originator is "an individual who for compensation or gain or in the expectation of compensation or gain: (i) takes a residential mortgage loan application; or (ii) offers or negotiates the terms of a residential mortgage loan..." If an individual acts as a residential mortgage loan originator for a property tax loan, then the individual must be licensed under Texas Finance Code, §351.0515. Both of the situations presented by the commenters appear to involve individuals offering terms for a loan, and therefore require the individual to be licensed.

One commenter recommends that the commission review property tax lending disclosure rules to "[e]nsure that consumers receive adequate notice regarding the cost and terms of the underlying transaction," and to provide "[s]tandardization of the forms and calculation methods for certain terms (e.g., APR) to ensure consumers can make well-informed choices." Another commenter recommends re-evaluating current rules related to disclosures. The commission agrees with these recommendations and is proposing amendments to §§89.502, 89.503, 89.504, and 89.506, published elsewhere in this issue of the Texas Register, with amended disclosure requirements for property tax loans.

In §89.601(a), two commenters recommend limiting the scope of the closing cost rule's limitations to homestead property. In response to this recommendation, the commission is proposing an amendment to §89.601(a), published elsewhere in this issue of the Texas Register, that amends the scope of the rule's closing cost limitations.

In §89.601(c)(4), three commenters recommend allowing additional closing costs for each additional parcel of commercial property, for property tax loans that cover both residential and commercial property. In response to these comments, the commission is proposing amendments to §89.601(c)(4), published elsewhere in this issue of the Texas Register; that remove language limiting the current additional $100 authorization to residential parcels.

In §89.602, two commenters recommend increasing the allowable fees to process a release of lien due to inflation and increased actual costs. As part of a stakeholder meeting, the agency asked for specific information from stakeholders regarding the costs to file a release of lien. Although stakeholders provided general cost ranges, the agency does not believe that it has obtained sufficiently specific cost information that supports a change in the fee for filing a release of lien at this time. Stakeholders are welcome to submit specific cost information related to this issue for consideration in a future rule action.

In §89.603, one commenter recommends increasing the payoff statement fee from $10 to $12. The commenter did not identify any specific costs associated with this fee. The commission disagrees with this recommendation, and believes that amending the payoff statement fee is unnecessary at this time.

In §89.701(a)(13), which contains the form for the borrower's sworn document authorizing the tax lien transfer, one commenter states: "This section was never updated for the 2013 restriction on making a loan after a homestead owners turns 65. This should be changed to ..." The commission disagrees with this recommendation. Under Texas Tax Code, §32.06(a-3), a person who is 65 years of age or older may not authorize a property tax loan if the person is authorized to claim a homestead exemption. The legislature added this provision to the statute in 2013. That same year, the commission amended the form of the sworn document to remove the phrase "either age 65 or older or" before "disabled." This amendment conformed to the 2013 statutory amendment. The statement regarding individuals 65 or older should not be included on the sworn document, because these individuals are prohibited from obtaining a property tax loan.

In §89.702, regarding the certified statement signed by the taxing unit, one commenter recommends allowing the citation to Texas Tax Code, §32.06 to be changed for transfers that occur under Texas Tax Code, §33.445. In response to this comment, the commission is proposing new §89.702(d)(3), published elsewhere in this issue of the Texas Register; that allows the citation to be replaced in this situation.

Two commenters recommend that the commission adopt rules clarifying Texas Tax Code, §32.06(a-8)(1), which prohibits a property tax loan on property that "has been financed, wholly or partly, with a grant or below market rate loan provided by a governmental program or nonprofit organization and is subject to the covenants of the grant or loan." As part of a stakeholder meeting, the agency asked stakeholders to provide information about the types of real property financed by governmental or nonprofit loans they have encountered, what rates they have encountered, and whether it is unclear if these rates are below market rate. Although some stakeholders provided recommended rule text, they did not provide specific rate information about governmental or nonprofit loans they have encountered. The agency does not believe that it has obtained sufficiently specific rate information that supports...
a rule on this issue. Stakeholders are welcome to submit specific rate information on this issue for consideration in a future rule action.

Three commenters recommend that the commission authorize additional costs for the modification of a property tax loan. Two of these commenters characterize modification costs as "closing costs." The commission disagrees with this recommendation. Modification costs are post-closing costs, because they occur after the loan is closed. Post-closing costs are expressly limited by Texas Finance Code, §351.0021, which specifies certain narrow types of post-closing costs a property tax lender can charge for a modification. For example, §351.0021(a)(10) allows a property tax lender to charge "recording expenses incurred in connection with a modification necessary to preserve a borrower's ability to avoid a foreclosure proceeding." Section 351.0021(c)(1) explains that a property tax lender may not charge any post-closing fees except for the charges expressly authorized by the section. Because post-closing costs are already specified by statute, the commission believes that a rule on this issue is unnecessary.

One commenter requests "[e]laboration and/or clarification of permissible post-closing fees." Another commenter recommends that the commission "Enforce and Clarify Post-Closing Fees." The commenters do not identify which post-closing fees should be clarified. As discussed earlier, because post-closing costs are already specified by statute, the commission believes that a rule on this issue is unnecessary. One commenter recommends that the commission "narrowly evaluate certain fee rules, especially those related to modifications and renewals of existing accounts." The commenter does not specify which rules are being referred to. As discussed earlier, the commission is proposing amendments to §89.601, published elsewhere in this issue of the Texas Register, dealing with closing costs. As discussed earlier, the commission believes that a rule authorizing costs for modification is unnecessary.

One commenter recommends that the commission "clarify that reasonable attorney's fees are not directly correlated to the loan balance but instead, calculated on actual work performed." The commenter explains: "Certain judges/tax masters have claimed legal fees are unreasonable when compared to some [tax lien transfer] balances (i.e $1,000 property tax loan with $3,000 attorney's fees)." The commission disagrees with this recommendation. Whether attorney's fees are reasonable depends on a variety of facts that should be considered on a case-by-case basis. See, e.g., Tex. Disciplinary Rules Prof'l Conduct R. 1.04(b) (providing a nonexclusive list of eight factors that may be considered in determining whether a fee is reasonable, for purposes of disciplinary rules governing attorneys). Typically, a court will determine whether attorney's fees are reasonable in a particular case. See Tex. Civ. Prac. & Rem. Code ch. 38; Fed. R. Civ. P. 54(d)(2) (describing procedural requirements for attorney's fee claims). For this reason, the commission does not believe that it would be appropriate to adopt a rule excluding certain facts from the consideration of whether attorney's fees are reasonable. Under the current recordkeeping rule at §89.207(3)(A)(ix) and (3)(l)(ii), property tax lenders are required to maintain invoices for attorney's fees that specifically describe the services performed by the attorney. Property tax lenders should also maintain evidence showing that their attorney's fees are reasonable, so that they can provide this evidence when a court questions their fee claims.

One commenter requests that the commission "[s]pecify if escrow accounts are allowable, and if so, adopt rules regarding their usage." Another commenter states: "The OCCC should also clarify that escrow accounts are optional. Escrow accounts can benefit consumers but the OCCC must ensure escrow accounts do not accrue interest, except if the PTL is due uncollected insurance premiums. However, an escrow account for property taxes must be free of finance charges or interest." The commission disagrees with these recommendations. Section 32.06 of the Tax Code and Chapter 351 of the Finance Code do not expressly mention escrow accounts. Whether an escrow account is permissible depends on how the account is used in a particular transaction. A property tax lender may not use an escrow account in a way that violates a legal requirement (e.g., exceeding the limitation on funds advanced in Texas Tax Code, §32.06(e), or engaging in unlicensed lending). Whether there is a violation depends on the particular transaction. The requirements of the Tax Code and Finance Code apply generally, whether or not the property tax lender uses an escrow account. The commission believes that a rule specifying that these requirements apply to property tax loans with escrow accounts is unnecessary.

One commenter requests "[c]larification that any insurance premiums charged count in the closing cost calculation." The commission disagrees with this recommendation. The funds advanced for a property tax loan are expressly limited under Texas Tax Code, §32.06(e), which does not authorize a property tax lender to advance insurance premiums. Fees for collateral protection insurance are authorized as a post-closing cost under Texas Finance Code, §351.0021(a)(8). The commission believes that a rule on this issue is unnecessary.

One commenter requests that the commission "allow for and specify reasonable closing costs associated with . . . the processing of any force pay related to paying off a county tax suit made after our loans." The commission disagrees with this recommendation. It appears that the commenter is describing a post-closing cost, not a closing cost. As discussed earlier, because post-closing costs are already specified by statute, the commission believes that a rule on this issue is unnecessary.

One commenter requests that the commission "[p]ermit PTLS charge a nominal fee to accept credit cards." The commission disagrees with this recommendation. A fee for accepting credit card payment is a post-closing cost that is not authorized by Texas Finance Code, §351.0021.

One commenter requests that the commission "clarify that services must be performed by a person that is not an employee of the property tax lender in order to prevent creation of affiliated entities to circumvent [Texas Finance Code, §351.0021(d)]." The commission disagrees with this recommendation. Texas Finance Code, §351.0021(d) already provides that certain post-closing costs must be performed by a person who is not an employee of the property tax lender. The current recordkeeping rule at §89.207(3)(l)(iii) and (7) requires a property tax lender to maintain records of amounts paid to affiliated businesses, as well as records describing the property tax lender's relationship with any affiliated businesses. The current disclosure rule at §89.504(f) requires a property tax lender to disclose the names of affiliated businesses to which post-closing costs may be paid. The commission believes that additional rules on this issue are unnecessary at this time.

One commenter states that the commenter "has observed inconsistencies across the industry regarding business practices involving affiliated entities and believes clarifying certain rules on this topic would better protect consumers." The commenter does not specify which rules are being referred to. The commission is proposing amendments to §89.502(3), published elsewhere in this issue of the Texas Register, specifying that costs paid to affiliated businesses are included in the finance charge for purposes of calculating the annual percentage rate.

One commenter requests that the commission "clarify scenarios where a PTL may waive the 3 Day Right to Rescind. Suggested scenarios: a. The waiver prevents a foreclosure due to tax sale, or; b. The waiver prevents customer from being subject to a significant financial penalty: i. June to July increase; or ii. January to February increase (properties not subject to a preexisting mortgage)." The commission disagrees with this recommendation. Texas Tax Code, §32.06(d-1), provides: "A right of rescission described by 12 C.F.R. Section 226.23 applies to a transfer under this section of a tax lien on residential property owned and used
by the property owner for personal, family, or household purposes." The situations where a borrower may waive the right of rescission are described in Regulation Z, 12 C.F.R. §226.23(e)(1) and §1026.23(e), which provide: "The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind. Printed forms for this purpose are prohibited . . ." Because Regulation Z and its official commentary specify the situations where the right of rescission may be waived, the commission believes that additional rules on this issue are unnecessary at this time.

As a result of the comments submitted and internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing amendments to 7 TAC Chapter 89 published elsewhere in this issue of the Texas Register.

Subject to the proposed amendments to Chapter 89, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039. This concludes the review of 7 TAC, Part 5, Chapter 89.

TRD-201703208
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 18, 2017
TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.
Property Tax Loan
Pre-Closing Disclosure

Borrower
[borrower name]
Property Address
[borrower address 1]
[borrower address 2]
Closing Date
[closing date]
Loan ID#
[loan ID]

Lender
[lender name]
Address
[lender address 1]
[lender address 2]
OCCC License #
[lender license #]
Loan Originator
[RMLO name]
NMLS ID#
[RMLO NMLS ID]

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<tr>
<th>Loan Terms</th>
<th>Loan Calculations</th>
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<td>Loan Amount (funds advanced on your behalf)</td>
<td>APR (cost of loan as a yearly rate)</td>
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<td>Interest Rate (loan contract rate)</td>
<td>Amount Financed (amount of loan used for APR)</td>
</tr>
<tr>
<td>Loan Term</td>
<td>Finance Charge (loan cost used for APR)</td>
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<tr>
<td>Monthly Payment</td>
<td>Total of Payments</td>
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Payment Schedule

Prepayment
You can pay off the loan at any time without a penalty.

Loan Amount Itemization

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Closing costs

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</tr>
</thead>
<tbody>
<tr>
<td>[fee description] to [third party name]</td>
<td>$0.00</td>
</tr>
<tr>
<td>[fee description] to [third party name]</td>
<td>$0.00</td>
</tr>
<tr>
<td>[fee description] to [third party name]</td>
<td>$0.00</td>
</tr>
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<td>$0.00</td>
</tr>
<tr>
<td>[fee description] to [third party name]</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

Recording costs

<table>
<thead>
<tr>
<th>$0.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>to [governmental unit name]</td>
</tr>
<tr>
<td>to [governmental unit name]</td>
</tr>
</tbody>
</table>

Prepaid Interest

<table>
<thead>
<tr>
<th>Total prepaid interest</th>
<th>$0.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per diem interest (0.00% per day, 0 days)</td>
<td>$0.00</td>
</tr>
<tr>
<td>Discount points</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

Tax Office Notice

Your tax office may offer delinquent tax installment plans that may be less costly to you. You can request information about the availability of these plans from the tax office.
Property Tax Loan
Pre-Closing Disclosure (continued)

What is a property tax loan?
You currently have a lien against your property for unpaid property taxes. The tax lien for unpaid taxes automatically attached to your property on January 1. You may pay the taxing unit(s) directly, or authorize the property tax lender to pay the taxes. In order for the property tax lender to pay the tax lien, you have to authorize the transfer of the lien from the taxing unit(s) and enter into a loan with the property tax lender. Unless you agree in writing, the property tax lender may not make the property tax loan. The property tax loan may include unpaid property taxes, penalties, and interest. The property tax lender may also assess closing costs and interest not to exceed 18% per year. This transaction does not remove the tax lien against your property. If you do not pay the property tax lender under the loan agreement, you may lose your property to foreclosure.

The property tax loan is the superior lien.
If you default on any lien against your property, this property tax loan will be superior, or “first in line” to be paid, over any other preexisting lien on your property (for example, first or secondary mortgage).

You may have alternatives to this property tax loan.
If this property is your homestead and you are disabled, you are entitled to tax deferral under Texas Tax Code, §33.06. You may arrange with the taxing unit(s) to enter into an installment agreement for the repayment of these taxes. You may have financing options available to you through other private lenders, such as establishing an escrow account or refinancing your existing mortgage to include the taxes. You may be able to borrow from savings or family members. You may shop around with other property tax lenders and compare the different loan terms offered by other lenders.

Foreclosure is possible.
If you don't pay, you may lose your property. The tax lien may be considered a default by any mortgage holder with a lien on the same property. The only way to correct the default is to pay off the taxes and have the lien released. Any secured loan may be foreclosed if the loan is in default. The cost of any foreclosure, either tax lien or mortgage, may be added to the amount you owe.

You can contact the OCCC, a state agency that regulates the property tax lender.
For questions or complaints about this loan, contact (insert name of lender) at (insert lender's phone number and, at lender's option, one or more of the following: mailing address, fax number, website, e-mail address). If this does not resolve your question or complaint, you can contact the OCCC:

Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, TX 78705
(800) 538-1579 — Consumer Helpline
occc.texas.gov
consumer.complaints@occc.texas.gov

Before you sign a property tax loan, be sure that you understand this document.
You may seek advice from an attorney or any third party before you enter into a property tax loan. You should ask about the terms of any loan you are considering and you should read any document before signing it.
## Property Tax Loan
### Pre-Closing Disclosure

<table>
<thead>
<tr>
<th>Borrower</th>
<th>[borrower name]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property Address</td>
<td>[borrower address 1] [borrower address 2]</td>
</tr>
<tr>
<td>Closing Date</td>
<td>[closing date]</td>
</tr>
<tr>
<td>Loan ID#</td>
<td>[loan ID]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Lender</th>
<th>[lender name]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>[lender address 1] [lender address 2]</td>
</tr>
<tr>
<td>OCCC License #</td>
<td>[lender license #]</td>
</tr>
</tbody>
</table>

### Loan Terms

<table>
<thead>
<tr>
<th>Loan Amount</th>
<th>$0.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>(funds advanced on your behalf)</td>
<td></td>
</tr>
<tr>
<td>Interest Rate</td>
<td>0.00%</td>
</tr>
<tr>
<td>(loan contract rate)</td>
<td></td>
</tr>
<tr>
<td>Loan Term</td>
<td>0 months</td>
</tr>
<tr>
<td>Monthly Payment</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

### Payment Schedule

| Prepayment | If you prepay the loan within two years, you will pay a prepayment penalty as high as $________ |

### Loan Amount Itemization

<table>
<thead>
<tr>
<th>Amounts paid to taxing units</th>
<th>$0.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>to [taxing unit name]</td>
<td>$0.00</td>
</tr>
<tr>
<td>to [taxing unit name]</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Closing costs</th>
<th>$0.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Costs to lender</td>
<td>$0.00</td>
</tr>
<tr>
<td>[fee description] to [third party name]</td>
<td>$0.00</td>
</tr>
<tr>
<td>[fee description] to [third party name]</td>
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<thead>
<tr>
<th>Total prepaid interest</th>
<th>$0.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>(not included in loan amount)</td>
<td></td>
</tr>
<tr>
<td>Per diem interest</td>
<td>$0.00</td>
</tr>
<tr>
<td>(0.00% per day, 0 days)</td>
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Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
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(800) 538-1579 — Consumer Helpline
occc.texas.gov
consumer.complaints@occc.texas.gov

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Texas Department of Agriculture

2018 Young Farmer Grant Program Request for Application Purpose.

Pursuant to the Texas Agriculture Code, §58.091, the Texas Department of Agriculture (TDA) is requesting applications for the Young Farmer Grant (YFG) program. The YFG is administered by TDA under the direction of the Texas Agricultural Finance Authority (TFA). The purpose of this program is to provide financial assistance in the form of dollar-for-dollar matching grant funds to those persons 18 years or older but younger than 46 years of age that are engaged or will be engaged in creating or expanding an agricultural business in Texas.

TFA's YFG Program aims to:

• Grow and support Texas agriculture - so as not to have to ship products from other states, including deficit commodities;
• Help grow an operation that also impacts the community; and
• Help meet a financial need that is otherwise not met.

Eligibility.

Grant applications will be accepted from any person 18 years or older, but younger than 46 years of age as of the time of the grant award, who is engaged or will be engaged in creating or expanding agriculture in Texas. The applicant must be able to make dollar-for-dollar matching expenditures to sustain, create or expand the proposed project.

Funding Parameters.

Selected grantees will receive funding for their projects on a cost reimbursement basis. Funds will not be advanced to grantees. Selected grantees must have the financial capability to pay all costs upfront.

The TFAA Board of Directors (Board) anticipates total funding of $150,000 will be available for grant awards of not less than $5,000 or more than $20,000 for each grantee selected to receive an award under the program.

The Board reserves the right to fully or partially fund any particular grant application. The grant award does not include required Grantee Matching Funds. Grantees will be required to meet a 1:1 match. For every dollar requested, the grantee must show expenditure, prior to reimbursement, of at least an equal amount of Grantee Matching Funds from allowable sources. Awards are subject to the availability of funds. If funds are not appropriated or collected for this purpose, applicants will be informed accordingly.

Application Requirements.

To be considered, applications must be complete and submitted on Form GTBD-108. An application and information can be downloaded from TDA’s Grants Office under the Grants and Services tab at www.TexasAgriculture.gov.

The complete application packet including the proposal with signatures must be received by Wednesday, September 20, 2017.

For questions regarding submission of the proposal and/or TDA requirements, please contact the Grants Office at (512) 463-2537, or by email at Grants@TexasAgriculture.gov.

Texas Public Information Act.

Once submitted, all applications shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-201703193
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Filed: August 18, 2017

Comptroller of Public Accounts

Notice of Contract Amendments

The Texas Comptroller of Public Accounts ("Comptroller") entered into amendments with several independent contractors to their respective original Professional Services Agreements for Independent Examining Services ("Contracts") resulting from Comptroller's Request for Qualifications 212m ("RFQ 212m"). The Contracts were awarded as authorized by Chapter 111, Subchapter A, Section 111.0045 of the Texas Tax Code.

Notice of issuance of RFQ 212m was published in the April 10, 2015, issue of Texas Register (40 TexReg 2104). Notice of Award was published in the September 4, 2015, issue of Texas Register (40 TexReg 5938).

The Amendments to the respective Contracts have been entered into with the following persons or firms:

- Cynthia Alvarez, 3820 Ashbury Lane, Bedford, Texas 76021, is extended by Amendment No. 2.
- Cindy H. Coats, CPA, 212 W. Legend Oaks Drive, Georgetown, Texas 78628-5003, is extended by Amendment No. 2.
- Antonio V. Concepcion, 9227 Bristlebrook Drive, Houston, Texas 77083, is extended by Amendment No. 2.
- Lee A. Hopes & Associates, Inc., 10415 Antelope Alley, Missouri City, Texas 77459, is extended by Amendment No. 2.
- Delores A. Nornberg, 7518 Briecesco Drive, Corpus Christi, Texas 78414, is extended by Amendment No. 2.
- Taygor Associates, LLC, 1124 Native Garden Cove, Round Rock, Texas 78681, is extended by Amendment No. 2.
- Texas Tax Consulting Group, L.C., 414 Louisiana Avenue, Corpus Christi, Texas 78404, is extended by Amendment No. 2.

The original term of the Contracts is September 1, 2015 through August 31, 2016. The Amendments, the subject of this notice, extend the term of the Contracts through August 31, 2018, with no option to renew.
The total amount of each Contract is based on the size of contract tax examination packages awarded by the Comptroller's Project Manager during the term of each Contract.

TRD-201703168
Cindy Stapper
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: August 16, 2017

Notice of Contract Amendments

The Texas Comptroller of Public Accounts ("Comptroller") entered into amendments with several independent contractors to their respective original Professional Services Agreements for Independent Examining Services ("Contracts") resulting from Comptroller's Request for Qualifications 216d ("RFQ 216d"). The Contracts were awarded as authorized by Chapter 111, Subchapter A, §111.0045 of the Texas Tax Code.

Notice of issuance of RFQ 216d was published in the April 8, 2016, issue of Texas Register (41 TexReg 2607).

Notice of Award was published in the September 2, 2016, issue of Texas Register (41 TexReg 6795).

The Amendments to the respective Contracts have been entered into with the following persons or firms:

Fabian Avina, 1106 Knights Cross Drive, San Antonio, Texas 78258, is extended by Amendment No. 1.

Marina Roy Buenaventura, CPA, 4042 Cheena Drive, Houston, Texas 77025-4702, is extended by Amendment No. 1.

Jean Chan, 6600 Escondido Street, Irving, Texas 75039, is extended by Amendment No. 1.

Cherise D. Collins, 17011 Driver Lane, Sugar Land, Texas 77498, is extended by Amendment No. 1.

D Smith Consulting, 418 Sonora Drive, Garland, Texas 75043, is extended by Amendment No. 1.

Dibrell P. Dobbs dba State Tax Consulting Group, 2906 Timber Gardens Court, Arlington, Texas 76016, is extended by Amendment No. 1.

Dana W. Foote, 8622 Upshur Lane, Houston, Texas 77064-5255, is extended by Amendment No. 1.

Garrett State Tax Service, Inc., 2461 County Road 1342, Pittsburgh, Texas 75686, is extended by Amendment No. 1.

Ramiro J. Garza, 913 Rio Grande Drive, Mission, Texas 78572, is extended by Amendment No. 1.

Paul Hernandez, 1938 Crisfield Drive, Sugar Land, Texas 77479, is extended by Amendment No. 1.

Terra Hillman, 1121 Hodges Street, Lake Charles, Louisiana 70601, is extended by Amendment No. 1.

Stephanie (Clark) Jackson dba The Ann Group, 6618 Honeyridge Lane, San Antonio, Texas 78239, is extended by Amendment No. 1.

Art Koenings, Jr., CPA, 15712 Spillman Ranch Loop, Austin, Texas 78738-6576, is extended by Amendment No. 1.

Brenda Maldonado, 2095 Savannah Trail, Beaumont, Texas 77706, is extended by Amendment No. 1.

Mario A. Mandujano, 1711 Ayleth Avenue, San Antonio, Texas 78213-3966, is extended by Amendment No. 1.

Ronnie E. Marsh, 301 Gage Road, Big Sandy, Texas 75755, is extended by Amendment No. 1.

Dan A. Northern, 2201 Woodland Hills Lane, Weatherford, Texas 76087, is extended by Amendment No. 1.

Dora Irma Ortiz, 1200 South Calvin, Monahans, Texas 79756, is extended by Amendment No. 1.

Wayne A. Powe, 5501 Independence Pkwy., Suite 107, Plano, Texas 75023, is extended by Amendment No. 1.

Ruzicka-Reed Partnership, 1555 Glenhill Lane, Lewisville, Texas 75077, is extended by Amendment No. 1.

Vernice Seriale, Jr., 11612 Cross Spring Drive, Pearland, Texas 77584, is extended by Amendment No. 1.

Stites Pybus, LLC, 2925 Cuero Cove, Round Rock, Texas 78681, is extended by Amendment No. 1.

Sullivan State Tax Group, LLC, 4530 Brookren Court, Pearland, Texas 77584-8690, is extended by Amendment No. 1.

Paul D. Underwood, 6130 Coralridge Drive, Corpus Christi, Texas 78413, is extended by Amendment No. 1.

Homer Max Wiesen, CPA, 1009 Panhandle Street, Denton, Texas 76201-2841, is extended by Amendment No. 1.

The original term of the Contracts is September 1, 2016 through August 31, 2017. The Amendments, the subject of this notice, extend the term of the Contracts through August 31, 2018, with one (1) additional one (1) year option to renew.

The total amount of each Contract is based on the size of contract tax examination packages awarded by the Comptroller's Project Manager during the term of each Contract.

TRD-201703279
Cindy Stapper
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: August 23, 2017

Notice of Contract Awards

Pursuant to Chapter 403, Chapter 2254, Subchapter A of the Texas Government Code, and Chapter 111, Subchapter A, §111.0045 of the Texas Tax Code, Texas Comptroller of Public Accounts ("Comptroller") announces this notice of contract awards.

Comptroller's Request for Qualifications 219e ("RFQ") related to these contract awards was published in the April 7, 2017, issue of Texas Register (42 TexReg 1940).

The examiners will provide Professional Contract Examination Services as authorized by Subchapter A, Chapter 111, §111.0045 of the Texas Tax Code as described in the Comptroller's RFQ.

Comptroller announces that six (6) contracts were awarded as follows:

Sylvia Villanueva Flaherty, 9000 Vantage Point Drive, Apt. 636, Dallas, Texas 75243. Examinations will be assigned in $64,000 - $96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2017, through August 31, 2018, with two (2) one (1) year options to renew.
Sean J. Lomonaco, 3300 Cummins Street, Apt. 2420, Houston, Texas 77027. Examinations will be assigned in $64,000 - $96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2017, through August 31, 2018, with two (2) one (1) year options to renew.

Khrista Marque, LLC, 20619 Redbud Rain Drive, Katy, Texas 77449. Examinations will be assigned in $64,000 - $96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2017, through August 31, 2018, with two (2) one (1) year options to renew.

Julie R. Ortiz, CPA, 603 W. 8th Street, Weslaco, Texas 78596. Examinations will be assigned in $64,000 - $96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2017, through August 31, 2018, with two (2) one (1) year options to renew.

State and Local Tax Group, LLC, 308 Cooper Drive, Hurst, Texas 76053. Examinations will be assigned in $64,000 - $96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2017, through August 31, 2018, with two (2) one (1) year options to renew.

State Sales Tax Consulting, LLC, 2935 Westerfield Lane, Houston, Texas 77084. Examinations will be assigned in $64,000 - $96,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $192,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2017, through August 31, 2018, with two (2) one (1) year options to renew.

The six (6) contracts above are the final awards that the Comptroller will make under this RFQ.

TRD-201703282
Cindy Stapper
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: August 23, 2017

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/28/17 - 09/03/17 is 18% for Consumer/Agricultural/Commercial credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/28/17 - 09/03/17 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/17 - 09/30/17 is 5.00% for Consumer/Agricultural/Commercial credit thru $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/17 - 09/30/17 is 5.00% for commercial over $250,000.

1 Credit for personal, family or household use.

2 Credit for business, commercial, investment or other similar purpose.

TRD-201703267
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 22, 2017

Texas Education Agency

Request for Applications Concerning Generation Twenty-Three Open-Enrollment Charter Application (RFA #701-17-104)


Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-17-104 from eligible entities to operate open-enrollment charter schools. Eligible entities include public institutions of higher education, private or independent institutions of higher education, organizations exempt from taxation under the Internal Revenue Code of 1986 (26 United States Code, §501(c)(3)), and governmental entities. At least one member of the governing board of the group requesting the charter must attend one required applicant information session. Applications are scheduled for Friday, September 15, 2017, and Friday, September 22, 2017, in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494. Failure to attend one of the sessions will disqualify an applicant from submitting a complete application for an open-enrollment charter.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. An approved open-enrollment charter school may be located in a facility of a commercial or nonprofit entity or in a school district facility. If the open-enrollment charter school is located in a school district facility, it must be operated under the terms established by the board of trustees or governing body of the school district in an agreement governing the relationship between the charter school and the district.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. An open-enrollment charter school must be nonsectarian in its programs, admissions, policies, employment practices, and all other operations and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Texas Student Data System Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the TEC, §12.1056, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school or charter holder is immune from liability and suit to the same extent as a school district, and the employees and volunteers of the open-enroll-
ment charter school or charter holder are immune from liability and suit to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability and suit to the same extent as a school district trustee. The TEC, §12.1057, states that an employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. The completed application must be received by the TEA by 5:00 p.m. (Central Time), Monday, December 4, 2017, to be eligible for review.

Project Amount. The TEC, §12.106, specifies the following.

(a) Effective September 1, 2017, a charter holder is entitled to receive for the open-enrollment charter school funding under the TEC, Chapter 42, equal to the amount of funding per student in weighted average daily attendance, excluding enrollment funding under the TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253.

(a-1) In determining funding for an open-enrollment charter school under subsection (a), adjustments under the TEC, §§42.102, 42.103, 42.104, and 42.105, are based on the average adjustment for the state.

(a-2) In addition to the funding provided by subsection (a), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under the TEC, §42.302, based on the state average tax effort.

The TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the TEA or the commissioner of education in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. In addition, the TEC, Chapter 12, states that an open-enrollment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, juvenile court adjudication, or a discipline problem under the TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The commissioner may approve open-enrollment charter schools as provided in the TEC, §12.101 and §12.152. There are currently 180 charters approved under the TEC, §12.101 (Subchapter D), and 6 charters approved under the TEC, §12.152 (Subchapter E). There is a cap of 255 charters approved under the TEC, §12.101, and no cap on the number of charters approved under the TEC, §12.152. The commissioner is scheduled to consider awards under RFA #701-17-104 in June 2018.

The commissioner may approve applicants to ensure representation of urban, suburban, and rural communities; various instructional settings; innovative programs; diverse student populations and geographic regions; and various eligible entities. The commissioner will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The commissioner may also consider the history of the sponsoring entity and the credentials and background of its board members. The commissioner may not award a charter to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered. The commissioner will not consider an application submitted by an individual that is substantially related to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered.

Requesting the Application. An application must be submitted under commissioner guidelines to be considered. A complete copy of the publication Generation Twenty-Three Open-Enrollment Charter Application (RFA #701-17-104), which includes an application and procedures, may be obtained on the TEA website at http://tea.texas.gov/Texas_Schools/Charter_Schools/.

Further Information. For clarifying information about the open-enrollment charter school application, contact the Division of Charter School Administration, Texas Education Agency, at (512) 463-9575 or charterschools@tea.texas.gov.

TRD-201703291
Cristina De La Fuente-Valdez
Director, Rulemaking
Texas Education Agency
Filed: August 23, 2017

Request for Applications Concerning Public College or University Open-Enrollment Charter Guidelines and Application (RFA #701-17-105)

Filing Authority. Texas Education Code (TEC), §12.152.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under RFA #701-17-105 from eligible entities to operate open-enrollment charter schools. Eligible entities include public junior colleges or universities or public junior colleges. At least one member of the governing board of the group requesting the charter must attend one required applicant information session. Sessions are scheduled for Friday, September 15, 2017, and Friday, September 22, 2017, in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494. Failure to attend one of the sessions will disqualify an applicant from submitting a complete application for an open-enrollment charter.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. As stated in the TEC, §12.152, in matters related to location, a college, university, or junior college open-enrollment charter school may operate on a campus of the college, university, or junior college or at another location in any county in the state as deemed appropriate by the commissioner of education after considering the number of existing charters in the area and the needs of the community.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. An open-enrollment charter school must be nonsectarian in its programs, admissions, policies, employment practices, and all other operations and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Texas Student Data System Public Education Information Management System, criminal...
history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the TEC, §12.1056, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school or charter holder is immune from liability and suit to the same extent as a school district, and the employees and volunteers of the open-enrollment charter school or charter holder are immune from liability and suit to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability and suit to the same extent as a school district trustee. The TEC, §12.1057, states that an employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. The completed application must be received by the TEA by 5:00 p.m. (Central Time), Monday, December 4, 2017, to be eligible for review.

Project Amount. The TEC, §12.106, specifies the following.

(a) Effective September 1, 2017, a charter holder is entitled to receive for the open-enrollment charter school funding under the TEC, Chapter 42, equal to the amount of funding per student in weighted average daily attendance, excluding enrichment funding under the TEC, §42.302(a), to which the charter holder would be entitled for the school under the TEC, Chapter 42, if the school were a school district without a tier one local share for purposes of the TEC, §42.253.

(a-1) In determining funding for an open-enrollment charter school under subsection (a), adjustments under the TEC, §§42.102, 42.103, 42.104, and 42.105, are based on the average adjustment for the state.

(a-2) In addition to the funding provided by subsection (a), a charter holder is entitled to receive for the open-enrollment charter school enrichment funding under the TEC, §42.302, based on the state average tax effort.

The TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the TEA or the commissioner of education in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. In addition, the TEC, Chapter 42, states that an open-enrollment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, juvenile court adjudication, or a discipline problem under the TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The commissioner may approve open-enrollment charter schools as provided in the TEC, §12.101 and §12.152. There are currently 180 charters approved under the TEC, §12.101 (Subchapter D), and 6 charters approved under the TEC, §12.152 (Subchapter E). There is a cap of 255 charters approved under the TEC, §12.101, and no cap on the number of charters approved under the TEC, §12.152. The commissioner is scheduled to consider awards under RFA #701-17-105 in June 2018.

The commissioner may approve applicants to ensure representation of urban, suburban, and rural communities; various instructional settings; innovative programs; diverse student populations and geographic regions; and various eligible entities. The commissioner will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The commissioner may also consider the history of the sponsoring entity and the credentials and background of its board members. The commissioner may not award a charter to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered. The commissioner will not consider an application submitted by an individual that is substantially related to an entity that has within the preceding 10 years had a charter revoked, non-renewed, or surrendered.

Requesting the Application. An application must be submitted under commissioner guidelines to be considered. A complete copy of the publication Generation Twenty-Three Open-Enrollment Charter Application (RFA #701-17-105), which includes an application and procedures, may be obtained on the TEA website at http://tea.texas.gov/Texas_Schools/Charter_Schools/.

Further Information. For clarifying information about the open-enrollment charter school application, contact the Division of Charter School Administration, Texas Education Agency, at (512) 463-9575 or charterschools@tea.texas.gov.

TRD-201703292 Cristina De La Fuente-Valadez Director, Rulemaking Texas Education Agency Filed: August 23, 2017

Texas Board of Professional Engineers

Criminal History Policy for Applications

Pursuant to Chapter 53, Texas Occupations Code, relating to Consequences for Criminal Convictions, the Texas Board of Professional Engineers has filed the following policies regarding criminal incidents for applicants and licensees with the Secretary of State:

Overview/Purpose:

The Board's consideration of an applicant's "character and reputation" is required by statute (1001.302(d)). This is addressed through an assessment of ethics. In the application process, ethics are addressed by PE references and on the truthfulness demonstrated in the application information. In addition, Texas Occupations Code Chapter 53 relating to Consequences of Criminal Convictions, requires the Texas Board of Professional Engineers to establish guidelines for consideration for licensure as a Professional Engineer in Texas.

Policy Determination:

On the PE license application form, all applicants will be asked to state, under penalty of perjury, whether he or she has ever been convicted of an offense, placed on probation, granted deferred adjudication or any type of pretrial diversion for a felony or misdemeanor crime. If so, the applicant will be asked to supply additional information about each criminal incident using the Criminal History form as well as providing copies of appropriate court documents. All applicants are required to submit a fingerprint-based Criminal History Records Check (CHRC) through the Texas Department of Public Safety.

In some cases, additional information is needed to adequately assess an applicant's character and reputation prior to approval. Pursuant to Board Rule 22 TAC §133.93 (relating to Personal Interview of Applicants), applicants will be referred to the Licensing Committee to obtain additional information and make recommendations for final action. Al-
though not meant to be an exhaustive list, the Licensing Committee may consider applications if any of the following conditions apply:

• Any reportable criminal judgments discovered by staff through the CHRC that were not reported in the application materials by the applicant.

• Any direct relationship of a reportable criminal judgment to the applicant's fitness to practice as a Professional Engineer in Texas.

• Multiple reportable misdemeanor or felony judgments that occurred within 10 years of the date of application that indicate a pattern of unethical behavior.

• Any reportable felony judgment for which the date of completion and resolution of the terms is within 10 years of the date of application.

• Applicants whose applications are denied solely due to criminal conviction(s) or deferred adjudication(s) will be offered a hearing pursuant to Texas Occupations Code Chapter 53.

Background and reason(s) for policy interpretation:

Pursuant to Texas Occupations Code Chapter 53 relating to Consequences of Criminal Convictions, The Texas Board of Professional Engineers establishes the following guidelines for consideration for licensure as a Professional Engineer in Texas.

The board shall consider:

• The nature and seriousness of the crime;

• The relationship of the crime to the board's statutory responsibility to ensure that a person practicing as a Professional Engineer in Texas protects the health, safety, and welfare of the public;

• The relationship of the crime to the competence, ability, capacity, fitness or professional judgment required to perform the duties and discharge the responsibilities of an engineer;

• The outcome or resolution of criminal charges and any associated judgment, deferral of judgment, penalty or punishment, whether completed or on-going;

• The date of completion and resolution of the terms of any judgment, deferral of judgment, penalty or punishment;

• The extent to which issuance of a license will allow a person to engage in further criminal activity of the same type as that which the applicant previously had been involved.

In addition to the factors stated above, the board shall consider Texas Occupations Code §53.023 in determining the present fitness of a candidate who has been convicted of a crime.

Pursuant to Texas Occupations Code §53.025(a), the Texas Board of Professional Engineers considers that the following crimes directly relate to the practice of engineering due to the adverse impact each of these crimes has on the special trust and ethical duties a Professional Engineer owes to the client and the public involving honesty, integrity, fidelity and the exercise of good judgment and character:

• Any felony or misdemeanor which involves a disregard for the health, safety or welfare of the general public or individuals, including violent crimes or crimes involving drugs or alcohol;

• Any felony or misdemeanor of which theft, fraud or deceit is an essential element;

• Any felony or misdemeanor which demonstrates a lack of professional judgment expected of a Professional Engineer;

• Any felony or misdemeanor involving financial or other loss for a client(s) or the public; and

• Any other felony or misdemeanor reflecting adversely upon the applicant's fitness to practice engineering.

In addition, as authorized in Texas Occupations Code 53, Subchapter D, the Board will, upon request issue a criminal history evaluation letter and a determination of eligibility letter.

Applicable Rules:

§133.83 Executive Director Review; Evaluation and Processing of Applications

§133.93 Personal Interviews of Applicants

§133.99 Processing of Applications with a Criminal Conviction

TRD-201703275
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: August 23, 2017

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is October 2, 2017. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on October 2, 2017. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: ALERO ENTERPRISE LLC dba Adam Food Mart; DOCKET NUMBER: 2017-0385-PST-E; IDENTIFIER: RN101550200; LOCATION: Springtown, Parker County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.602(a), by failing to have at least one certified operator present at the station during the hours of operation; 30 TAC §334.50(b)(2)(A)(i)(III) and (ii) and TWC, §26.3475(a), by failing to provide proper release detection for the pressurized piping
(8) COMPANY: Farmers Transport Incorporated dba Enchanted Harbor Utility; DOCKET NUMBER: 2017-0757-PWS-E; IDENTIFIER: RN101442556; LOCATION: Point Comfort, Calhoun County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(iv) and Texas Health and Safety Code, §34.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; PENALTY: $187; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(9) COMPANY: HFOGLO LLC; DOCKET NUMBER: 2017-0531-AIR-E; IDENTIFIER: RN100223445; LOCATION: Houston, Harris County; TYPE OF FACILITY: petroleum storage, blending and transporting plant; RULES VIOLATED: 30 TAC §122.121 and §122.210(a), and Texas Health and Safety Code, §382.054 and §382.085(b), by failing to submit a permit revision application for a Federal Operating Permit to incorporate emissions units and applicable requirements; PENALTY: $4,012; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: IMMUNEMAN ENTERPRISE, INCORPORATED dba Fast Trac Food Mart; DOCKET NUMBER: 2017-0585-PST-E; IDENTIFIER: RN102055076; LOCATION: Grand Prairie, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWCC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month, and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $6,129; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: KM Liquids Terminals LLC; DOCKET NUMBER: 2017-0733-AIR-E; IDENTIFIER: RN100224815; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.15(b)(2)(F) and (c) and §122.143(4); New Source Review Permit Number 5171, Special Conditions Number 1, Federal Operating Permit Number O984, Special Terms and Conditions Number 17, and Texas Health and Safety Code, §382.085(b), by failing to comply with the permitted emissions rate; PENALTY: $4,500; Supplemental Environmental Project offset amount of $1,800; ENFORCEMENT COORDINATOR: Trina Grieço, (210) 403-4006; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Leander Independent School District; DOCKET NUMBER: 2017-0606-PST-E; IDENTIFIER: RN101492672; LOCATION: Cedar Park, Williamson County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2)(B)(i) and TWCC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month, and failing to provide release detection for the gravity flow piping associated with the UST system; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(13) COMPANY: Lucite International, Incorporated; DOCKET NUMBER: 2017-0763-WDW-E; IDENTIFIER: RN102736089; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §331.63(c), 40 Code of Federal Regulations (CFR) §146.67(a), and Underground Injection Control (UIC) Permit Numbers Waste Disposal Well (WDW) 100 and WDW 101, Permit Provision VII.B. Operating Parameters, by failing to maintain an operating wellhead injection pressure that does not exceed the permitted maximum; and 30 TAC §331.63(e), 40 CFR §146.67(c), and UIC Permit Numbers WDW 100 and WDW 101, Permit Provision VII.E. Operating Parameters, by failing to maintain a positive pressure of 100 pounds per square inch gauge over tubing injection pressure in the tubing-casing annulus in WDW 100 and WDW 101 without dropping below this pressure differential for greater than 15 minutes; PENALTY: $32,813; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(14) COMPANY: New Brothers Enterprises Incorporated dba Sonic Food Mart; DOCKET NUMBER: 2017-0349-PST-E; IDENTIFIER: RN101546398; LOCATION: Grand Prairie, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4)(C) and TWCC, §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of the protection at a frequency of at least once every three years; and 30 TAC §334.50(b)(1)(A) and (2) and TWCC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once per month and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $6,353; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: REHOBETH WATER SUPPLY CORPORATION; DOCKET NUMBER: 2016-1842-PWS-E; IDENTIFIER: RN101457919; LOCATION: Carthage, Panola County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2), (3)(A)(iv), (B)(iv), and (v), by failing to make water works operation and maintenance records available for review by commission personnel during the investigation; 30 TAC §290.46(j), by failing to utilize a customer service inspection (CSI) certificate form approved by the executive director (ED) or receive approval from the ED for any CSI certificate form which varies from the specified format; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.110(c)(5)(B)(ii), by failing to monitor nitrate and nitrate levels at the first customer monthly for at least six months to determine baseline nitrate and nitrate levels in the water prior to consumption; 30 TAC §290.46(e), by failing to create a nitrification action plan for a system distributing chloraminated water; 30 TAC §290.44(h)(4), by failing to have the backflow prevention assemblies which are installed to provide protection against health hazards tested and certified to be operating within specifications at least annually by a recognized backflow prevention assembly tester; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §34.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of chlorine throughout the distribution system at all times; and 30 TAC §290.44(e), by failing to ensure all water lines within the distribution system are a minimum diameter of two inches; PENALTY: $799; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: Round Rock Independent School District; DOCKET NUMBER: 2017-0213-MLM-E; IDENTIFIER: RN102052629; LOCATION: Round Rock, Williamson County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWCC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month;
and 30 TAC §213.5(d)(1) and TWC, §26.3475(a) and (c)(1), by failing to provide a functioning continuous monitoring leak detection system that is capable of immediately alerting of possible leakages; PENALTY: $6,750; Supplemental Environmental Project offset amount of $10,800; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(17) COMPANY: Scott L. Newland; DOCKET NUMBER: 2017-0834-WQ-E; IDENTIFIER: RN109726992; LOCATION: Hallsville, Harrison County; TYPE OF FACILITY: residential construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $2,126; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 2916 Teague Drive Tyler, Texas 75701-3734, (903) 535-5100.

(18) COMPANY: The Chart House Condominium Association, Incorporated; DOCKET NUMBER: 2017-0321-PWS-E; IDENTIFIER: RN101252740; LOCATION: Azle, Tarrant County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 5 picoCuries per liter (pCi/L) for combined radium-226 and radium-228, based on the running annual average; and 30 TAC §290.108(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 15 pCi/L for gross alpha particle activity, based on the running annual average; PENALTY: $2,345; ENFORCEMENT COORDINATOR: Monica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: THREE PAKS, INCORPORATED dba Three Way; DOCKET NUMBER: 2017-0754-PST-E; IDENTIFIER: RN101444164; LOCATION: Kaufman, Kaufman County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $2,813; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Town of Combes; DOCKET NUMBER: 2017-0192-WQ-E; IDENTIFIER: RN105597074; LOCATION: Combes, Cameron County; TYPE OF FACILITY: Small Municipal Separate Storm Sewer System (MS4); RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge stormwater associated with Texas Pollutant Discharge Elimination System General Permit for Small MS4s; PENALTY: $13,750; ENFORCEMENT COORDINATOR: Caleb Olson, (512) 239-2541; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-201703264
Gitanjali Yadav
Acting Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 22, 2017

Enforcement Orders

An agreed order was adopted regarding Gold Star, LLC, Docket No. 2015-1093-PST-E on August 23, 2017, assessing $21,986 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Hicks Oil & Butane Co., Docket No. 2015-1734-PST-E on August 23, 2017, assessing $49,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jai Shree Ambe Corporation dba 18th Street Food Mart, Docket No. 2015-1780-PST-E on August 23, 2017, assessing $26,239 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting lan Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pradhan and Company, Inc. dba Express Food, Docket No. 2016-0290-PST-E on August 23, 2017, assessing $4,125 in administrative penalties with $525 deferred. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding King Ranch, Inc., Docket No. 2016-0673-PWS-E on August 23, 2017, assessing $163 in administrative penalties with $163 deferred. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Crockett, Docket No. 2016-0680-PWS-E on August 23, 2017, assessing $351 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default and shutdown order was adopted regarding Naila Partners, Ltd. dba Handi Plus, Docket No. 2016-0724-PST-E on August 23, 2017, assessing $15,579 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was adopted regarding Myong Rehman dba KP Foods, Docket No. 2016-0763-PST-E on August 23, 2017, assessing $4,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was adopted regarding Odfjell Terminals (Houston) Inc., Docket No. 2016-1081-AIR-E on August 23, 2017, assessing $69,555 in administrative penalties with $13,911 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Star Container Company Inc., Docket No. 2016-1084-MLM-E on August 23, 2017, assessing $8,313 in administrative penalties with $1,662 deferred. Information concerning any aspect of this order may be obtained by contacting Keith Frank,
An agreed order was adopted regarding City of Paducah, Docket No. 2016-1116-PWS-E on August 23, 2017, assessing $4,202 in administrative penalties with $4,202 deferred. Information concerning any aspect of this order may be obtained by contacting Michaele Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ozmir, Inc. dba Super Trac, Docket No. 2016-1290-PST-E on August 23, 2017, assessing $15,475 in administrative penalties with $3,095 deferred. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Galveston County Water Control and Improvement District No. 8, Docket No. 2016-1621-MWD-E on August 23, 2017, assessing $16,500 in administrative penalties with $3,300 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Webb County, Docket No. 2016-1638-PWS-E on August 23, 2017, assessing $1,890 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Michaele Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Boerne, Docket No. 2016-1648-MWD-E on August 23, 2017, assessing $17,601 in administrative penalties with $3,520 deferred. Information concerning any aspect of this order may be obtained by contacting Melissa Castro, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DHP Sales & Services Inc dba Champs Food Mart, Docket No. 2016-1663-PST-E on August 23, 2017, assessing $15,598 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Adam Taylor, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Gardendale Mobile Home Park, LLC, Docket No. 2016-1788-PWS-E on August 23, 2017, assessing $930 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texas Eastern Transmission, LP, Docket No. 2016-1909-AIR-E on August 23, 2017, assessing $31,763 in administrative penalties with $6,352 deferred. Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GoPetro Transport LLC, Docket No. 2016-1954-PST-E on August 23, 2017, assessing $3,612 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Yeti Investment LLC dba Kiranna 101, Docket No. 2016-1982-PST-E on August 23, 2017, assessing $8,415 in administrative penalties with $1,683 deferred. Information concerning any aspect of this order may be obtained by contacting Benjamin Sakmar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Prestwick Investments II, LLC, Docket No. 2016-2012-PWS-E on August 23, 2017, assessing $1,263 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Troy G. Waller dba Rockwell Acres Water System, Docket No. 2016-2047-PWS-E on August 23, 2017, assessing $1,108 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Us Ecology Texas, Inc., Docket No. 2016-2118-IWD-E on August 23, 2017, assessing $15,200 in administrative penalties with $3,040 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Camp Rio Vista, Inc., Docket No. 2017-0122-PWS-E on August 23, 2017, assessing $330 in administrative penalties with $330 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Targa Midstream Services LLC, Docket No. 2017-0173-AIR-E on August 23, 2017, assessing $8,000 in administrative penalties with $1,600 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shri Swamikrupa, Inc., Docket No. 2017-0197-PWS-E on August 23, 2017, assessing $330 in administrative penalties with $330 deferred. Information concerning any aspect of this order may be obtained by contacting Michaele Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.
sessing $450 in administrative penalties with $90 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding El Paso Water Utilities Public Service Board, Docket No. 2016-0942-MWD-E on August 22, 2017, assessing $1,575 in administrative penalties with $315 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Wilbert Vaults of Houston, L.L.C., Docket No. 2016-1170-WQ-E on August 22, 2017, assessing $4,705 in administrative penalties with $941 deferred. Information concerning any aspect of this order may be obtained by contacting Sandra Douglas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding FLAT FORK WATER SUPPLY CORPORATION, Docket No. 2016-1549-MLM-E on August 22, 2017, assessing $1,038 in administrative penalties with $207 deferred. Information concerning any aspect of this order may be obtained by contacting Michaele Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Community Services, Inc., Docket No. 2016-1924-PST-E on August 22, 2017, assessing $5,250 in administrative penalties with $1,050 deferred. Information concerning any aspect of this order may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Midway Range, LLC, Docket No. 2016-1936-PWS-E on August 22, 2017, assessing $500 in administrative penalties with $100 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding FIRST TEXAS CATTLE CO., Docket No. 2016-2050-PWS-E on August 22, 2017, assessing $506 in administrative penalties with $101 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Everett E. Davis, Jr., Docket No. 2017-0064-WOC-E on August 22, 2017, assessing $947 in administrative penalties with $189 deferred. Information concerning any aspect of this order may be obtained by contacting Ariel Ramirez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Dripping Springs, Docket No. 2017-0125-MWD-E on August 22, 2017, assessing $1,188 in administrative penalties with $237 deferred. Information concerning any aspect of this order may be obtained by contacting Melissa Castro, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Martin Ramirez, Jr., Docket No. 2017-0136-LII-E on August 22, 2017, assessing $1,616 in administrative penalties with $323 deferred. Information concerning any aspect of this order may be obtained by contacting Raine Hayes-Falero, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding OIL PATCH FUEL & SUPPLY, INC., Docket No. 2017-0162-PST-E on August 22, 2017, assessing $1,356 in administrative penalties with $271 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Stump, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Randall C. Voorheis and Terry D. Voorheis, Docket No. 2017-0183-EAQ-E on August 22, 2017, assessing $2,125 in administrative penalties with $425 deferred. Information concerning any aspect of this order may be obtained by contacting Farhad Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Town & Country Food Stores, Inc., Docket No. 2017-0185-PWS-E on August 22, 2017, assessing $326 in administrative penalties with $65 deferred. Information concerning any aspect of this order may be obtained by contacting Sandra Douglas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Meyersville Independent School District, Docket No. 2017-0196-PWS-E on August 22, 2017, assessing $420 in administrative penalties with $84 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BRANDCO, INC., Docket No. 2017-0288-AIR-E on August 22, 2017, assessing $1,125 in administrative penalties with $225 deferred. Information concerning any aspect of this order may be obtained by contacting Jo Hunsberger, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ANGAL 786 ENTERPRISE INC dba Texas Totem, Docket No. 2017-0332-PST-E on August 22, 2017, assessing $2,438 in administrative penalties with $487 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Stump, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Grand Castle Water Supply Corporation, Docket No. 2017-0347-PWS-E on August 22, 2017, assessing $50 in administrative penalties with $10 deferred. Information concerning any aspect of this order may be obtained by contacting Ariel Ramirez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Wolfe Airpark Civic Club, Inc., Docket No. 2017-0387-PWS-E on August 22, 2017, assessing $362 in administrative penalties with $72 deferred. Information concerning any aspect of this order may be obtained by contacting Sandra Douglas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding JUSRyn COMPANY, INC., Docket No. 2017-0476-PWS-E on August 22, 2017, assessing $725 in...
administrative penalties with $145 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Crosbyton, Docket No. 2017-0484-PWS-E on August 22, 2017, assigning $345 in administrative penalties with $69 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Industrial Independent School District, Docket No. 2017-0496-PWS-E on August 22, 2017, assigning $50 in administrative penalties with $10 deferred. Information concerning any aspect of this order may be obtained by contacting Michael Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Duval County Conservation and Reclamation District, Docket No. 2017-0507-PWS-E on August 22, 2017, assigning $450 in administrative penalties with $90 deferred. Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201703294
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 23, 2017

Notice of District Petition

Notice issued August 16, 2017
TCEQ Internal Control No. D-06122017-018; Peach Creek Partners, LTD, McFarlane Interests, LTD, RB Ventures I, LLC, John E. McFarlane, Jr., and Erin Mcfarlane, and Rock Barn Conservation Partners, LLC, (Petitioners) filed a petition for creation of Brazos County Municipal Utility District of Brazos County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Texas Constitution; Chapters 49 and 54 of the Texas Water Code; Title 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Joint Petitioners are the owners of a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Prosperity Bank, a Texas state bank, being lienholder on the land to be included in the proposed District; (3) the proposed District will contain approximately 995.30 acres located within Brazos County, Texas; and (4) all of the land within the proposed District is within the corporate limits of the City of College Station (City), Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. The Petitioners have also provided certificates evidencing the consent of the lienholders to the creation of the proposed District. By Resolution No. 06-09-16-02, passed and approved June 9, 2016, the City of College Station, Brazos County, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) design, construct, acquire, maintain, and operate an adequate and efficient waterworks and sanitary sewer system primarily for commercial and domestic purposes; (2) design, construct, acquire, maintain, and operate works, improvements, facilities, plants, equipment, and appli-
ances helpful or necessary to provide more adequate drainage for the proposed District; (3) to control, abate, and amend local storm waters or other harmful excesses of water; (4) to construct, acquire, operate, and maintain roadways, including storm drainage, bridges, and other improvements in aid of these roadways; (5) to construct, acquire, maintain, and operate parks and recreational facilities; and (6) construct, acquire, improve, maintain, and operate such other and additional facilities, systems, plants, and enterprises as may be consonant with the purposes for which the District is created, to connect to Brazos County Municipal Utility District No. 6, the proposed master district, which will provide the regional water supply and wastewater treatment services to four districts, including the proposed District, the District will pay its pro-rata share of the development costs. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from such information available at the time, that the cost of said project will be approximately $23,138,000 ($10,760,000 for utilities, plus $9,904,000 for pro-rata share of the master district trunk water; wastewater, and drainage facilities, plus $2,474,000 for road facilities).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement “I/we request a contested case hearing”; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District’s boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-201703283
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 23, 2017

Notice of Hearing
Hanson Aggregates LLC
SOAH Docket No. 582-17-5611
TCEQ Docket No. 2017-0687-AIR
Proposed Registration No. 142439

APPLICATION.

Hanson Aggregates LLC, 300 East John Carpenter Freeway, Suite 1645, Irving, Texas 75062-2772, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant Registration Number 142439, which would authorize construction of two permanent concrete batch plants under Title 30 Texas Administrative Code (TAC) §116.611 on Esperanza Road approximately 0.25 miles east of the intersection with State Highway 75, Willis, Montgomery County, Texas 77378. This application was submitted to the TCEQ on August 26, 2016. The proposed facility will emit the following air contaminants: particulate matter including (but not limited to) aggregate, cement, road dust, and particulate matter with diameters of 10 microns or less and 2.5 microns or less.

The TCEQ Executive Director has determined that the application meets all of the requirements of a Standard Permit authorized by 30 TAC §116.611 which would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision to issue the registration because it meets all rules and regulations. The permit application, Executive Director's preliminary decision, and standard permit are available for viewing and copying at the TCEQ central office, the TCEQ Houston regional office, and at the Montgomery County Memorial Library System - R.F. Meador Branch, 709 West Montgomery Street, Willis, Montgomery County, Texas. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: http://www.tceq.texas.gov/assets/public/hb610/in dex.html?lat=30.490167&lng=-95.487361&zoom=13&type=r. For the exact location, refer to the application.

CONTESTED CASE HEARING.
The State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing at:
10:00 a.m. - October 5, 2017
William P. Clements Building
300 West 15th Street, 4th Floor
Austin, Texas 78701

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, allow an opportunity for settlement discussions, and to address other matters as determined by the judge. The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on July 27, 2017. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with the Chapter 2001, Texas Government Code; Chapter 382, Texas Health and Safety Code; TCEQ rules including 30 TAC Chapter 116, Subchapters A and B; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chap-
ter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the preliminary hearing and show you would be affected by the application in a way not common to the general public. Any person may attend the preliminary hearing and request to be a party. Only persons named as parties may participate at the contested case hearing.

MAILING LIST. You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www.tceq.texas.gov/goto/comments, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency’s public record. For more information regarding this permit application, the permitting process, or the contested case hearing process, please call the Public Education Program toll free at (800) 687-4040. If you need more information regarding this permit application, the permitting process, or the contested case hearing process, please call the Public Education Program toll free at (800) 687-4040. General information regarding the TCEQ may be obtained electronically at http://www.tceq.texas.gov.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov; or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the permit application process, please call the Public Education Program, toll free, at (800) 687-0404. General information regarding the TCEQ can be found at http://www.tceq.texas.gov/.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Further information may also be obtained from Hanson Aggregates LLC at the address stated above or by calling Mr. Lalit Bhatnagar, Region EHS Director, at (972) 653-3735.

Issued: August 17, 2017
TRD-201703218
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 21, 2017

Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit Major Amendment Proposed Permit Number 956c

APPLICATION. City of Edinburg, P.O. Box 1079, Edinburg, Hidalgo County, Texas 78540-1079, owner/operator of the Edinburg Regional Disposal Facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to their existing permit authorizing a name change and a lateral and vertical expansion of the existing facility. The facility is located at 8601 North Jasman Road, Edinburg, Hidalgo County, Texas 78542. The TCEQ received this application on July 21, 2017. The permit application is available.
for viewing and copying at the City of Edinburg, City Hall- Secretary's Office, 415 West University Drive, Edinburg, Hidalgo County, Texas 78541, and may be viewed online at http://www.cityofedinburg.com/pdfs/EdinburgPermitAmendmentMSW-956C.pdf. The following website which provides an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://www.tceq.texas.gov/assets/public/hb610/index.html?lat=26.398055&lng=-98.13&zoom=13&type=r.

For exact location, refer to application.

**ADDITIONAL NOTICE.** TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

**PUBLIC COMMENT/PUBLIC MEETING.** You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

**OPPORTUNITY FOR A CONTESTED CASE HEARING.** After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

**TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST:** your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

**MAILING LIST.** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

**AGENCY CONTACTS AND INFORMATION.** All public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record.

For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040. Further information may also be obtained from the City of Edinburg at the address stated above or by calling Mr. Chad Ireland, Senior Project Geological Engineer, Golder Associates Inc. at (281) 821-6868.

TRD-201703277
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 23, 2017

Notice of Water Quality Application
The following notices were issued on August 17, 2017.
The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

**INFORMATION SECTION**
LEVERETT'S CHAPEL INDEPENDENT SCHOOL DISTRICT has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011113001, to authorize replacement of the existing treatment plant with a new package wastewater treatment plant. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The facility is located at 8956 Highway 42/135 North, in Rusk County, Texas 75684.

ZEHRABEN MOMIN has applied for a minor amendment to the TPDES Permit No. WQ0015398001 to authorize a change in wastewater treatment process from a dispersed phase activated sludge biological process to a submerged fixed-film biological process. The facility is located at 9218 Farm-to-Market Road 2354, Beach City, in Chambers County, Texas 77523.
If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201703278
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 23, 2017

Notice of Water Rights Application
Notice issued August 16, 2017
APPLICATION NO. 13231; Battleground Oil Specialty Terminal Company, 1836 Miller Cut Off Road, La Porte, Texas 77571, Applicant, has applied for a water use permit to divert and use not to exceed 117.74 acre-feet of water per year from a point located on the Houston Ship Channel (Buffalo Bayou), San Jacinto River Basin, for industrial purposes in Harris County. The application and fees were received on September 4, 2015. Additional information and fees were received on October 17, 2016, February 22, February 27, and March 9, 2017. The application was declared administratively complete and filed with the Office of the Chief Clerk on April 12, 2017. The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions including, but not limited to, installing a measuring device. The application and Executive Director's draft ammendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided below, within 30 days of the date of newspaper publication of the notice.

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/ce/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement (1/we) request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissionors for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711 3087. For information concerning the hearing process, please contact the Public Inter-

Department of State Health Services
Notice of Public Hearing for Proposed Rule - Recognition of Emergency Medical Services Personnel Licensure Interstate Compact
Pursuant to the authority of Texas Health and Safety Code Chapter 778A, the Recognition of EMS Personnel Licensure Interstate Compact (REPLICA), Sections 10 and 12, the member states hereby provide notice of the intent to consider and vote on the adoption of administrative rule Chapter 1, "Rule on Rulemaking."

The purpose of the proposed rule is to establish a rulemaking process of the Interstate Commission for Emergency Medical Services (EMS) Personnel Practice that substantially conforms to the principles of the model State Administrative Procedure Act of 2010 and subsequent amendments thereto.

In accordance with Section 12 of the REPLICA, notice of this meeting and intended action and opportunity for a public hearing is being distributed to provide public notice of the October 8, 2017, hearing in Oklahoma City, Oklahoma.

Sunday, October 8, 2017 - 9:30 a.m.
Oklahoma Museum of Fine Arts
415 Couch Drive
Oklahoma City, Oklahoma 73120

Further information regarding this hearing may be obtained by contacting Joseph Schmider, Office of EMS Trauma System Coordination, State EMS Director, email Joseph.Schmider@dhs.state.ok.us.

Virtual Participation: Either by call in (phone) or by computer with audio, please register via this URL: https://register.gotowebinar.com/register/5725974367137182977

TRD-201703285
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: August 23, 2017

Texas Department of Licensing and Regulation
Public Notice - Enforcement Plan
The Texas Commission of Licensing and Regulation (Commission) provides this public notice that at their regularly scheduled meeting held August 18, 2017, the Commission adopted the Texas Department of Licensing and Regulation's (Department) revised enforcement plan which was established in compliance with Texas Occupations Code, §51.302(c).
The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction. The enforcement plan is revised to include the penalty matrix for the Hearing Instrument Fitters and Dispensers program.

The Texas Legislature enacted Senate Bill 202 (SB 202), 84th Legislature, Regular Session (2015), which transferred regulatory authority of 13 programs, to include Hearing Instrument Fitters and Dispensers from the Texas Department of State Health Services to the Commission and Department. The Hearing Instrument Fitters and Dispensers penalty matrix provides for a single range of penalties for each class to eliminate confusion and allow the industry to fully understand the penalties assessed. The penalty matrix describes the specific ranges of penalties and license sanctions that apply to specific violations of the statutes and rules enforced by the Department.

In 2017, the 85th Texas Legislature enacted House Bill 4007 (HB 4007), which repealed multiple sections from the Hearing Instrument Fitter and Dispenser statute; Chapter 402 of the Texas Occupations Code. This matrix is consistent with those statutory changes that take effect September 1, 2017.

The Hearing Instrument Fitters and Dispensers Advisory Board recommended approval of the penalty matrix at their meeting held July 26, 2017. The penalty matrix was presented to the Commission on August 18, 2017, and was adopted as recommended.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.tdlr.texas.gov. You may also contact the Enforcement Division at (512) 539-5600 or by e-mail at enforcement@tdlr.texas.gov to obtain a copy of the revised plan.
HEARING INSTRUMENT FITTERS AND DISPENSERS

Class A

Penalty Range
Up to $1000

Administrative Violations
- Failed to file a surety bond with the Department 112.60; 402.404
- Failed to notify the Department in writing within thirty (30) days of a change in name, address, telephone number or employment 112.91
- Failed to comply with federal regulations adopted by the U.S. Food and Drug Administration 112.96
- Failed to maintain records on every client for five years from the date of last visit 112.140(d)

Posting and Public Information Violations
- Failed to include Department information on the written contract(s) for services 112.92(1); 402.152(b)
- Failed to prominently display a sign containing Department information in the primary place of business 112.92(2); 402.152(a)
- Failed to prominently display hearing instrument fitter and dispenser license in the primary place of business 112.93; 402.351

Expired License Violations
- Engaged in the fitting and dispensing of hearing instruments with an expired license 112.32(g); 402.201
- Acted as an apprentice in hearing instrument fitting and dispensing with an expired permit 112.42(c); 402.201
- Acted as temporary training permit holder in hearing instrument fitting and dispensing with an expired permit 112.52(c); 402.201

Violations by Temporary Permit Holder
- Failed notify the Department within 10 days of an applicant’s transfer of supervision 112.53(f)

Supervisor Violations
- Failed to supervise a temporary training permit holder in an established place of business 402.255(a)(2)
- Supervised more than two temporary training permit holders at one time 112.53(j); 402.255(e)
- Failed to notify the Department within 10 days of an applicant’s termination of supervision 112.53(e); 402.252(b)(2)
Standard of Care Violations
- Failed to ensure adequate sound-level measurement as required 112.97; 402.353

Class B

Penalty Range
$1000 to $3000 and/or up to 1 year full suspension

Continuing Education Violations
- Falsified copies of certificates, transcripts or other documentation satisfactory to the department, verifying the license holder’s attendance, participation, and completion of continuing education courses 112.71(b)(2) and (b)(3)

Violations by Temporary Permit Holders
- Acted as temporary training permit holder in hearing instrument fitting and dispensing without being supervised by a license holder 402.256(a); 112.53(a)

Violations by Apprentices
- Acted as an apprentice in hearing instrument fitting and dispensing without being supervised by a license holder 402.207(c); 112.43

Supervisor Violations
- Supervised an individual who did not hold a temporary training permit 112.53(a); 112.53(b)
- Supervised a temporary training permit holder without a hearing instrument fitter and dispenser license 112.53(b); 402.255(a)(1); 402.252(a)
- Failed to supervise all work done by a temporary training permit holder 112.53(b); 402.255(a)(3), (b) and (c)(1); 402.252(b)(1)
- Failed to comply with all statutory guidelines and rules while supervising and/or training a temporary permit holder 402.252(b)(3); 402.254; 402.255; 112.53(b), (g), (h), and (i)
- Failed to provide to the permit holder materials and equipment necessary for appropriate audiometric and hearing instrument evaluation and fitting 402.255(c)(2)
- Failed to supplement the permit holder's background information with reading lists and other references 402.255(c)(3)
- Failed to conduct in-service training for the permit holder 402.255(c)(4)
- Failed to act as a consultant to the permit holder by providing time for conferences for the permit holder and providing a variety of resource 402.255(c)(5)
materials, approaches, and techniques that are based on sound theory, successful practice, or documented research

- Failed to establish goals with the permit holder that are realistic, easily understandable, and directed toward the successful completion of the training requirements 402.255(c)(6)

- Failed to observe the permit holder during the practicum, confer with the permit holder after the permit holder's contact with clients, and provide an opportunity for comment on the practicum experience in writing or through conferences, during and after the practicum experience 402.255(c)(7)

- Failed to establish that the supervisor is solely responsible for the practicum and daily supervision of the permit holder 402.255(c)(8)

- Failed to know and adhere to state and federal laws relating to hearing instrument fitting and dispensing 402.255(c)(10)

- Failed to assist the permit holder in fulfilling licensing requirements 402.255(c)(11)

- Failed to maintain a log of the contact hours by practicum category on a form prescribed by the department 112.53(i); 402.255(d)

- Failed to sign and notarize the log of contact hours after the temporary training permit holder completed 150 contact hours 112.53(i); 402.255(d)

Unlicensed Activity

- Acted as an apprentice or trained under the supervision of a licensed hearing fitter and dispenser without holding an apprentice or temporary training permit 402.201; 402.208; 402.251

Standard of Care Violations

- Failed to comply with client confidentiality rights within the limits established by the law 112.98(b) and (c)(2)

- Failed to refer a client for those services that the license holder or permit holder is unable to provide 112.98(b) and (c)(3)

- Failed to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) 112.98(b) and (c)(4)

- Failed to ensure that all equipment used is in proper working order and is properly calibrated 112.98(b) and (c)(5)

- Misrepresented his or her professional credentials and/or qualifications 112.98(b) and (d)(3)

- Failed to follow guidelines for the 30-day trial period 112.140(b)

- Sold a hearing instrument to a person under 18 years of age without a parent or guardian presenting a required written approval signed by a licensed physician specializing in diseases of the ear 402.402

Prohibited Practice

- Failed to clearly disclose name, business address and the purpose of the communication when making a telephone solicitation 402.451(b)(1); 112.98(b)

- Used or purchased for use a list of names of potential customers compiled by telephone by a person other than the license or permit 402.451(b)(2); 112.98(b)
holder, the license or permit holder's authorized agent, or another license or permit holder
• Advertised a manufacturer's product or uses a manufacturer's name or trademark in a way that implies a relationship between a license or permit holder and a manufacturer that does not exist

Standard of Care – Telepractice Violations
• Rendered telehealth services without first being authorized to do so by the Department 112.150(c)
• Used inappropriate telecommunication technology to provide telehealth services 112.150(d)
• Failed to monitor the client and oversee and direct the facilitator at all times during the telehealth session 112.150(f)
• Failed to verify and document the facilitator's qualifications, training, and competence prior to allowing the facilitator to assist with rendering telehealth services 112.150(g)
• Allowed facilitator to perform tasks at the client site not approved by the Department 112.150(h)
• Rendered telehealth services to a client without a qualified facilitator when a facilitator was required to ensure safe and effective service to the client 112.150(i)
• Provided telehealth service when telecommunications technology and equipment at client site were inadequate to allow quality fitting and dispensing services 112.150(j) and (l)
• Failed to provide professional services during a telehealth session as in person at a physical location 112.150(m)
• Failed to comply with all laws, rules, and regulations governing the maintenance of client records, including client confidentiality requirements regarding telehealth services

Class C

Penalty Range
$1000 to $5000 and/or up to revocation

Contract Violations
• Failed to provide client with a written contract that contains the required information upon the sale or change of a hearing instrument 112.140(c); 402.403

Standard of Care Violations
• Failed to try to obtain required information on each prospective candidate for amplification 112.95; 402.352
- Offered services that are outside the scope of his or her professional competency
- Performed an act that requires a license from the Texas Optometry Board or the Texas Medical Board
- Treated the ear in any manner for any defect or administer any drug or physical treatment without holding a physician’s license issued by the Texas Medical Board

**Professional Conduct Violations**

- Made a material misstatement in furnishing information to the Department or to another state or federal agency
- Convicted of a felony or misdemeanor that includes dishonesty as an essential element or of a crime directly related to the practice of fitting and dispensing hearing instruments
- Aided or assisted another person in violating a Law or Rule
- Failed to provide information in response to a written request made by the department within 60 days
- Knowingly employed, hired, procured, or induced an unlicensed person to fit and dispense hearing instruments
- Aided an unlicensed person in the fitting or dispensing of hearing instruments
- Received from a person a fee, commission, rebate, or other form of compensation for a service not actually provided
- Violated a term of probation
- Willfully made or filed a false record or report
- Has a physical illness that results in the inability to practice the profession with reasonable judgment, skill, or safety, including the deterioration or loss of motor skills through aging
- Participated in subterfuge or misrepresentation in the fitting or dispensing of a hearing instrument
- Falsely represented that the service of a licensed physician or other health professional will be used or made available in the fitting, adjustment, maintenance, or repair of a hearing instrument
- Used a term, abbreviation, or symbol that falsely gives the impression that: a service is being provided by a person who is licensed or has been awarded a degree or title
- Used a term, abbreviation, or symbol that falsely gives the impression that: the person providing a service has been recommended by a government agency or health provider
- Gave or offered to give, or permitted or caused to be given, money or another thing of value to a person who advises others in a professional

112.98(b) and (c)(1)
402.451(b)(3)
402.453(a); 112.98(b)
402.501(1)
402.501(3)
402.501(6)
402.501(7)
402.501(8)
402.501(9)
402.501(11)
402.501(12)
402.501(13)
402.501(14)
402.501(16)
402.501(18)
402.501(19)
402.501(19)(A)
402.501(19)(B)
402.501(21)(A)
capacity as an inducement to influence the person to influence the others to purchase or contract to purchase products sold or offered for sale by the license or permit holder

- Gave or offered to give, or permitted or caused to be given, money or another thing of value to a person who advises others in a professional capacity as an inducement to influence the person to influence the others to refrain from purchasing or contracting to purchase products sold or offered for sale by another license or permit holder
- With fraudulent intent fitted and dispensed a hearing instrument under a name, including a false name or alias
- Did not adequately provide for the service or repair of a hearing instrument fitted and sold by the license holder
- Violated a regulation of the federal Food and Drug Administration or the Federal Trade Commission relating to hearing instruments
- Engaged in sexual contact or sexual exploitation with a client
- Failed to observe or comply with the hearing fitters code of ethics by falsifying records
- Refused to provide services solely on the basis of a client's age, gender, race, color, religion, national origin, or disability
- Provided services while impaired due to the use of medication, drugs, or alcohol, or a physical or mental health condition
- Altered a license with the intent to defraud
- Falsely impersonated a license holder

Advertising Violations

- Solicited a service by advertising that is false, misleading or deceptive
- Knowingly advertised for sale a model or type of hearing instrument that cannot be purchased

Unlicensed Activity

- Engaged in the fitting and dispensing of hearing instruments without an appropriate license
- Represented that he/she is authorized to engage in the fitting and dispensing of hearing instruments without an appropriate license
- Owned, managed, or independently operated a business that engages in the fitting or sale of hearing instruments holding only a temporary training permit
- Advertises or otherwise represented that he/she holds a hearing fitter and dispenser license, while holding only a temporary training permit

Class D
Penalty Range
$5000 and/or Revocation

- Obtained or attempted to obtain a license by fraud, misrepresentation, or concealment of material fact 60.23(a)(1);
  402.451(a)(1);
  402.451(a)(3);
  402.501(4)

- Failed to comply with a previous order of the Commission or Executive Director 51.353(a);
  401.451(a)(1);
  112.98(c)(6)

- Failed to pay the Department for a dishonored payment or processing fee 60.82

- Interfered with an investigation or disciplinary proceeding by willful misrepresentation or omission of facts 112.98(b) and (d)(6);
  60.23

- Acted professionally incompetent or engaged in malpractice or dishonorable, unethical, or unprofessional conduct that likely deceived, defrauded, or harmed the public 402.501(5)

- Habitually intoxicated or addicted to a controlled substance 402.501(10)

- Engaged in the fitting and dispensing of hearing instruments when with a suspended or revoked license 402.451(a)(5);
  112.98(b); 402.501(2)

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which transferred regulatory authority of 13 programs, to include Speech-Language Pathologists and Audiologists, from the Texas Department of State Health Services to the Commission and Department. The Speech-Language Pathologists and Audiologists penalty matrix provides for a single range of penalties for each class to eliminate confusion and allow the industry to fully understand the penalties assessed. The penalty matrix describes the specific ranges of penalties and license sanctions that apply to specific violations of the statutes and rules enforced by the Department. This penalty matrix may differ slightly from others as the agency focuses on aligning strategic plan goals with agency resources.

The Speech-Language Pathologists and Audiologists Advisory Board recommended approval of the penalty matrix at their meeting held June 30, 2017. The penalty matrix was presented to the Commission on August 18, 2017, and was adopted as recommended.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.tdlr.texas.gov. You may also contact the Enforcement Division at (512) 539-5600 or by e-mail at enforcement@tdlr.texas.gov to obtain a copy of the revised plan.
Speech-Language Pathologists and Audiologists

Class A

$50 up to $500

Administrative Violations
• Failing to inform the Department of a change of name, highest academic degree granted, address, telephone number, or employment information within thirty days of any change, or failing to use the Department-approved form for such changes 111.150(a); 111.115(a)(10)
• Failed to display license 111.151(b)

Violations by Interns or Assistants
• Used “SLP-CFY” or “SLP-CF” as a sole indicator of credentials 111.40(p)
• Used “SLP-A” or “STA” as a sole indicator for credentials 111.50(i)(18)

Violations Related to the Supervision of Speech-Language Pathology Interns
• Failed to obtain Department approval before implementing any changes to the terms of the internship 111.40(l)
• Failed to submit a Report of Completed Internship within 30 days of the date supervision is completed or ended for any other reason 111.40(l)(2)
• Failed to notify the Department that the location of the internship changed within 30 days of the date of the change 111.40(l)(3)

Violations Related to the Supervision of Audiology Interns
• Failed to obtain Department approval before implementing any changes to the terms of the internship 111.80(g)
• Failed to submit a Report of Completed Internship within 30 days of the date supervision ended 111.80(g)(2)
• Failed to notify the Department that the location of the internship changed within 30 days of the date of the change 111.80(g)(3)

Class B

$300 to $3,000 and/or up to 1 year full suspension

Records and Billing Violations
• Failure to include the Department’s name, mailing address, and telephone number on the written contract or bill for service for fitting and dispensing hearing instruments, or office information brochure 401.403(b)(4); 111.151(a)(2); 111.220(c)(8)
• Failed to prominently display a sign containing Department information in the primary place of business 111.151(a)(1)
- Failed to provide results of an evaluation within 60 days, when requested  
  111.155(a)(18)

**Unlicensed Activity – Related to Speech-Language Pathologists**
- Practiced as a speech-language pathologist with an expired license  
  401.301; 111.37(g); 111.30(a)
- Practiced as an intern in speech-language pathology with an expired license  
  401.301; 111.47(g); 111.40(a)
- Practiced as an assistant in speech-language pathology with an expired license  
  401.301; 111.57(g); 111.50(a)
- Practiced as a speech-language pathologist without a current temporary certificate of registration  
  111.60(a)

**Unlicensed Activity – Related to Audiologists**
- Practiced as an audiologist with an expired license  
  401.301; 111.77(g); 111.70(a)
- Practiced as an intern in audiology with an expired license  
  401.301; 111.87(g); 111.80(a)
- Practiced as an assistant in audiology with an expired license  
  401.301; 111.97(g); 111.90(a)
- Practiced as an audiologist without a current temporary certificate of registration  
  111.100(a)

**Violations by Interns**
- Failed to indicate status as a speech-language pathology intern in any professional context  
  111.40(m)
- Failed to indicate status as an intern in audiology in any professional context  
  111.80(g)(4)

**Violations by Assistants**
- Failed to indicate status as a licensed speech-language pathology assistant in any professional context  
  111.50(l)
- Failed to indicate status as a licensed audiology assistant in any professional context  
  111.90(g)

**Violations Related to Supervision of Interns or Assistants**
- Supervised an intern or an assistant when the supervisor had less than two years of professional experience providing direct clinical services in the area of licensure  
  111.154(a)
- Supervised an intern or assistant who is within the first degree of consanguinity to the licensee  
  111.154(b)
- Failed to verify that the intern had a current license  
  111.154(e)(1)(A)

**Violations Related to Supervision of Speech-Language Pathology Interns or Assistants**
• Failed to maintain documentation of an intern’s formal evaluations for a period of three years or until the intern obtained a speech-language pathology license 111.40(k)
• Failed to submit an Intern Plan and Agreement of Supervision form before beginning to supervise an intern 111.40(g)(1)
• Failed to provide the minimum number of hours of supervision for a speech-language pathology assistant 111.50(g)(3)
• Failed to maintain supervisory records for a speech-language pathology assistant for a period of three years 111.50(g)(4)
• Failed to maintain job descriptions and performance records of a licensed speech-language pathology assistant 111.50(h)(2)
• Failed to notify the parents of students that services will be provided by a licensed assistant 111.50(j)(1)
• Supervised an intern in speech-language pathology when the supervisor had less than a master’s degree in one of the areas of communicative sciences or disorders 111.154(c)

Violations Relating to Supervision of Audiology Interns or Assistants
• Failed to submit an Intern Plan and Agreement of Supervision form before beginning to supervise an intern 111.80(e)(1)
• Failed to maintain job descriptions and performance records of a licensed assistant in audiology 111.90(f)(2)
• Supervised an intern in audiology when the supervisor had less than the required level of education 111.154(d)

Violations Related to Continuing Education
• Failed to complete required continuing education 111.130; 111.131
• Failed to maintain record of continuing education for at least three years 111.132

Class C

$1,000 to $5,000 and/or up to revocation

Records and Billing Violations
• Failed to maintain accurate records of professional services rendered 111.153(a)
• Failed to maintain records for five years or longer as warranted 111.153(b); 111.220(d)
• Billed for services not rendered 111.153(e)
• Falsified records 111.155(b)(13)
• Failed to comply with all laws, rules, and regulations governing the maintenance of client records related to the provision of telehealth services 111.212(n)

Unlicensed Activity – Related to Speech-Language Pathologists
Practice as a speech and language pathologist or represent oneself as a speech-language pathologist without a license 401.301; 111.30(a)
Practice as a speech-language pathology intern without an intern’s license 111.40(a)
Practice as an assistant in speech-language pathology without a license 111.50(a)
Practiced as an assistant without a valid supervisory responsibility statement on file in the Department 111.50(i)(11)
Aided or abetted the practice of an unlicensed person when that person is required to have a license 111.155(b)(14)

Unlicensed Activity – Related to Audiologists
Practice as an audiologist or represent oneself as an audiologist without a license 401.301; 111.70(a)
Practice as an audiologist intern without an intern’s license 111.80(a)
Practice as an assistant in audiology without a license 111.90(a)
Practiced as an assistant without a valid supervisory responsibility statement on file in the Department 111.90(f)(5)(R)
Aided or abetted the practice of an unlicensed person when that person is required to have a license 111.155(b)(14)

Violations by Speech-Language Pathology Assistants
Conducted evaluations 111.50(i)(1)
Interpreted results of routine tests 111.50(i)(2)
Interpreted observations or data into diagnostic statements, clinical management strategies, or procedures 111.50(i)(3)
Represented speech-language pathology at staff meetings, or at an admission, review and dismissal (ARD), except as specified 111.50(i)(4)
Attended staffing meeting or ARD without the licensed assistant’s supervising speech-language pathologist department-approved supervisor being present, except as specified 111.50(i)(5)
Designed or altered a treatment program or IEP 111.50(i)(6)
Determined case selection 111.50(i)(7)
Presented written or oral reports of client information, except as specified 111.50(i)(8)
Referred a client to other professionals or agencies 111.50(i)(9)
Used any title which connotes the competency of a licensed speech-language pathologist 111.50(i)(10)
Performed invasive procedures 111.50(i)(12)
Screened or diagnosed clients for feeding and swallowing disorders 111.50(i)(13)
Used a checklist or tabulated results of feeding or swallowing evaluations 111.50(i)(14)
Demonstrated swallowing strategies or precautions to clients, family or staff 111.50(i)(15)
Provided client or family counseling 111.50(i)(16)
• Signed any formal document relating to the reimbursement for or the provision of speech-language pathology services without the licensed assistant’s supervisor’s signature

111.50(i)(17)

Violations by Audiology Assistants

• Conducted aural habilitation or rehabilitation activities or therapy

111.90(f)(5)(A)

• Provided carry-over activities for patients in aural rehabilitation therapy

111.90(f)(5)(B)

• Collected data during aural rehabilitation therapy documenting progress and results of therapy

111.90(f)(5)(C)

• Administered assessments during aural rehabilitation therapy to assess therapeutic progress

111.90(f)(5)(D)

• Conducted audiological procedures that require decision-making or leads to a diagnosis

111.90(f)(5)(E)

• Interpreted results of procedures and evaluations except screening tests

111.90(f)(5)(F)

• Made diagnostic statements, or proposed or developed clinical management strategies

111.90(f)(5)(G)

• Made ear impressions

111.90(f)(5)(H)

• Caused a substance to enter the ear canal or placed an instrument or object in an ear canal for the purpose of removing cerumen or debris

111.90(f)(5)(I)

• Made changes to the internal settings of a hearing instrument manually or using computer software

111.90(f)(5)(J)

• Represented audiology at staff meetings or an admission, review, and dismissal (ARD) committee

111.90(f)(5)(K)

• Attended staffing meetings or ARD committee meetings without the department-approved supervisor being present

111.90(f)(5)(L)

• Designed a treatment program

111.90(f)(5)(M)

• Determined a case selection

111.90(f)(5)(N)

• Presented written or oral reports of client information except to his or her department-approved supervisor

111.90(f)(5)(O)

• Referred a client to other professionals or agencies

111.90(f)(5)(P)

• Used any title which connotes the competency of a licensed audiologist

111.90(f)(5)(Q)

Standard of Care Violations

• Failed to conduct sound-level measurements at the time of testing or failed to ensure that ambient noise levels met the permissible testing threshold

401.401(a)

• Practiced out of the scope of license

111.155(a)(1)

• Failed to ensure a safe therapy environment

111.155(a)(2)

• Failed to provide services as specified in the treatment plan, Individual Education Plan (IEP), or Individualized Family Service Plans (IFSP)

111.155(a)(3)

• Failed to seek appropriate medical consultation when indicated

111.155(a)(4)
• Failed to identify competent, dependable referral for clients 111.155(a)(5)  
• Failed to maintain objectivity in all matters concerning the welfare of the client 111.155(a)(6)  
• Failed to ensure that all equipment used in providing services was in proper working order and properly calibrated; including equipment used in providing telehealth services 111.155(a)(7); 111.201(2); 111.212(g)  
• Failed to terminate a professional relationship when it is reasonably clear that the client is not benefiting from the services being provided 111.155(a)(8)  
• Failed to provide accurate information to clients and the public about the nature and of communication disorders and about the profession and the services rendered 111.155(a)(9)  
• Failed to comply with the Health and Safety Code, Chapter 85, Subchapter I, concerning the prevention of the transmission of HIV or Hepatitis B virus by infected health care workers 111.155(a)(17)  
• Failed to fully inform clients of the nature and possible effects of the services rendered; and nature, possible effects, and consequences of activities if the client is participating in research or teaching activities 111.155(a)(18)  
• Engaged in the medical treatment of speech-language and hearing disorders 111.155(b)(1)  
• Jeopardized a client’s safety by any inattentive behavior; 111.155(b)(2)  
• Guaranteed, directly or by implication, the results of any therapeutic procedures or misled clients to expect results that could not be predicted from reliable evidence 111.155(b)(3)  
• Delegated any service requiring professional competence of a licensee or registrant to anyone not licensed or registered for the performance of that service 111.155(b)(4)  
• Provided services if the services cannot be provided with reasonable skill or safety to the client 111.155(b)(5)  
• Provide any services which create an unreasonable risk that the client may be mentally or physically harmed 111.155(b)(6)  
• Revealed, without authorization, any professional or personal information about the person served professionally, unless required by law to do so, or unless doing so is necessary to protect the welfare of the person or of the community 111.155(b)(9)  
• Participate in activities that constitute a conflict of professional interest 111.155(b)(10)  
• Used his or her professional relationship with a client, intern, assistant, or student to promote for personal gain or profit any item, procedure, or service unless the licensee or registrant has disclosed to the client, intern, assistant, or student the nature of the licensee’s or registrant’s personal gain or profit 111.155(b)(11)  
• Misrepresented his or her training or competence 111.155(b)(12)  
• Endangered the health, welfare, or safety of the public 111.155(b)(17)  
• Failed to conduct a communication screening in the client’s dominate language and primary mode of communication 111.190(c)
• Failed to perform or interpret a hearing screening in the required manner 111.191(b)
• Failed to comply with 25 TAC Chapter 37 regarding reporting hearing screening or audiologic outcomes to the Department of State Health Services in the required manner regarding referral of children under the age of three to ECI within two days of identification 111.192(b)

**Violations Related to Telehealth by Speech-Language Pathologists**

• Failed to ensure that the quality of electronic transmissions used in telehealth services was the same as if those services were provided in person 111.212(d)
• Utilized technology which the licensee was not competent to use as part of telehealth services 111.212(e)
• Failed to maintain equipment used for telehealth services at the clinician site in appropriate operational status to provide the appropriate quality of services 111.212(f)
• Provided telehealth services to a client without first having an initial contact at the same physical location to assess the client’s candidacy for telehealth 111.212(h)
• Failed to adjust the practice to maximize the client or consultant’s level of comfort with technology used in providing telehealth services 111.212(i)
• Failed to be sensitive to cultural and linguistic variables that affect the identification, assessment, treatment, and management of clients 111.212(l)
• Failed to notify the client, guardian, caregiver, and the multidisciplinary team, if appropriate of the client’s rights related to the provision of telehealth services 111.212(o)

**Violations Related to Telehealth for Fitting and Dispensing Hearing Instruments**

• Failed to be visible and audible in real-time when carrying out a telehealth service 111.232(d)
• Failed to document the facilitator’s qualifications, training, and competence in each task and in the methodology and equipment prior to allowing a facilitator to assist in rendering a telehealth service 111.232(e)
• Allowed a facilitator at a client site to perform tasks for which they are not qualified 111.232(f)
• Rendered a telehealth session to a client when the situation required the presence of a facilitator to ensure a safe and effective service 111.232(g)
• Rendered a telehealth session without ensuring the telecommunications technology and equipment located at the client site and provider site are properly calibrated, in good working order, and sufficient quality 111.232(i)
• Failed to perform initial professional contact in person at the same physical location 111.232(j)
• Failed to comply with all laws, rules, and regulations governing the maintenance of records 111.232(k)
Violations Related to Fitting and Dispensing of Hearing Instruments

- Failed to adhere to federal Food and Drug Administration regulations in accordance with 21 Code of Federal Regulations §§ 801.420 and 801.421
- Failed, before selling a hearing instrument, to receive a written statement signed by a physician stating that a client’s hearing has been medically evaluated during the previous six months and that the client is a candidate for a hearing instrument
- Failed to verify appropriate fit of the hearing instrument
- Failed to adhere to the most current American National Standards Institute octave band criteria for permissible ambient noise levels during audiometric testing
- Failed to follow guidelines for the 30-day trial period
- Failed to provide a written contract to each client upon sale or change of model or serial number of a hearing instrument that contains the required information

Code of Ethics Violations

- Sold a hearing instrument to a minor without obtaining a written statement from a licensed physician specializing in diseases of the ear
- Failed to inform the department of violations of the Act, this code of ethics, or of any other provision of this chapter
- Failed to report in accordance with the Family Code §261.101(b), if there is cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect by any person
- Failed to cooperate with the department by promptly furnishing required documents and by promptly responding to a request for information from, or a subpoena issued by, the department or the department's designee
- Used alcohol or drugs when the use adversely affects or could adversely affect the licensee's provision of professional services
- Interfered with a department investigation or disciplinary proceeding by willful misrepresentation or omission of facts to the department or the department's designee or by the use of threats or harassment against any person
- Intentionally or knowingly offered to pay or agreed to accept any remuneration for securing or soliciting clients or patronage for or from any health care professional
- Used threats, threatening behavior, or acts of violence towards clients, employees, or employers

Violations Related to the Supervision of Interns and Assistants

- Failed to obtain Department approval as a supervisor for interns or assistants
Delegated tasks to an assistant that assistants are prohibited from performing
Failed to be responsible for all client services provided by the intern or assistant
Failed to provide appropriate supervision
Supervised more than the permitted number of interns or assistants

Class D
$5,000 and/or revocation

- Failed to comply with a previous order of the Commission or Executive Director
- Obtained, or attempted to obtain, a license by fraud, misrepresentation, or concealment of a material fact
- Sold, bartered, or offered to sell or barter a license or certificate of registration
- Engaged in unprofessional conduct that endangered the health, welfare, or safety of the public
- Failed to pay the Department for a dishonored payment or processing fee
- Engaged in sexual contact, including intercourse, kissing, or fondling, with a client or an assistant, intern, or student supervised by the licensee

Texas Lottery Commission
Scratch Ticket Game Number 2001 "Deuces Wild"

1.0 Name and Style of Scratch Ticket Game.
   A. The name of Scratch Ticket Game No. 2001 is "DEUCES WILD". The play style is "key number match".

1.1 Price of Scratch Ticket Game.
   A. Tickets for Scratch Ticket Game No. 2001 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2001.
   A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

   B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

   C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 2 OF HEARTS SYMBOL, $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $250, $500, $1,000 and $100,000.

   D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:
Figure 1: GAME NO. 2001 - 1.2D

<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
<th>CAPTION</th>
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<tr>
<td>01</td>
<td>ONE</td>
</tr>
<tr>
<td>03</td>
<td>THR</td>
</tr>
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<td>FOR</td>
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<tr>
<td>05</td>
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<tr>
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<td>NIN</td>
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<td>11</td>
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<td>FFN</td>
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2 OF HEARTS SYMBOL

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<th>Amount</th>
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<td>FVHN</td>
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<td>ONTH</td>
</tr>
<tr>
<td>$100,000</td>
<td>100TH</td>
</tr>
</tbody>
</table>

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (2001), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2001-0000001-001.

H. Pack - A Pack of "DEUCES WILD" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "DEUCES WILD" Scratch Ticket Game No. 2001.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "DEUCES WILD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 45 (forty-five) Play Symbols. If the player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "2 of Hearts" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.
A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 45 (forty-five) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery; and
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to twenty (20) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $1,000 and $100,000 will each appear at least once, except on Tickets winning twenty (20) times.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

H. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 5 and $5, 10 and $10, 15 and $15, 20 and $20, 50 and $50).

I. On all Tickets, a Prize Symbol will not appear more than four (4) times, except as required by the prize structure to create multiple wins.

J. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

K. The "2 OF HEARTS" (DBL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

L. The "2 OF HEARTS" (DBL) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

M. The "2 OF HEARTS" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

N. The "2 OF HEARTS" (DBL) Play Symbol will only appear once on a Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "DEUCES WILD" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100, $250 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100, $250 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and in-
struct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "DEUCES WILD" Scratch Ticket Game prize of $1,000 or $100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "DEUCES WILD" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. If the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "DEUCES WILD" Scratch Ticket Game, the Texas Lottery shall make the payment to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "DEUCES WILD" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 8,280,000 Scratch Tickets in the Scratch Ticket Game No. 2001. The approximate number and value of prizes in the game are as follows:
**Figure 2:** GAME NO. 2001 - 4.0

<table>
<thead>
<tr>
<th>Prize Amount</th>
<th>Approximate Number of Winners*</th>
<th>Approximate Odds are 1 in **</th>
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*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.91. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2001 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2001, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-201703286
Bob Biard
General Counsel
Texas Lottery Commission
Filed: August 23, 2017

Public Utility Commission of Texas

Notice of Application for Recovery of Universal Service Funding

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on August 18, 2017, for recovery of Universal Service Funding pursuant to the Public Utility Regulatory Act, §56.025 and 16 Texas Administrative Code §26.406.


The Application: Valley Telephone Cooperative, Inc. seeks recovery of funds from the Texas Universal Service Fund (TUSF) due to Federal Communications Commission (FCC) actions resulting in a reduction in the Federal Universal Service Fund (FUSF) revenues available to VTC. The petition requests that the Commission allow VTC recovery of funds from the TUSF in the amount of $899,965 for 2016 to replace FUSF revenue reductions. VTC is not seeking any rate increases through this proceeding.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 47525.

TRD-201703262
Adriana Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2017

Notice of Application for Sale, Transfer, or Merger
Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on August 11, 2017, pursuant to the Texas Water Code.


The Application: Lonzo J. Gale dba Lass Water Company, Inc. and SRC Water, Inc. filed an application for the sale and transfer of certificate rights in Montgomery County. The total area being requested includes approximately 37 acres and serves 53 current customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 47493.

TRD-201703194
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 18, 2017

Notice of Application to Amend a Water Certificate of Convenience and Necessity
Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on August 16, 2017, to amend a certificate of convenience and necessity for a proposed transmission line in Winkler County, Texas.

Docket Style and Number: Application of Oncor Electric Delivery Company LLC to Amend a Certificate of Convenience and Necessity for a 138-kV Transmission Line in Winkler County (Balding POD), Docket Number 47458.

The Application: The application of Oncor Electric Delivery Company LLC is designated as the Balding Point of Delivery (POD) 138-kV Transmission Line Project. The facilities include construction of a new double-circuit capable 138-kV transmission line, with a single circuit in place initially, between the proposed Balding point of delivery and the existing Oncor Wink-Loving 138-kV transmission line in Winkler County. Oncor has contracted with Targa Midstream Services LLC to provide transmission facilities necessary to interconnect Targa's new substation facility to the electric grid.

The total estimated cost for the project is $3,135,000. The proposed project is estimated to be approximately 2.5 miles in length. Any of the routes or route segments presented in the application could be approved by the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is October 2, 2017. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 47458.

TRD-201703190

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17, 2017

Notice of Application to Amend a Water Certificate of Convenience and Necessity
Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend a water certificate of convenience and necessity (CCN) in Hays County.

Docket Style and Number: Application of Aqua Utilities, Inc. d/b/a Aqua Texas to Amend a Sewer Certificate of Convenience and Necessity in Hays County, Docket Number 47494.

The Application: Aqua Utilities, Inc. d/b/a Aqua Texas filed an application to amend its sewer certificate of convenience and necessity number 20453 in Hays County. The total area being requested includes approximately 524.401 acres of undeveloped land which is in the planning stage of being developed into a residential neighborhood. There are zero current customers.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 47494.

TRD-201703182
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17, 2017

Notice of Generic Proceeding for Declaratory Order
Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) a generic proceeding for declaratory order regarding network nodes, transport facilities, and node support poles constructed by a network provider filed with the commission on August 21, 2017.


The Application: Commission Staff filed a petition to initiate a generic proceeding regarding network nodes, transport facilities, and node support poles constructed by a network provider, as those terms were defined by recent amendments to the Texas Local Government Code. With this petition, the commission is requested to assess what effect the enactment of the Act of May 17, 2017, 85th Leg., R.S., ch. 591 (SB 1004), §1 (to be codified at Tex. Local Gov’t Code Chapter 284) will have on the commission’s jurisdiction under Chapter 283 with respect to network nodes, transport facilities, and node support poles constructed by a network provider.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline to intervene in this proceeding is September 20, 2017. Hearing and speech-impaired individuals with text tele-
TRD-201703293
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 23, 2017

Notice of Petition for Amendment to a Water Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on August 16, 2017, of a petition to amend a water certificate of convenience and necessity (CCN) by expedited release in Travis County.

Docket Style and Number: Landowners' Petition to Amend Manville Water Supply Corporation's Certificate of Convenience and Necessity in Travis County by Expedited Release, Docket Number 47518.

The Petition: Landowners Kimbro Road Estates, LP, Sky Village Kimbro Estates, LLC, Alma Juanta Champion Meier, William Clark Meier, and Carolyn Juanita Fauber filed a petition for expedited release of three parcels of land that total approximately 538.368 acres from Manville Water Supply Corporation's water certificate of convenience and necessity number 11144 in Travis County, under Texas Water Code §13.254(a-5) and 16 Texas Administrative Code §24.113(l).

Persons wishing to comment on the action sought should contact the commission no later than September 15, 2017, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 47518.

TRD-201703274
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 22, 2017

Notice of Petition for Approval of Revisions to Rate Schedule SQF

Notice is given to the public of a petition filed on July 31, 2017, with the Public Utility Commission of Texas (commission) for approval of revisions to Rate Schedule SQF.

Case Style and Number: Petition of Entergy Texas, Inc. for Approval of Revisions to Rate Schedule SQF, Tariff Control Number 47460.

The Application: Entergy Texas, Inc. proposes two changes to its current Small Qualifying Facilities (SQF) schedule. First, Option 4 in Schedule SQF, which provides for billing to a customer who installs a qualifying generator less than 50 kW through a single, bi-directional meter, will be closed to new business. Second, a new Option-2 C. would become available for new business under this schedule. This Option -2 C. also uses a single, bi-directional meter, but rather than what occurs under Option 4 with respect to monthly billing, Option-2 C. bills the customer in accordance with the applicable retail rate schedule and riders, and then separately credits the customer's bill, as applicable, during the billing cycle. Entergy proposed an effective date of September 28, 2017.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by September 15, 2017, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Tariff Control Number 47460.

TRD-201703289
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 23, 2017

Notice of Petition to Determine Requirements for Smart Meter Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas a petition on August 16, 2017, to initiate a contested case proceeding to address issues relating to Smart Meter Texas.

Docket Style and Number: Commission Staff's Petition to Determine Requirements for Smart Meter Texas, Docket Number 47472.

The Petition: Commission Staff's petition initiates a contested case proceeding to address outstanding issues relating to Smart Meter Texas (SMT). SMT is a web portal that was created through a collaborative stakeholder process in accordance with the requirement in 16 Texas Administrative Code §25.130 that a utility use a web portal to make metering data available to certain persons. SMT is operated by several transmission and distribution utilities that have entered into a Joint Development and Operations Agreement (JDOA), which provides for the joint ownership, development, operation, and maintenance of SMT. JDOA anticipates selection of a new vendor to operate SMT to replace the existing SMT operations contract. Staff requests that the Commission determine what changes, if any, should be made to the requirements for the continued operation of SMT under the JDOA.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline to intervene is September 15, 2017. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 47472.

TRD-201703196
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 18, 2017

Public Notice of Workshop

The Public Utility Commission of Texas will conduct a workshop regarding Project No. 47522, Revisions to Standard Preliminary Order for CCN Applications, on Wednesday, September 13, 2017, from 1:30 to 3:30 p.m. All comments shall be filed no later than Wednesday, September 6, 2017. The workshop will take place in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

Questions concerning the workshop or this notice should be referred to Stephen Journeay at (512) 936-7215 or stephen.journeay@puc.texas.gov. Hearing and speech-impaired
individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201703273
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 22, 2017

Public Notice of Workshop and Request for Comments
Staff of the Public Utility Commission of Texas (commission) will conduct a workshop on October 13, 2017, in Project No. 47199, Project to Assess Price-Formation Rules in ERCOT’s Energy-Only Market. The workshop will begin at 9:30 a.m. in the Commissioners’ Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas.

Interested parties should be prepared to discuss: (1) proposals outlined in the Priorities for the Evolution of an Energy-Only Electricity Market Design in ERCOT Report and (2) any alternate proposals or alternatives that parties intend to advance in this project. Pursuant to direction given at the August 17, 2017, Open Meeting, Staff requests that parties intending to present alternative proposals or additional analysis file written comments describing those proposals or analyses with the commission’s Central Records office by 3:00 p.m. on September 29, 2017. Comments may be filed by submitting 16 copies to the commission’s Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. All comments should reference Project No. 47199. A workshop agenda will be posted by October 6, 2017, under Project No. 47199.

Questions concerning the workshop or this notice should be referred to Julia Harvey at (512) 936-7371 or julia.harvey@puc.texas.gov or Stephen Mack at (512) 936-7442 or stephen.mack@puc.texas.gov. This proceeding will be livestreamed and archived by AdminMonitor at http://www.texasadmin.com/tx/puc/. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

TRD-201703197
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 18, 2017

Request for Comments on CCN Obtain or Amend Form for Water and Sewer Utilities
The Public Utility Commission of Texas (commission) requests comments on its proposed revisions to the application to obtain or amend a water or sewer certificate of convenience and necessity form. The proposed revisions to the form will update the form in response to changes made to 16 Texas Administrative Code (TAC) Chapter 24, Subchapter G adopted by the commission in Project No. 45111 and would update and streamline the form generally. The proposed form can be found on the commission’s website home page under “Filings,” by clicking on “Filings Search” and entering “45117” in the box labeled “Control Number.” The form will be used by a water or sewer retail public utility applying to obtain or amend a CCN under 16 TAC Chapter 24, Subchapter G. Project Number 45117 is assigned to this proceeding.

Comments on the proposed form may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Initial comments must be filed no later than Monday, October 2, 2017, and reply comments must be filed no later than Monday, October 16, 2017. Sixteen copies of comments to the proposed form are required to be filed. Comments should be organized in a manner consistent with the organization of the form. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, adoption of the proposed form. The commission will consider the costs and benefits in considering the adoption of the proposed form. All comments should refer to Project Number 45118.

Questions concerning the project should be directed to Kennedy Meier, Legal Division, at (512) 936-7265. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201703188
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17, 2017

Request for Comments on Sale/Transfer/Merger Form for Water and Sewer Utilities
The Public Utility Commission of Texas (commission) requests comments on its proposed revisions to the sale/transfer/merger application form for water and sewer utilities. The proposed revisions to the form will update the form in response to changes made to 16 Texas Administrative Code (TAC) §24.109 adopted by the commission in Project No. 45111 and would update and streamline the form generally. The proposed form can be found on the commission’s website home page under “Filings,” by clicking on “Filings Search” and entering “45118” in the box labeled “Control Number.” The form will be used by a water or sewer utility applying for a sale, transfer, or merger under 16 TAC §24.109. Project Number 45118 is assigned to this proceeding.

Comments on the proposed form may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Initial comments must be filed no later than Monday, October 2, 2017, and reply comments must be filed no later than Monday, October 16, 2017. Sixteen copies of comments to the proposed form are required to be filed. Comments should be organized in a manner consistent with the organization of the form. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, adoption of the proposed form. The commission will consider the costs and benefits in considering the adoption of the proposed form. All comments should refer to Project Number 45118.

Questions concerning the project should be directed to Kennedy Meier, Legal Division, at (512) 936-7265. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201703189
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17, 2017

Sam Houston State University
Request for Proposal - Human Resources Management Consulting Services
Sam Houston State University announces a Request for Proposal for consultant services pursuant to Government Code, Chapter 2254, Subchapter B.

Purpose:
Sam Houston State University (the "University") through this Request for Proposal ("RFP") is seeking a qualified Market Research Firm to conduct a comprehensive market segmentation study including demographic, behavioral, psychographic, and geographic segmentation of Texas residents aged 25-40 in Houston and San Antonio, Texas. The University's Strategic Enrollment Management ("SEM") Committee is tasked with developing and implementing initiatives to support the goals and metrics established in the 60X30TX Plan. SEM seeks to engage the services of a market research firm in order to identify likely populations of adult learners and degree completers for enrollment in the University's online programs.

Evaluation Criteria and Scoring:
All proposals will be evaluated by appointed representatives of the University in accordance with the following:
1. Previous experience, references and success with similar service projects for the Federal Government, State of Texas, State of Texas County Governments, Texas Municipalities, K-12 Education, or Higher Education.
2. Business references.
3. Cost for services requested within the RFP. Proposer's financial stability.
4. Plan and strategy for performing services as described in the RFP, and the quality of proposal.

Deadline:
RFP Close Date: September 9, 2017, at 3:00 p.m. CST

Obtaining a Copy of the RFP:
Sam Houston State University's Procurement and Business Services uses an e-commerce system, BearKatBuy Sourcing Director, for all solicitations. All proposals must be submitted through Sourcing Director.

Copies of the documentation are accessible through a link posted on the Electronic State Business Daily under "Sam Houston State University - 753" at: http://esbd.cpa.state.tx.us/
or at Sam Houston State University's BearKatBuy Sourcing Director website at: https://bids.sciquest.com/apps/Router/PublicEvent?CustomerOrg=SamHoustonState

SHSU contact for inquiries concerning this RFP is:
Dan Fry
Procurement and Business Services
P.O. Box 2028
Huntsville, Texas, 77341-2028
Phone: (936) 294-1941
Email: pur_djf@shsu.edu
Texas Department of Transportation

Notice of Award

In accordance with Government Code, Chapter 2254, Subchapter B, the Texas Department of Transportation (department) publishes this notice of a consultant contract award for providing Independent Verification and Validation (IV&V) services to the department. Notice of the request for proposals was published in the April 28, 2017, issue of the Texas Register (42 TexReg 2375; TRD-201701556).

The consultant will provide IV&V of the services provided via a Master Services Agreement (MSA) between the department and NTT Data related to the design and implementation of a centralized data architecture program for the department.

The selected consultant for these services is Gartner, Inc., 106E Sixth Street, Suite 900, Austin, Texas 78701. The total value of the contract is $450,000.00. The contract was executed on August 22, 2017, and will continue through August 31, 2018.

TRD-201703290
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: August 23, 2017

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website: www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html

Or visit www.txdot.gov, and under How Do I, choose Find Hearings and Meetings, then choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or 1-800-68-PILOT.

TRD-201703169
Leonard Reese
Associate General Counsel
Texas Department of Transportation
Filed: August 16, 2017

Texas Water Development Board

Applications for August 2017

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73760, a request from the San Antonio River Authority, P.O. Box 839980, San Antonio, Texas 78283-9980, received March 3, 2017, for $9,500,000 in financing from the Clean Water State Revolving Fund for the design and construction of a new wastewater treatment plant and collection line.

Project ID #21770, a request from Hidalgo County Drainage District No. 1, c/o S & B Infrastructure, Ltd., 5408 N. 10th Street, McAllen, Texas 78504, received July 18, 2017, for a $4,500,000 grant pursuant to Rider No. 27 of the General Appropriation's Act.

Project ID #62754, a request from the City of Booker, P.O. Box M, Booker, Texas 79005, received May 9, 2017, for $455,000 in financing from the Drinking Water State Revolving Fund for planning, design, and construction of a water main replacement project.

Project ID #62753, a request from D & M Water Supply Corporation, P.O. Box 9, Douglass, Texas 75943, received May 5, 2017, for $1,900,000 in financing from the Drinking Water State Revolving Fund for planning, acquisition, design, and construction of water system improvements and for a waiver of the requirement that a portion of the financial assistance be used to mitigate water loss.

Project ID #62752, a request from the City of Chandler, P.O. Box 425, Chandler, Texas 75788-0425, received April 21, 2017, for $750,000 in financing from the Drinking Water State Revolving Fund for planning, design, and construction of water system improvements.

TRD-201703272
Todd Chenoweth
General Counsel
Texas Water Development Board
Filed: August 22, 2017

Workforce Solutions Brazos Valley Board

Public Notice: Targeted Occupation List Update Fiscal Year 2017

The Workforce Solutions Brazos Valley Board seeks public comment on an update to the 2017 Targeted Occupations list for the time period of August 21, 2017, to September 21, 2017. Three occupations are being added. They are certified medical assistant, certified hospitality management, and certified customer service representative. The Targeted Occupations list is used to provide Workforce Innovation Opportunity Act (WIOA) training for eligible customers to achieve self-sufficient wages. A copy of this list may be reviewed at the Center for Regional Services located at 3991 East 29th Street, Bryan, Texas 77802 between 8:00 a.m. to 5:00 p.m., Monday through Friday, for the period of August 21, 2017, to September 21, 2017, by asking for Ms. Clemmons. The proposed updated 2017 Targeted Occupation List is also posted on www.bvjobs.org under Board. Any comments can be emailed to Barbara.clemmons@bvco.org by September 21, 2017.

Equal Opportunity Employer/Program

Auxiliary aids and services are available upon request to individuals with disabilities.

Deaf, hard-of-hearing or speech-impaired customers may contact Relay Texas (800) 735-2989 (TTY) and 711 (Voice) and (979) 595-2180.

Equal opportunity is the law.

TRD-201703191
How to Use the Texas Register

Information Available: The sections of the Texas Register represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.
Attorney General - summaries of requests for opinions, opinions, and open records decisions.
Texas Ethics Commission - summaries of requests for opinions and opinions.
Emergency Rules - sections adopted by state agencies on an emergency basis.
Proposed Rules - sections proposed for adoption.
Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.
Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.
Transferred Rules - notice that the Legislature has transferred rules within the Texas Administrative Code from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.
In Addition - miscellaneous information required to be published by statute or provided as a public service.
Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the Texas Register is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “40 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 40 TexReg 3.”

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the Texas Register office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using Texas Register indexes, the Texas Administrative Code section numbers, or TRD number.

Both the Texas Register and the Texas Administrative Code are available online at: http://www.sos.state.tx.us. The Texas Register is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The Texas Administrative Code (TAC) is the compilation of all final state agency rules published in the Texas Register. Following its effective date, a rule is entered into the Texas Administrative Code. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC.

The TAC volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State’s website at http://www.sos.state.tx.us/tac.

The Titles of the TAC, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the TAC scheme, each section is designated by a TAC number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the Texas Administrative Code; TAC stands for the Texas Administrative Code; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the Texas Administrative Code, please look at the Index of Rules.

The Index of Rules is published cumulatively in the blue-cover quarterly indexes to the Texas Register.

If a rule has changed during the time period covered by the table, the rule’s TAC number will be printed with the Texas Register page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION

Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1.................................................950 (P)
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