

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. 9-1-1 SERVICE--STANDARDS

1 TAC §§251.1, 251.3, 251.7

The Commission on State Emergency Communications (CSEC) adopts amended §251.1, relating to Regional Strategic Plans for 9-1-1 Service; §251.3, relating to Use of Revenue in Certain Counties; and §251.7, relating to Guidelines for Implementing Integrated Services (Title 1, Part 12, Tex. Admin. Code Chapter 251).

The amended sections are adopted without changes to the proposed text as published in the August 3, 2018, issue of the *Texas Register* (43 TexReg 5031). The amendments will not be republished.

REASONED JUSTIFICATION

The amendments to §251.1 add the full name for Telecommunication Device for the Deaf (TDD) and delete TTY in §251.1(d)(6), as the two are used interchangeably: a TTY (a teletypewriter) is a type of TDD and is included in that category. The adopted amendment also adds, in §251.1(d)(9)(D), a redundancy requirement for regional strategic plans for network connections from the Host CPE Location to a Public Safety Answering Point (PSAP)—this change updates the list of redundancies already required to be included in a Regional Planning Commission's (RPC's) regional strategic plan.

The amendments to §251.3 clarify in §251.3(a) that the rule authorizes an RPC to use unexpended 9-1-1 fee and equalization surcharge revenues in certain counties; update §251.3(b) to reflect a change in the name of the Texas State Data Center; and clarify the requirements in §251.3(c) for requesting use of revenue—specifically that a request must include a description of the design of the 9-1-1 system and, for each PSAP or other answering point listed, include a written request from the PSAP or other answering point that specifies how the funds will be used and that funds received will be expended as specified.

The amendments to §251.7 clarify in §251.7(a) that a 9-1-1 call refers to both a voice or Text-to-911 call; and adds subsections (ix) and (x) to §251.7(c)(1)(A) Short Message Service (SMS) and Real Time Text (RTT), respectively, to be included as eligible integrated services.

COMMENTS

CSEC has, to date, received no comments regarding the proposed amendments to the rules.

STATEMENT OF AUTHORITY

The amended sections are adopted pursuant to Health and Safety Code Chapter 771, §§771.051, 771.052, 771.055, 771.056, 771.057, 771.0751, and 771.078.

No other statute, article, or code is affected by the proposal.

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 September 26, 2018.

TRD-201804178

Patrick Tyler

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Commission on State Emergency Communications

Effective date: October 16, 2018

Proposal publication date: August 3, 2018

For further information, please call: (512) 305-6926



CHAPTER 252. ADMINISTRATION

1 TAC §252.2

The Commission on State Emergency Communications (CSEC) adopts amended §252.2, relating to Purchases of Goods and Services: Historically Underutilized Businesses. The amended section is adopted without changes to the proposed text as published in the August 3, 2018, issue of the *Texas Register* (43 TexReg 5034) and will not be republished.

REASONED JUSTIFICATION

The amendments to §252.2 are to update the adoption by reference of the specific rules of the Texas Comptroller of Public Accounts (Comptroller) relating to the state Historically Underutilized Business (HUB) program. The amendments are to reflect the Comptroller's recent reorganizing and renumbering of its rules, including its HUB rules. Adoption of the Comptroller's HUB rules is required of a state agency by Government Code §2161.003. In addition, references to Comptroller §20.82(d)(1) and §20.82(d)(4) have been added to make clear the application of HUB rules to delegated purchase authority for goods and services, respectively. References to §282.286 and §282.287 have been added as they incorporate the HUB reporting requirements in Government Code §2161.002 and §2161.122.

STATUTORY AUTHORITY

The amended section is adopted pursuant to Government Code §2161.003.

No other statute, article, or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 26, 2018.

TRD-201804177

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Effective date: October 16, 2018

Proposal publication date: August 3, 2018

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER P. MENTAL HEALTH TARGETED CASE MANAGEMENT AND MENTAL HEALTH REHABILITATION

1 TAC §§353.1401, 353.1403, 353.1405, 353.1407, 353.1409, 353.1411, 353.1413, 353.1415, 353.1417, 353.1419

The Texas Health and Human Services Commission (HHSC) adopts new Title 1, Part 15, Chapter 353, Subchapter P, concerning Mental Health Targeted Case Management and Mental Health Rehabilitation.

New §§353.1405, 353.1413, and 353.1417 are adopted with changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2082) and will be republished. Sections 353.1401, 353.1403, 353.1407, 353.1409, 353.1411, 353.1415, and 353.1419 are adopted without changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2082) and will not be republished.

BACKGROUND AND JUSTIFICATION

Senate Bill (S.B.) 58, 83rd Legislature, Regular Session, 2013, integrated two Medicaid State Plan mental health benefits, mental health targeted case management (TCM) and mental health rehabilitative (MHR) services, into Medicaid managed care. Prior to S.B. 58, the local mental health authorities (LMHAs) operated under the Texas Department of State Health Services were the sole providers of these services. Effective September 1, 2014, Medicaid managed care organization (MCO) contracted providers of mental health TCM and MHR services, in addition to LMHAs, were allowed to deliver these benefits. HHSC is adopting these rules to provide MCOs and contracted mental health TCM and MHR comprehensive provider agencies, including local mental health and local behavioral health authorities, with necessary guidance on the delivery of these two services to ensure the services are delivered appropriately.

COMMENTS

The 30-day comment period ended May 6, 2018. During this period, HHSC received comments regarding the proposed rules from five commenters: Disability Rights Texas, Texas Associa-

tion of Health Plans, Texas Medical Association, Meadows Mental Health Policy Institute, and Texas Council of Community Centers. A summary of comments relating to the rules and HHSC's responses follows.

Comment: One commenter requested that §353.1403 include a definition for "transition age" to encompass individuals between the ages of 16 and 20.

Response: HHSC declines to revise the rule in response to this comment. The rule aligns definitions of "child or youth" and "adult" with federally required Early and Periodic Screening, Diagnostic and Treatment requirements.

Comment: One commenter requested clarification of whether the definition of community service specialists (CSSPs) in §353.1403(7) is intended to prevent new providers of this type.

Response: HHSC declines to revise the rule in response to this comment. This definition includes a category of individuals with certain experience prior to a specific date as community service specialists (CSSPs). Only Qualified Mental Health Professionals (QMHPs) can become newly credentialed to provide these services.

Comment: Two commenters offered suggested changes related to the uniform assessments as defined in §353.1403. One requested the definition of uniform assessment be modified to replace the reference to specific assessment tools with "a state approved assessment tool," and one requested more detail about the named assessment tools.

Response: HHSC declines to revise the rule in response to these comments. The reference to specific assessments is retained because the tools, in part, form the basis of service eligibility, and additional detail about the tools can be found in the Uniform Managed Care Manual.

Comment: One commenter requested the definition of utilization management guidelines be amended to allow flexibility for the MCOs to use their own utilization management guidelines.

Response: HHSC declines to revise the rule in response to this comment. MCOs are required to use the utilization management guidelines outlined in their contract with HHSC. This would constitute a substantive change to the proposed rules and requires broader stakeholder input and further consideration.

Comment: One commenter expressed concern that some comprehensive provider agencies may not be able to meet the requirements specified in §353.1405 and inquired if the requirements will apply to local mental health authority contracts. The commenter further raised a series of questions related to how the rule provisions will be operationalized.

Response: HHSC declines to revise the rule in response to this comment. The requirements are consistent with existing rule, contract, and medical policy and apply to both public and private comprehensive provider agencies.

Comment: One commenter requested §353.1405(c)(5) be amended to clarify a provider that has been reinstated to participate as a Medicaid provider would not be prohibited from contracting with an MCO.

Response: HHSC agrees and has revised the rule to delete this paragraph.

Comment: One commenter requested the rules include provisions related to Texas Government Code §533.002552(d).

Response: HHSC declines to revise the rules in response to this comment. The referenced statutory provisions are addressed in §353.1405(d).

Comment: One commenter requested the documentation retention provisions in §353.1407 be reduced from ten to seven years.

Response: HHSC declines to revise the rule in response to this comment. The ten-year retention period is consistent with requirements in 42 CFR §438.230.

Comment: One commenter requested the rules include a provision indicating an MCO may not require a comprehensive provider agency to have a behavioral health crisis hotline or a mobile crisis team that operates 24 hours a day and seven days a week.

Response: HHSC declines to revise the rule in response to this comment. Section 353.1411(a) and (b) delineate expectations for telephonic and crisis services during non-business hours.

Comment: One commenter requested the addition of "or cognitive" between the words "physical" and "disability" in §353.1413(a)(3)(C) to reflect minimum staff competencies include acknowledgement that some individuals seeking services may have a dual diagnosis involving a physical disability in addition to their mental health diagnosis.

Response: HHSC declines to revise the rule in response to this comment. However, HHSC did revise the rule to add "or have a physical disability" following "hearing" at the end of §353.1413(c)(4) in order to address concern that the current language does not include individuals with a co-occurring physical disability.

Comment: One commenter requested the addition of "or cognitive speech related" between the words "physical" and "disability" in §353.1413(c)(4) to reflect minimum staff competencies include acknowledgement that some individuals seeking services may have a dual diagnosis involving a physical disability in addition to their mental health diagnosis.

Response: HHSC declines to add "or cognitive speech related" to the rule and agrees to revise the rule to add "or have a physical disability" following "hearing" at the end of §353.1413(c)(4) in order to address the concern that the current language does not include individuals with a co-occurring physical disability.

Comment: With regards to §353.1413, one commenter expressed concern about the inclusion of ability to "prevent" abuse, neglect, and exploitation among required minimum staff competencies.

Response: HHSC declines to revise the rule in response to this comment. The use of the word "prevent" in the context of training and staff competency is appropriate.

Comment: One commenter suggested §353.1415(a)(1) be modified to allow greater flexibility in the credentialing requirements for QMHP-CS providers.

Response: HHSC declines to revise the rule in response to this comment. The rules are consistent with Medicaid State Plan requirements.

Comment: Two commenters expressed confusion about the inclusion of §353.1417(c), and in particular the reference to non-licensed staff, given MCOs do not credential non-licensed staff.

Response: HHSC agrees and has revised the rule to delete §353.1417(c). Section 353.1417 relates to comprehensive provider agency responsibilities for staff member credentialing.

Comment: One commenter requested the addition of a definition in §353.1403 of "community center" to allow for the addition of language referencing this term in §353.1417(c).

Response: HHSC declines to revise the rule in response to this comment at this time. Please see the response to the comment below.

Comment: One commenter requested the addition of language to §353.1417(c) to require an MCO to deem a Medicaid provider otherwise credentialed by a community center in accordance with 25 TAC §412.316 as having met the MCO's credentialing requirements.

Response: HHSC declines to revise the rule in response to this comment. This would constitute a substantive change to the proposed rule and requires broader stakeholder input and further consideration. Additionally, this subsection has been deleted in its entirety.

Comment: With regard to §353.1419, one commenter requested modification to prohibit supervision of a physician by a non-physician and one commenter expressed concern about a lack of clarity for how Registered Nurses are required to be supervised.

Response: HHSC declines to revise the rule in response to this comment. HHSC notes the changes are not necessary as §353.1419(b) includes provisions requiring that licensed staff members be supervised in accordance with applicable law and rules.

Comment: With regards to §353.1419(c)(3), one commenter requested the rule allow for a supervising physician to be a contractor rather than an employee.

Response: HHSC disagrees and declines to revise the rule in response to this comment. This would constitute a substantive change to the proposed rules and requires broader stakeholder input and further consideration.

Comment: With regards to §353.1419(g)(3), one commenter recommended the frequency of supervision for peer providers be left to the discretion of the supervisor or reduced in required frequency.

Response: HHSC disagrees and declines to revise the rule in response to this comment. Supervision requirements are consistent with existing 25 TAC §412.327.

STATUTORY AUTHORITY

These new rules are adopted under Texas Government Code §533.00255; 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 medical assistance (Medicaid) program in Texas.

§353.1405. Managed Care Organization Responsibilities.

(a) A managed care organization (MCO) must ensure that each contracted comprehensive provider agency meets the requirements established in this subchapter.

(b) An MCO must develop policies, procedures, and contract requirements to ensure that contracted comprehensive provider agencies adhere to the requirements in this subchapter.

(c) An MCO must not approve or contract with a comprehensive provider agency as a provider of mental health targeted case management and mental health rehabilitative services unless the comprehensive provider agency:

(1) is enrolled as a Texas Medicaid provider in accordance with §352.7 of this title (related to Applying for Enrollment);

(2) attests in the credentialing application to the MCO and agrees in the contract to comply with applicable state and federal regulations, rules, policies, and procedures relating to mental health targeted case management and mental health rehabilitative services;

(3) agrees to comply with applicable state and federal laws governing participation of providers in the Medicaid program;

(4) agrees to submit accurate and complete cost reports in accordance with applicable HHSC requirements;

(5) is not listed on the HHSC Inspector General's Excluded Individuals/Entities Listing;

(6) provides or subcontracts for the full array of mental health targeted case management and mental health rehabilitative services listed in Chapter 354, Subchapter M, of this title (relating to Mental Health Targeted Case Management and Mental Health Rehabilitation), with the exception of §354.2715 of this title (relating to Day Programs for Acute Needs (DPAN)); and

(7) has staff that are credentialed in accordance with §353.1415 of this subchapter (relating to Staff Member Credentialing).

(d) If an MCO contracts with a comprehensive provider agency to provide mental health targeted case management and mental health rehabilitative services specific to children who are at risk of juvenile justice involvement, expulsion from school, displacement from the home, hospitalization, residential treatment, or serious injury to self, others, or animals, the MCO must ensure the comprehensive provider agency has a referral arrangement with a Texas Medicaid enrolled provider within the MCO network that has the ability to otherwise meet the needs of the child and that can provide the services to the child without interruption in services and without otherwise affecting the child's access to care.

§353.1413. Staff Member Competency.

(a) Prior to providing services or accessing an individual's confidential information, the comprehensive provider agency must ensure that each staff member:

(1) can provide services within the scope of the staff member's license, job description, or contract specification;

(2) has completed required training modules as identified by HHSC; and

(3) has the following minimum competencies:

(A) an understanding of the nature of severe mental illness and serious emotional disturbances;

(B) an understanding of the developmental needs of an adult, child, or youth;

(C) the ability to interact appropriately with an individual who has a physical disability;

(D) the ability to respond to an individual's linguistic and cultural needs through knowledge of customs, beliefs, and values of various, racial, ethnic, religious, and social groups;

(E) identification of an individual experiencing a crisis and the process for accessing crisis services;

(F) knowledge of appropriate actions to take in managing a crisis;

(G) knowledge of available resources within the local community;

(H) an understanding of the dignity and rights of an individual, as described in 25 TAC §404.154 (relating to Rights of All Persons Receiving Mental Health Services) and 25 TAC §404.163 (relating to Communication of Rights to Individuals Receiving Mental Health Services);

(I) the ability to identify, prevent, and report abuse, neglect, and exploitation, in accordance with 40 TAC Chapter 705 (relating to Adult Protective Services) and Chapter 711 (relating to Investigations of Individuals Receiving Services from Certain Providers);

(J) knowledge of individual confidentiality and relevant state and federal laws affecting confidentiality of medical records, including Title 42 CFR Part 2;

(K) knowledge of professional ethics and standards of conduct;

(L) knowledge of proper documentation of services provided;

(M) understanding exposure control of blood borne pathogens; and

(N) the ability to respond to severe weather, disasters, and bioterrorism.

(b) For a staff member whose primary duties include assessment and service authorization, the comprehensive provider agency must ensure that the staff member has the ability to:

(1) complete the uniform assessment; and

(2) understand and apply the utilization management guidelines.

(c) For a staff member whose primary duties include individual service contacts and interactions, the comprehensive provider agency must ensure that the staff member has adequate knowledge of:

(1) cardiopulmonary resuscitation (CPR);

(2) first aid;

(3) safe management of verbally and physically aggressive behavior;

(4) use of assistive technology, such as communication devices, with individuals who are deaf or hard of hearing or have a physical disability;

(5) seizure assessment and response;

(6) infection control;

(7) how to recognize, report, and record side effects, contraindications, and drug interactions of psychoactive medication;

(8) assessment and intervention with children, youth, and families; and

(9) clinical specialties directly related to the services to be performed.

(d) A staff member who provides mental health targeted case management must also have:

(1) knowledge of strategies for advocating effectively on behalf of individuals;

(2) the ability to document the mental health targeted case management services described in §354.2655 of this title (relating to Case Management Services); and

(3) knowledge gained from the completion of training modules as identified by HHSC.

(e) A staff member who provides intensive case management, before providing services to children and youth, must complete training approved by HHSC on wraparound process planning and demonstrate understanding of wraparound process planning.

(f) A staff member who routinely provides or supervises the provision of mental health targeted intensive case management to a child or youth must receive training and demonstrate competency in the aspects of a child's or youth's growth and development (including physical, emotional cognitive, educational and social) and the treatment needs of a child or youth.

(g) Additional competencies for providers of mental health rehabilitative services.

(1) A comprehensive provider agency must ensure that a staff member who provides mental health rehabilitative services is trained in the rehabilitative practice techniques related to:

- (A) medication training and support services;
- (B) skills training and development; and
- (C) psychosocial rehabilitation.

(2) A comprehensive provider agency must ensure that staff members who provide or supervise the provision of mental health rehabilitative services receive initial training in:

- (A) the nature of serious mental illness and serious emotional disturbance;
- (B) the concepts of recovery and resilience;
- (C) the rehabilitative practice techniques found in curricula, program practices, and protocols;
- (D) the prevalence of physical health risk factors; and
- (E) other training modules as identified by HHSC.

§353.1417. *Comprehensive Provider Agency Requirements for Staff Member Credentialing and Appeals.*

(a) A comprehensive provider agency must:

(1) justify in writing and document in a staff member's personnel file support of the staff member's qualifications to provide mental health targeted case management and mental health rehabilitative services based on credentialing requirements listed in §353.1415 of this division (relating to Staff Member Credentialing); and

(2) regularly monitor each staff member's demonstrated competency throughout the staff member's tenure.

(b) A comprehensive provider agency must:

- (1) credential each staff member in a timely fashion; and
- (2) have a process for staff members to appeal credentialing decisions.

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 September 27, 2018.

TRD-201804198

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Effective date: October 17, 2018

Proposal publication date: April 6, 2018

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CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER M. MENTAL HEALTH TARGETED CASE MANAGEMENT AND MENTAL HEALTH REHABILITATION

The Texas Health and Human Services Commission (HHSC) adopts new Title 1, Part 15, Chapter 354, Subchapter M, concerning Mental Health Targeted Case Management and Mental Health Rehabilitation.

New §§354.2601, 354.2609, 354.2611, 354.2653, 354.2657, and 354.2711 are adopted with changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2088). Sections 354.2603, 354.2605, 354.2607, 354.2613, 354.2651, 354.2655, 354.2659, 354.2701, 354.2703, 354.2705, 375.2707, 354.2709, 354.2713, 354.2715, and 354.2717 are adopted without changes to the proposed text as published in the April 6, 2018, issue of the *Texas Register* (43 TexReg 2088) and will not be republished.

BACKGROUND AND JUSTIFICATION

Senate Bill (S.B.) 58, 83rd Legislature, Regular Session, 2013, integrated two Medicaid state plan mental health benefits, mental health targeted case management (TCM) and mental health rehabilitative (MHR) services, into Medicaid managed care. Prior to S.B. 58, the local mental health authorities (LMHAs) operated under the Texas Department of State Health Services were the sole providers of these services. Effective September 1, 2014, Medicaid managed care organization (MCO) contracted providers of mental health TCM and MHR services, in addition to LMHAs, were allowed to deliver these benefits. HHSC is adopting these rules to provide MCOs and contracted mental health TCM and MHR comprehensive provider agencies, including local mental health and local behavioral health authorities, with necessary guidance on the delivery of these two services to ensure the services are delivered appropriately.

COMMENTS

The 30-day comment period ended May 6, 2018. During this period, HHSC received comments regarding the proposed rules from five commenters: Disability Rights Texas, Texas Association of Health Plans, Texas Medical Association, Meadows Mental Health Policy Institute, and Texas Council of Community Centers. A summary of comments relating to the rules and HHSC's responses follows.

Comment: One commenter requested that §354.2603 include definitions for "transition age" to encompass individuals between the ages of 16 and 20.

Response: HHSC declines to revise the rule in response to this comment. The rule aligns definitions of "child or youth" and

"adult" with federally required Early and Periodic Screening, Diagnostic and Treatment requirements.

Comment: One commenter requested the addition of a definition in §354.2603 of "community center" to allow for the addition of language referencing this term in §354.2655(b).

Response: HHSC declines to revise the rule in response to this comment at this time. Please see the response to comment on §354.2655(b).

Comment: Two commenters offered suggested changes related to the uniform assessments as defined in §354.2603. One requested the definition of uniform assessment be modified to replace the reference to specific assessment tools with "a state approved assessment tool," and one requested more detail about the named assessment tools.

Response: HHSC declines to revise the rule in response to these comments. The reference to specific assessments is retained, in part, because the tools form the basis of service eligibility. Additional detail about the tools can be found in the Uniform Managed Care Manual (UMCM).

Comment: One commenter requested §354.2603 be amended to reflect that a registered nurse and a licensed vocational nurse may perform medication-related services and pharmacological management only under physician delegation and supervision.

Response: HHSC agrees to revise the rules in response to this comment by adding "acting within the scope of their practice" between "personnel" and "may" in §354.2711(g)(4). Please note that in §354.2611(b), pharmacological management is described as a physician service, with the exception of advanced practice registered nurses and physician assistants whose scope of license in Texas permits them to prescribe under the delegation of prescriptive authority. Further, nothing in this rule should be construed as authorizing any licensed provider to act outside the scope of their practice.

Comment: Two commenters recommended changes to §354.2605, one requesting the addition of contact information for the HHSC Ombudsman and one indicating the MCO should not be responsible for the fair hearing, given the MCOs role in performing the assessment.

Response: HHSC declines to revise the rule in response to this comment. Contact information for the HHSC Ombudsman is available on the HHSC website, and federal law requires that members have a right to a complaints and appeal process with an MCO, and to a subsequent state fair hearing.

Comment: One commenter requested §354.2607 be amended to include additional detail related to the information technology systems involved in the services assessment and authorization process.

Response: HHSC declines to revise the rule in response to this comment. The UMCM contains greater specificity related to the web-based system used for the uniform assessment tools and associated recommended levels of care.

Comment: One commenter requested the rules indicate providers are not required to receive prior authorization from the MCO to provide crisis services.

Response: HHSC declines to revise the rule in response to this comment. Section 354.2607(d) indicates prior authorization as a prerequisite to the provision of crisis intervention services is not required. Additionally, the UMCM requires MCOs to provide

coverage for Emergency Services, including crisis intervention services, without regard to prior authorization.

Comment: One commenter requested §354.2607(b) and §354.2611(c) be amended to clarify that only those professionals who have been statutorily authorized to diagnose may diagnose a mental illness.

Response: HHSC declines to revise the rules in response to this comment. Providers are expected to abide by the scope of practice as outlined by their licensing boards and the Texas Occupations Code for their profession. The state has established that professionals designated as licensed practitioners of the healing arts (LPHAs) have the ability to diagnose mental illness only to the extent they are practicing within the scope of their license. Section 354.2701(b)(1) references that LPHAs must be acting within the scope of their license.

Comment: One commenter requested §354.2607(c)(2) be amended to reflect that only a physician can determine medical necessity.

Response: HHSC declines to revise the rule in response to this comment. Medical necessity determinations for behavioral health services may be made by non-physician LPHAs to the extent the LPHA is acting within the scope of their practice.

Comment: Two commenters recommended modifying §354.2707 and §354.2609 to allow the delivery of services through telehealth.

Response: HHSC declines to revise the rules in response to this comment as this change would constitute an expansion of benefits given TCM and MHR are not currently reimbursed when delivered as telehealth services. Further, this would constitute a substantive change to the proposed rules and requires broader stakeholder input and further consideration.

Comment: One commenter requested language indicating an authorization issued by an MCO in response to an authorization requested under §354.2607(d)(1) is for the entire service package associated with a member's level of care.

Response: HHSC declines to revise the rule in response to this comment. A level of care may include multiple Medicaid reimbursable mental health services. If an individual chooses to receive services from a single provider, the authorization would encompass the entire service package.

Comment: One commenter requested "may" be changed to "shall" in §354.2609(d)(2).

Response: HHSC agrees and revised "may" to "must," consistent with §354.2703(c).

Comment: One commenter requested §354.2611(c) be amended to allow any physician, not just psychiatrists, to perform diagnostic evaluations.

Response: HHSC agrees and has revised the rule to replace "psychiatrist" with "physician" in keeping with currently allowable scope of practice.

Comment: One commenter sought clarification of §354.2611 in relation to the requirements of a comprehensive provider agency to provide or subcontract for services versus the ability of an entity to provide individual services toward the goal of increasing the provider pool.

Response: HHSC declines to revise the rule in response to this comment. The approved Medicaid state plan requires a provider

to have a readily accessible, comprehensive, integrated, and well-coordinated system of services and the capacity to deliver services either directly or under arrangement. Comprehensive provider agencies are required to either provide or subcontract for psychiatric evaluation, pharmacological management, and psychotherapy in addition to mental health TCM and MHR to ensure the delivery of behavioral health services that promote resiliency and recovery through the use of evidence-based practices. The Medicaid state plan requires that an individual's plan of care be consistent with the State utilization management guidelines.

Comment: In relation to §354.2611, one commenter expressed concern that prescriptions from certain providers would "fail" when presented to the pharmacy.

Response: HHSC declines to revise the rule in response to this comment. A prescriber with a valid National Provider Identifier (NPI) prescribing within their scope of practice does not have to be credentialed by the MCO in order for the claim to pay.

Comment: One commenter requested the deadline for discharge documentation in §354.2609(f) be extended from 21 to 30 calendar days.

Response: HHSC declines to revise the rule in response to this comment. The rule is consistent with existing 25 TAC §412.322(h).

Comment: One commenter requested the use of "serious emotional, behavioral or mental disorder" in §354.2651 be defined.

Response: HHSC declines to revise the rule in response to this comment. The use of "serious emotional disturbance" in §354.2651(a)(3) is tied to how the corresponding diagnosis is defined in the latest edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.

Comment: One commenter indicated the meaning of "if applicable" in §354.2653(3) was not clear.

Response: HHSC agrees and revised the rule to clarify.

Comment: One commenter requested §354.2655(b) be amended to indicate community centers are the only permissible providers of mental health targeted case management under Medicaid fee-for-service.

Response: HHSC agrees and revised §354.2601 to add subsection (c) clarifying nothing in the rules overrides permissible provider provisions of the Medicaid state plan.

Comment: One commenter requested §354.2655(e)(6) and (f)(4)(A) and (B) be amended to ensure documentation includes indication of the timeframe in which a scheduled meeting that did not occur will be rescheduled or indication of why a meeting is no longer considered necessary.

Response: HHSC declines to revise the rule in response to this comment. The rule is consistent with existing medical policy and 25 TAC §412.413.

Comment: One commenter indicated the documentation requirements in §354.2657 are more extensive than those typically contained in rule.

Response: HHSC declines to revise the rule in response to this comment. The rule is consistent with existing medical policy and 25 TAC §412.413.

Comment: One commenter requested the documentation requirements in §354.2657(c)(1) be amended to include informa-

tion about "any precipitating events that may have contributed to the crisis."

Response: HHSC declines to revise the rule in response to this comment. The rule is consistent with existing 25 TAC §412.407.

Comment: One commenter requested the documentation requirements in §354.2657(c)(5) be amended to include information about "steps taken to proactively address future crisis."

Response: HHSC declines to revise the rule in response to this comment. The rule is consistent with existing 25 TAC §412.407.

Comment: One commenter requested "individual's stated" be inserted between "the" and "reason" in §354.2657(d)(1).

Response: HHSC agrees and has revised the rule as requested for clarification.

Comment: One commenter requested the rules pertaining to mental health rehabilitative services describe which services can be billed for children and youth and which can be billed for adults.

Response: HHSC declines to revise the rule in response to this comment. Billing guidelines are included in the Texas Medicaid Provider Procedures Manual.

Comment: One commenter requested "medication training and support services" as described in §354.2709(a) and "medication-related services" as described in §354.2711(g)(4) be more clearly delineated to ensure the provision of services is appropriately limited to those personnel educated and trained to do so or to prohibit the provision of services that are outside the scope of what is allowed/required by a particular license.

Response: HHSC declines to revise the rule in response to this comment. Nothing in this rule should be construed as authorizing any licensed provider to act outside the scope of their practice.

Comment: One commenter requested language be added to §354.2711(g)(3) to broaden the allowable providers of independent living services.

Response: HHSC declines to revise the rule in response to this comment. The rules are consistent with Medicaid state plan requirements.

Comment: Once commenter requested language be added to §354.2715(c)(3)(B) to broaden the allowable providers of Day Program for Acute Needs.

Response: HHSC declines to revise the rule in response to this comment. The rules are consistent with Medicaid state plan requirements.

Although not requested by a commenter, HHSC made non-substantive changes to clarify the evidence-based modalities referenced in §354.2611(d) are those contained in the utilization management guidelines.

DIVISION 1. GENERAL PROVISIONS

1 TAC §§354.2601, 354.2603, 354.2605, 354.2607, 354.2609, 354.2611, 354.2613

STATUTORY AUTHORITY

These new rules are adopted under Texas Government Code §533.00255 and Texas Government Code §531.033, which provide 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 medical assistance (Medicaid) program in Texas.

§354.2601. *Purpose and Applicability.*

(a) The purpose of this subchapter is to establish requirements for providing mental health targeted case management and mental health rehabilitative services throughout Medicaid, including the managed care and the fee-for-service models.

(b) This subchapter applies to public and private comprehensive provider agencies delivering Medicaid mental health targeted case management and mental health rehabilitative services.

(c) Nothing in this subchapter shall be construed to override Medicaid State Plan limitations on permissible providers.

§354.2609. *Recovery/Treatment Planning, Recovery/Treatment Plan Review, and Discharge Summary.*

(a) Timeframe for recovery/treatment plan. A comprehensive provider agency must develop a written recovery/treatment plan:

(1) before the provision of mental health targeted case management or mental health rehabilitative services; and

(2) within 10 business days after the date the individual is eligible and has been authorized for routine care services.

(b) Credentials for completing recovery/treatment plan. A staff member credentialed as a QMHP-CS, at a minimum, is responsible for completing and signing the plan.

(c) Content of recovery/treatment plan (plan).

(1) The plan must reflect input from the individual and each of the disciplines of treatment to be provided to the individual based on the assessment. The plan must include:

(A) a description of the individual's presenting problem(s);

(B) a description of the individual's strengths;

(C) a description of the individual's needs arising from the mental illness or serious emotional disturbance;

(D) a description of the individual's co-occurring substance use disorder, intellectual or developmental disability, or physical health condition(s), if any;

(E) a description of the recovery goals and objectives based on the assessment, and expected outcomes of the treatment in accordance with paragraph (2) of this subsection;

(F) the expected date by which the recovery/treatment goals will be achieved; and

(G) a list of the type(s) of intervention(s) within each form of treatment that will be provided to the individual (e.g., psychosocial rehabilitation, medication services, supported employment), and for each type of service listed:

(i) a description of the strategies to be implemented by staff members in providing the service and achieving goals;

(ii) the frequency, number of units (e.g., 10 counseling sessions, two skills training sessions), and duration of each service to be provided (e.g., .5 hour, 1.5 hours); and

(iii) the credentials of the staff member responsible for providing the service.

(2) The goals and objectives with expected outcomes required by paragraph (1)(E) of this subsection must:

(A) specifically address the individual's unique needs, preferences, experiences, and cultural background;

(B) specifically address the individual's co-occurring substance use or physical health disorder, if any;

(C) be expressed in terms of overt, observable actions of the individual;

(D) be objective and measurable using quantifiable criteria; and

(E) reflect the individual's self-direction, autonomy, and desired outcomes.

(3) The plan must be developed in consultation with the individual, and LAR if applicable.

(4) The individual, and LAR if applicable, must be provided, in an understandable format as appropriate to meet the needs of each individual, a copy of the plan and each subsequent reviewed and revised plan.

(d) Review of recovery/treatment plan.

(1) A comprehensive provider agency must:

(A) review an individual's continued eligibility for services as specified in §354.2703 of this subchapter (relating to Continued Eligibility); and

(B) review an individual's plan prior to requesting an authorization for the continuation of services, including:

(i) reviewing the individual's plan in its entirety, considering input from the individual, the individual's LAR as applicable, and each member of the therapeutic team;

(ii) determining if the plan is adequately addressing the needs of the individual;

(iii) documenting progress on all goals and objectives; and

(iv) documenting any recommendation for continuing services, any change from current services, and any discontinuation of services.

(2) In addition to the required review under paragraph (1)(B) of this subsection, a comprehensive provider agency must review an individual's recovery/treatment plan:

(A) if clinically indicated; and

(B) at the request of the individual or the LAR, or the primary caregiver of a child or youth.

(3) Any time an individual's recovery/treatment plan is reviewed, the comprehensive provider agency must:

(A) meet with the individual face-to-face to solicit and consider input from the individual regarding a self-assessment of progress toward the recovery goals;

(B) solicit and consider the input from each member of the therapeutic team in assessing the individual's progress toward the recovery goals and objectives with expected outcomes;

(C) solicit and consider input from the LAR or primary caregiver, as applicable, regarding the level of satisfaction with the services provided; and

(D) document all the input described in subparagraphs (A) - (C) of this paragraph.

(e) Revisions to the recovery/treatment plan. If, after any review of the recovery/treatment plan, the individual or comprehensive provider agency determines that the plan does not adequately address the needs of the individual, the comprehensive provider agency, with input from the individual, must appropriately revise the content of the plan.

(f) Discharge Summary. Not later than 21 calendar days after an individual's discharge from services, whether planned or unplanned, a comprehensive provider agency must document in the individual's medical record:

(1) a summary, based on input from each member of the therapeutic team, of all the services provided, the individual's response to treatment, and any other relevant information;

(2) recommendations made to the individual, LAR, or primary caregiver for follow up services, if any; and

(3) the individual's most current diagnosis, based on diagnostic criteria from the latest edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.

§354.2611. Pharmacological Management, Psychiatric Diagnostic Evaluations, and Psychotherapy.

(a) Service Array. A comprehensive provider agency must have the capability to deliver pharmacological management, psychiatric diagnostic evaluation, and psychotherapy, either directly or through subcontract(s).

(b) Pharmacological management. Pharmacological management is the in-depth management of psychopharmacological agents to treat a client's mental health symptoms. Pharmacological management is a physician service and cannot be provided by a non-physician or "incident to" a physician service, with the exception of advanced practice registered nurses and physician assistants whose scope of license in Texas permits them to prescribe under delegation of prescriptive authority. Supporting documentation for pharmacological management must include:

(1) complete diagnosis using diagnostic criteria from the latest edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders;

(2) current list of medications;

(3) current psychiatric symptoms and problems, to include presenting mental status;

(4) problems, reactions, and side effects, if any, to medications;

(5) any medication modifications made during the visit and the reasons for medication adjustments, including the discontinuation of a medication;

(6) desired therapeutic drug levels, if applicable, for medications requiring blood level monitoring;

(7) current laboratory values, if applicable, for medications requiring monitoring for potential side effects; and

(8) the individual's related treatment goals.

(c) Psychiatric diagnostic evaluation.

(1) Psychiatric diagnostic evaluations must be conducted by:

(A) a physician;

(B) a psychologist;

(C) an advanced practice registered nurse;

(D) a physician assistant;

(E) a licensed clinical social worker;

(F) a licensed professional counselor; or

(G) a licensed marriage and family therapist.

(2) Documentation for a psychiatric diagnostic evaluation must include:

(A) the individual's presenting problem(s);

(B) the individual's prior diagnoses and any prior treatment;

(C) other pertinent medical, social, and family history;

(D) clinical observations and results of a mental status examination;

(E) complete diagnosis using diagnostic criteria from the latest edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders;

(F) expected long-term and short-term goals; and

(G) recommendations.

(d) Psychotherapy. Psychotherapy services may include individual psychotherapy, group psychotherapy, or family psychotherapy. A comprehensive provider agency is required to use evidence-based psychotherapy modalities in accordance with the utilization management guidelines.

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 September 27, 2018.

TRD-201804199

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Effective date: October 17, 2018

Proposal publication date: April 6, 2018

For further information, please call: (512) 730-7440



DIVISION 2. MENTAL HEALTH TARGETED CASE MANAGEMENT

1 TAC §§354.2651, 354.2653, 354.2655, 354.2657, 354.2659 STATUTORY AUTHORITY

These new rules are adopted under Texas Government Code §533.00255 and Texas Government Code §531.033, which provide 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 medical assistance (Medicaid) program in Texas.

§354.2653. Continued Eligibility.

Continued eligibility for mental health targeted case management services is based on:

(1) the eligibility criteria described in §354.2651 of this division (relating to Eligible Individuals);

(2) a reassessment by the comprehensive provider agency every:

- (A) 90 days for children and youth; or
- (B) 180 days for adults; and

(3) reauthorization of services when required by the managed care organization.

§354.2657. *Documentation Requirements.*

(a) Mental health targeted case management services must be documented in the individual's medical record. Case managers are required to maintain a record of each individual receiving mental health targeted case management, including:

- (1) the name of the individual;
- (2) the name of the comprehensive provider agency and the name of the assigned case manager;
- (3) the date, nature, content, and units of each service received and whether goals specified in the recovery/treatment plan have been achieved;
- (4) whether the individual has declined services in the recovery/treatment plan;
- (5) the need for, and occurrences of, coordination with other staff members;
- (6) a timeline for obtaining needed services; and
- (7) a timeline for reevaluation of the recovery/treatment plan.

(b) Service documentation. The case manager must document the following for each service provided:

- (1) the event or behavior that occurs while providing the service or the reason for the specific encounter;
- (2) the person, persons, or entity, including other staff members, with whom the encounter or contact occurred;
- (3) a collateral contact that is directly related to identifying the needs and supports for helping the individual access services and managing the individual's care, including coordination with other staff members;
- (4) the recovery/treatment plan goal(s) that was the focus of the service, including the progress or lack of progress in achieving recovery plan goal(s);
- (5) the specific intervention provided;
- (6) date the service was provided;
- (7) the start and end time of the service;
- (8) location where the service was provided, and whether it was a face-to-face or telephone contact; and
- (9) signature of the case manager providing the service, including credentials.

(c) Crisis service documentation. In addition to the general documentation requirements described in subsection (b) of this section, a staff member must document the following for crisis intervention services:

- (1) behavioral description of the presenting problem;
- (2) lethality (e.g., suicide, violence);
- (3) the individual's relevant substance use or abuse;

(4) the individual's relevant trauma, abuse, or neglect;

(5) all actions, including rehabilitative interventions and referrals to other agencies, used by the provider of crisis intervention services to address the problems presented;

(6) the response of the individual, and if appropriate, the response of the LAR or primary caregiver and family members;

(7) the signature of the staff member providing the service and a notation as to whether the staff member is an LPHA or a QMHP-CS;

(8) any pertinent event or behavior relating to the individual's treatment which occurs during the provision of the service;

(9) follow up activities, which may include referral to another provider; and

(10) the outcome of the individual's crisis.

(d) Refusing mental health targeted case management services. If the individual refuses mental health targeted case management services, the assigned case manager must:

(1) document the individual's stated reason for the refusal in the individual's medical record; and

(2) request that the individual sign a waiver of case management services that is filed in the individual's medical record.

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 September 27, 2018.

TRD-201804200

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Texas Health and Human Services Commission

Effective date: October 17, 2018

Proposal publication date: April 6, 2018

For further information, please call: (512) 730-7440



DIVISION 3. MENTAL HEALTH REHABILITATION

1 TAC §§354.2701, 354.2703, 354.2705, 354.2707, 354.2709, 354.2711, 354.2713, 354.2715, 354.2717

STATUTORY AUTHORITY

These new rules are adopted under Texas Government Code §533.00255 and Texas Government Code §531.033, which provide 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 medical assistance (Medicaid) program in Texas.

§354.2711. *Psychosocial Rehabilitative Services.*

(a) Psychosocial rehabilitative services must include the following services, as determined necessary for each individual:

- (1) independent living;
- (2) coordination;

- (3) employment related;
- (4) housing related; and
- (5) medication related.

(b) Independent living services assist an individual in acquiring the most immediate, fundamental functional skills needed to enable the individual to reside in the community and avoid more restrictive levels of treatment, or assist an individual in reducing behaviors or symptoms that prevent successful functioning in the individual's environment of choice. Such services include training in symptom management, personal hygiene, nutrition, food preparation, exercise, money management, and community integration activities.

(c) Coordination services are training activities that assist an individual in improving the ability to gain and coordinate access to necessary care and services appropriate to the individual's needs. Coordination services include instruction and guidance in such areas as:

- (1) assessment--identifying strengths and areas of need across life domains;
- (2) recovery/treatment planning--prioritizing needs, establishing life and treatment goals, selecting interventions, and developing and revising recovery/treatment plans that include wellness, relapse prevention, and crisis plans;
- (3) access--identifying and initiating contact with potential service providers and support systems across all life domains, including advocacy groups;
- (4) coordination--setting appointments, arranging transportation, and facilitating communication between providers; and
- (5) advocacy--
 - (A) asserting treatment needs, requesting special accommodations, and evaluating provider effectiveness and compliance with the agreed upon recovery/treatment plan; and
 - (B) requesting improvements and modifications to ensure maximum benefit from the services and supports.

(d) Employment related services provide supports and skills training that are not job-specific and focus on developing skills to reduce or manage the symptoms of serious mental illness that interfere with an individual's ability to make vocational choices or obtain or retain employment. Such services consist of:

- (1) instruction in dress, grooming, socially and culturally appropriate behaviors, and etiquette necessary to obtain and retain employment;
- (2) training in task focus, maintaining concentration, task completion, and planning and managing activities to achieve outcomes;
- (3) instruction in obtaining appropriate clothing, arranging transportation, utilizing public transportation, accessing and utilizing available resources related to obtaining employment, and accessing employment-related programs and benefits;
- (4) interventions or supports provided on or off the job site to reduce behaviors or symptoms of serious mental illness that interfere with job performance or that interfere with the development of skills that would enable the individual to obtain or retain employment; and
- (5) interventions designed to develop natural supports on or off the job site to compensate for skill deficits that interfere with job performance.

(e) Housing related services develop an individual's strengths and abilities to manage the symptoms of the individual's serious mental

illness that interfere with the individual's capacity to obtain or maintain independent, integrated housing. Such services consist of:

- (1) skills training related to:
 - (A) home maintenance and cleanliness;
 - (B) problem-solving with the individual's landlord and neighbors, mortgage lender, or homeowners association; and
 - (C) maintaining appropriate interpersonal boundaries;
 and
 - (2) supportive contacts with the individual to reduce or manage the behaviors or symptoms related to the individual's serious mental illness that interfere with maintaining independent, integrated housing.

(f) Medication related services provide training regarding an individual's medication adherence. Such services consist of training in:

- (1) the importance of the individual taking the medications as prescribed;
 - (2) the self-administration of the individual's medication;
 - (3) determining the effectiveness of the individual's medications;
 - (4) identifying side-effects of the individual's medications;
- and
- (5) contraindications for medications prescribed.

(g) Conditions for the delivery of psychosocial rehabilitative services.

- (1) Psychosocial rehabilitative services may be provided:
 - (A) only to adults who are not currently admitted to a CSU;
 - (B) individually or in a group;
 - (C) on-site or in-vivo; and
 - (D) only by a member of the individual's therapeutic team.

(2) The therapeutic team must be constituted and organized in a manner that ensures:

- (A) the team includes a sufficient number of staff to adequately address the rehabilitative needs of individuals assigned to the team;
- (B) team members are appropriately credentialed to provide the full array of component services;
- (C) team members have regularly scheduled team meetings either in person or by teleconference; and
- (D) every member of the team is knowledgeable of the needs and services available to the specific individuals assigned to the team.

(3) Independent living services, coordination services, employment-related services, and housing-related services must be provided by a:

- (A) QMHP-CS;
- (B) CSSP; or
- (C) peer provider.

(4) Only licensed medical personnel acting within the scope of their practice may provide medication-related services.

(5) Crisis-related services must be provided by a QMHP-CS.

(h) An individual receiving psychosocial rehabilitation is not eligible to simultaneously receive either skills training and development or targeted case management services.

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 September 27, 2018.

TRD-201804201

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Effective date: October 17, 2018

Proposal publication date: April 6, 2018

For further information, please call: (512) 730-7440



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts the repeal of part of Subchapter A: General Provisions §§24.3, 24.8, 24.11, 24.14, Subchapter B: Rates, Rate-Making and Rates/Tariff Changes §§24.21 - 24.24, 24.26, 24.28 - 24.36, Subchapter C: Rate-Making Appeals §§24.41 - 24.44, Subchapter D: Records and Reports §§24.71 - 24.76, Subchapter E: Customer Service and Protection §§24.80 - 24.90, Subchapter F: Quality of Service §§24.91 - 24.95, Subchapter G: Certificates of Convenience and Necessity §§24.101 - 24.107, 24.109 - 24.111, 24.113 - 24.120, Subchapter H: Water Utility Submetering and Allocation §§24.121 - 24.127, Subchapter I: Wholesale Water or Sewer Service §§24.128 - 24.138, Subchapter J: Enforcement, Supervision, and Receivership, §§24.140 - 24.144, 24.146, 24.147, Subchapter K: Provision Regarding Municipalities §§24.150 - 24.153, relating to substantive rules applicable to water and sewer service providers and adopts new §§24.3, 24.8, 24.11, 24.14, Subchapter B: Rates and Tariffs §§24.25, 24.27, 24.29, 24.31, 24.33, 24.35, 24.37, 24.39, 24.41, 24.43, 24.44, 24.47, 24.49, Subchapter C: Alternative Rate Methods §24.75, Subchapter D: Rate-Making Appeals §§24.101, 24.103, 24.105, 24.107, Subchapter E: Records and Reports §§24.125, 24.127, 24.129, 24.131, 24.133, 24.135, Subchapter F: Customer Service and Protection §§24.151, 24.153, 24.155, 24.157, 24.159, 24.161, 24.163, 24.165, 24.167, 24.169, 24.171, Subchapter G: Quality of Service §§24.201, 24.203, 24.205, 24.207, 24.209, Subchapter H: Certificates of Convenience and Necessity §§24.225, 24.227, 24.229, 24.231, 24.233, 24.235, 24.237, 24.239, 24.241, 24.243, 24.245, 24.247, 24.249, 24.251, 24.253, 24.255, 24.257, 24.259, Subchapter I: Water Utility

Submetering and Allocation §§24.275, 24.277, 24.279, 24.281, 24.283, 24.285, 24.287, Subchapter J: Wholesale Water or Sewer Service §§24.301, 24.303, 24.305, 24.307, 24.309, 24.311, 24.313, 24.315, 24.317, 24.319, 24.321, Subchapter K: Enforcement, Supervision, and Receivership §§24.351, 24.353, 24.355, 24.357, 24.359, 24.361, 24.363, Subchapter L: Provisions Regarding Municipalities §§24.375, 24.377, 24.379, and 24.381 relating to substantive rules applicable to water and sewer service providers without changes to the proposed text as published in the August 10, 2018, issue of the *Texas Register* (43 TexReg 5123). Sections 24.45 and 24.46 move from Subchapter C, Rate-Making Appeals to new Subchapter B, Rates and Tariffs. The rules were renumbered for administrative ease. This renumbering is adopted under Project Number 48526.

The commission received comments on the proposed §24.239.

The Texas Press Association argued that a good cause exception to public notice be removed from the text of §24.239. The Texas Press Association further argued that §24.239 be amended to specify what form public notice should take and that that form be by publication in a newspaper.

Commission response

This rulemaking is limited to renumbering certain sections, renaming and relettering certain subchapters, and adding a new subchapter. No substantive changes were made to the rules. Therefore, the comment on §24.239 is outside of the scope of this rulemaking. This comment will be taken into consideration for a future rulemaking.

All comments, including any not specifically referenced herein, were fully considered by the commission.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §§24.3, 24.8, 24.11, 24.14

The repeals are adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and §14.052.

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 September 27, 2018.

TRD-201804210

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Public Utility Commission of Texas

Effective date: October 17, 2018

Proposal publication date: August 10, 2018

For further information, please call: (512) 936-7244



SUBCHAPTER B. RATES, RATE-MAKING, AND RATES/TARIFF CHANGES

16 TAC §§24.21 - 24.24, 24.26, 24.28 - 24.36

The repeals are adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

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 September 27, 2018.

TRD-201804211
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Effective date: October 17, 2018
Proposal publication date: August 10, 2018
For further information, please call: (512) 936-7244



SUBCHAPTER C. RATE-MAKING APPEALS

16 TAC §§24.41 - 24.44

The repeals are adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

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 September 27, 2018.

TRD-201804212
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Effective date: October 17, 2018
Proposal publication date: August 10, 2018
For further information, please call: (512) 936-7244



SUBCHAPTER D. RECORDS AND REPORTS

16 TAC §§24.71 - 24.76

The repeals are adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce

rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

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 September 27, 2018.

TRD-201804213
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Effective date: October 17, 2018
Proposal publication date: August 10, 2018
For further information, please call: (512) 936-7244



SUBCHAPTER E. CUSTOMER SERVICE AND PROTECTION

16 TAC §§24.80 - 24.90

The repeals are adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

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 September 27, 2018.

TRD-201804215
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Effective date: October 17, 2018
Proposal publication date: August 10, 2018
For further information, please call: (512) 936-7244



SUBCHAPTER F. QUALITY OF SERVICE

16 TAC §§24.91 - 24.95

The repeals are adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

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 September 27, 2018.

TRD-201804216
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Effective date: October 17, 2018
Proposal publication date: August 10, 2018
For further information, please call: (512) 936-7244



SUBCHAPTER G. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §§24.101 - 24.107, 24.109 - 24.111, 24.113 - 24.120

The repeals are adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

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 September 27, 2018.

TRD-201804217
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Effective date: October 17, 2018
Proposal publication date: August 10, 2018
For further information, please call: (512) 936-7244



SUBCHAPTER H. WATER UTILITY SUBMETERING AND ALLOCATION

16 TAC §§24.121 - 24.127

The repeals are adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

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 September 27, 2018.

TRD-201804219
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Effective date: October 17, 2018
Proposal publication date: August 10, 2018
For further information, please call: (512) 936-7244



SUBCHAPTER I. WHOLESALE WATER OR SEWER SERVICE

16 TAC §§24.128 - 24.138

The repeals are adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

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 September 27, 2018.

TRD-201804221
Andrea Gonzalez
Assistant Rules Coordinator
Public Utility Commission of Texas
Effective date: October 17, 2018
Proposal publication date: August 10, 2018
For further information, please call: (512) 936-7244



SUBCHAPTER J. ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

16 TAC §§24.140 - 24.144, 24.146, 24.147

The repeals are adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

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 September 27, 2018.

TRD-201804223
Andrea Gonzales
Assistant Rules Coordinator
Public Utility Commission of Texas
Effective date: October 17, 2018
Proposal publication date: August 10, 2018
For further information, please call: (512) 936-7244



SUBCHAPTER K. PROVISIONS REGARDING MUNICIPALITIES

16 TAC §§24.150 - 24.153

The repeals are adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002; Texas Water Code §13.041(b).

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 September 27, 2018.

TRD-201804225
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Assistant Rules Coordinator
Public Utility Commission of Texas
Effective date: October 17, 2018
Proposal publication date: August 10, 2018
For further information, please call: (512) 936-7244



SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §§24.3, 24.8, 24.11, 24.14

The new sections are adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and §14.052.

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 September 27, 2018.

TRD-201804214

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Rules Coordinator
Public Utility Commission of Texas
Effective date: October 17, 2018
Proposal publication date: August 10, 2018
For further information, please call: (512) 936-7223



SUBCHAPTER B. RATES AND TARIFFS

16 TAC §§24.25, 25.27, 24.29, 24.31, 24.33, 24.35, 24.37, 24.39, 24.41, 24.43, 24.44, 24.47, 24.49

The new sections are adopted under section 14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2016) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and §14.052.

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 September 27, 2018.

TRD-201804218
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: October 17, 2018
Proposal publication date: August 10, 2018
For further information, please call: (512) 936-7223



SUBCHAPTER C. ALTERNATIVE RATE METHODS

16 TAC §24.75

The new sections are adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provide the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and §14.052.

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 September 27, 2018.

TRD-201804220

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: October 17, 2018
Proposal publication date: August 10, 2018
For further information, please call: (512) 936-7223



SUBCHAPTER D. RATE-MAKING APPEALS

16 TAC §§24.101, 24.103, 24.105, 24.107

The new sections are adopted under section 14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2016) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and §14.052.

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 September 27, 2018.

TRD-201804222
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: October 17, 2018
Proposal publication date: August 10, 2018
For further information, please call: (512) 936-7223



SUBCHAPTER E. RECORDS AND REPORTS

16 TAC §§24.125, 24.127, 24.129, 24.131, 24.133, 24.135

The new sections are adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and §14.052.

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 September 27, 2018.

TRD-201804224
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: October 17, 2018
Proposal publication date: August 10, 2018
For further information, please call: (512) 936-7223



SUBCHAPTER F. CUSTOMER SERVICE AND PROTECTION

16 TAC §§24.151, 24.153, 24.155, 24.157, 24.159, 24.161, 24.163, 24.165, 24.167, 24.169, 24.171

The new sections are adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and §14.052.

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 September 27, 2018.

TRD-201804226
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: October 17, 2018
Proposal publication date: August 10, 2018
For further information, please call: (512) 936-7223



SUBCHAPTER G. QUALITY OF SERVICE

16 TAC §§24.201, 24.203, 24.205, 24.207, 24.209

The new sections are adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and §14.052.

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 September 27, 2018.

TRD-201804227
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: October 17, 2018
Proposal publication date: August 10, 2018
For further information, please call: (512) 936-7223



SUBCHAPTER H. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §§24.225, 24.227, 24.229, 24.231, 24.233, 24.235, 24.237, 24.239, 24.241, 24.243, 24.245, 24.247, 24.249, 24.251, 24.253, 24.255, 24.257, 24.259

The new sections are adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2007 and Supp. 2017) (PURA) and Texas Water Code §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and §14.052.

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 September 27, 2018.

TRD-201804228
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: October 17, 2018
Proposal publication date: August 10, 2018
For further information, please call: (512) 936-7223



SUBCHAPTER I. WATER UTILITY SUBMETERING AND ALLOCATION

16 TAC §§24.275, 24.277, 24.279, 24.281, 24.283, 24.285, 24.287

The new sections are adopted under §14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2016) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and §14.052.

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 September 27, 2018.

TRD-201804230
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: October 17, 2018
Proposal publication date: August 10, 2018
For further information, please call: (512) 936-7223



SUBCHAPTER J. WHOLESALE WATER OR SEWER SERVICE

16 TAC §§24.301, 24.303, 24.305, 24.307, 24.309, 24.311, 24.313, 24.315, 24.317, 24.319, 24.321

The new sections are adopted under section 14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2016) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and §14.052.

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 September 27, 2018.

TRD-201804231
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: October 17, 2018
Proposal publication date: August 10, 2018
For further information, please call: (512) 936-7223



SUBCHAPTER K. ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

16 TAC §§24.351, 24.353, 24.355, 24.357, 24.359, 24.361, 24.363

The new sections are adopted under section 14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2016) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and §14.052.

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 September 27, 2018.

TRD-201804232
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: October 17, 2018
Proposal publication date: August 10, 2018
For further information, please call: (512) 936-7223



SUBCHAPTER L. PROVISIONS REGARDING MUNICIPALITIES

16 TAC §§24.375, 24.377, 24.379, 24.381

The new sections are adopted under section 14.002 of the Public Utility Regulatory Act, Tex. Util. Code Ann. §14.002 (West 2016) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Public Utility Regulatory Act §14.002 and §14.052.

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 September 27, 2018.

TRD-201804233

Adriana Gonzales

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Public Utility Commission of Texas

Effective date: October 17, 2018

Proposal publication date: August 10, 2018

For further information, please call: (512) 936-7223



PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 41. AUDITING

SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

16 TAC §41.56

The Texas Alcoholic Beverage Commission adopts amendments to §41.56, Out-Of-State Winery Direct Shipper's Permits, with changes to the proposed text as published in the August 10, 2018, issue of the *Texas Register* (43 TexReg 5196). The rules will be republished.

Rule §41.56 sets forth requirements for reporting and payment of excise taxes by holders of Out-of-State Winery Direct Shipper's Permits under chapter 54 of the Alcoholic Beverage Code.

The amendments to §41.56 clarify the information required in the Direct Shipper's Report, require certain information to be attached to the report, and modify the reporting dates for the two categories of shippers.

Comments were received from Wine Institute suggesting that the cutoff between shippers who will be required to submit reports monthly versus those who will be required to submit reports quarterly be moved from 4,000 gallons annually (in the rule as proposed) to 5,000 gallons annually. Wine Institute said "Adopting this reasonable standard would allay some of the reporting burden for smaller wineries and those wineries that do not ship large amounts of wine directly to Texas consumers."

The commission agrees with Wine Institute's comments and makes the requested changes in subsections (g) and (h) of the rule.

The amendments also clarify in the rule requirements that already exist in Alcoholic Beverage Code §54.05. That code sec-

tion requires that a package be clearly labeled to show that it contains wine and that the package may only be delivered to a person who is age 21 or over. The shipping requirements in new subsection (i) of the rule require the shipper to notify the carrier that the shipment contains alcoholic beverages and that an adult signature is required at delivery. The amendments also make clear that permit holders who use a fulfillment center or similar service to fill an order must require that center or service to provide the required notice to the carrier on behalf of the permit holder.

New subsection (j) provides notice that the Winery Direct Shipper's Permit is subject to cancellation or suspension if any of the requirements in §41.56 are not met, whether by the permit holder or by a fulfillment center or similar service used to fill the winery's orders. This notice is consistent with Alcoholic Beverage Code §11.61(b)(2).

The amendments are adopted pursuant to Alcoholic Beverage Code §5.31, which authorizes the agency to prescribe rules necessary to carry out the provisions of the Alcoholic Beverage Code, §54.06(c), which provides that the agency shall establish rules requiring the holder of an out-of-state winery direct shipper's permit to periodically file reports giving the commission such information as the commission determines is necessary to more efficiently and effectively enforce applicable state laws, and §54.11, which requires the commission to adopt rules necessary to implement chapter 54 of the Alcoholic Beverage Code.

§41.56. *Out-Of-State Winery Direct Shipper's Permits.*

(a) This rule relates to Chapter 54 of the Alcoholic Beverage Code.

(b) Each holder of an out-of-state winery direct shipper's permit shall make reports (Direct Shipper's Report) to the commission on forms prescribed by the executive director or executive director's designee.

(c) The report shall be made and filed by the permittee with the commission at its offices in Austin, Texas, on or before the 15th day of the month following the end of the reporting period for which the report is made and shall show:

(1) the reporting period and year for which the report is made, the permit number and the name and address of the winery; and

(2) the invoice date, invoice number, customer name, city, total wine gallons per invoice, and carrier name and tracking number for each sale and delivery.

(d) The permittee shall attach to the Direct Shipper's Report either:

(1) copies of invoices showing:

(A) the names and addresses of the individuals to whom the alcoholic beverages were shipped;

(B) the brands of products shipped and the quantities of each brand;

(C) the prices charged for each brand;

(D) the licensed common carrier used to deliver the alcoholic beverages; and

(E) the licensed common carrier tracking number used to identify each shipment; or

(2) a list containing the information described in paragraph (1) of this subsection.

(e) Holders of out-of-state winery direct shipper's permits must pay the excise tax on the total gallons of wine shipped into the state, not later than the 15th day of the month following the reporting period the wine was shipped into the state. Remittance of the tax due on wine, less 2.0% of the amount due when submitted within the required time, shall accompany the report hereinbefore provided and shall be made by check, United States money order, or other acceptable methods of payment payable to the Texas Alcoholic Beverage Commission.

(f) As long as an out-of-state winery direct shipper's permit remains active, the reports required herein must be filed even though no sales or shipments have been made.

(g) Holders of out-of-state winery direct shipper's permits that shipped 5,000 gallons annually or more to consumers in Texas during the previous calendar year, must file a monthly report.

(h) Holders of out-of-state winery direct shipper's permits that shipped less than 5,000 gallons annually to consumers in Texas during the previous calendar year, must file a quarterly report. Quarterly Reporting Periods: January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(i) Shipping requirements.

(1) Holders of out-of-state winery direct shipper's permits shall require adult signature upon delivery and shall notify the carrier that the shipment contains alcoholic beverages.

(2) Holders of out-of-state winery direct shipper's permits utilizing a fulfillment center or similar service to fulfill an order shall ensure that the fulfillment center or service requires adult signature upon delivery and notify the carrier that a shipment contains alcoholic beverages.

(j) Failure to comply with the requirements of this section, including failure to ensure that a fulfillment center or similar service requires adult signature upon delivery and notify the carrier that a shipment contains alcoholic beverages, is cause for cancellation or suspension of the direct shipper's permit.

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 September 26, 2018.

TRD-201804184

Clark Smith

General Counsel

Texas Alcoholic Beverage Commission

Effective date: October 16, 2018

Proposal publication date: August 10, 2018

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS

DIVISION 1. STATUS, STANDARDS, AND SANCTIONS

19 TAC §97.1055

The Texas Education Agency (TEA) adopts an amendment to §97.1055, concerning accreditation status. The amendment is adopted without changes to the proposed text as published in the June 29, 2018 issue of the *Texas Register* (43 TexReg 4293) and will not be republished. The adopted amendment modifies the rule to provide clarifications to existing statutory provisions and reflect the recodification of Texas Education Code (TEC), Chapter 39, Subchapter E, into TEC, Chapter 39A.

REASONED JUSTIFICATION. Section 97.1055 defines the requirements a school district must meet each school year to receive the status of Accredited and states how the accreditation statuses of Accredited-Warned, Accredited-Probation, and Not Accredited-Revoked are determined.

The adopted amendment to §97.1055 adds new subsection (a)(7) to extend the commissioner's option to withhold the assignment of an accreditation status to an open-enrollment charter school subject to revocation or non-renewal/expiration to those that have voluntarily surrendered their charter contract in order to reduce duplicative actions on the part of the TEA.

New subsection (a)(10) clarifies the commissioner's authority to proceed with previously imposed sanctions due to a lowered accreditation status after the subsequent issuance of a new accreditation status. This addition best fulfills the purposes of the accreditation system by ensuring that interventions and sanctions are continued so that districts do not earn their way out of the accreditation system only to fall back into the system in the next school year.

New subsection (d)(2) was added to clarify the commissioner's options when a district might otherwise earn a Not Accredited-Revoked accreditation status. When the commissioner determines that good cause exists to maintain the district's current status, together with new or existing interventions or sanctions, the commissioner may abate the issuance of an accreditation status, issue another accreditation, appoint a board of managers to govern the district, and/or take other actions reasonably necessary to achieve the purposes of the accreditation system in lieu of revoking the district's accreditation. This allows the commissioner greater flexibility to tailor interventions to meet the purposes of the accreditation system.

New subsection (d)(3) was added to explain how accreditation statuses will be determined during school years in which a district is operated wholly or in part by an appointed board of managers. This change allows the board of managers an opportunity to correct the district's academic, financial, programmatic, and governance deficiencies and holds the board of managers responsible for the performance of the district that occurs during the period of appointment. This provision best meets the purposes of the accreditation system by recognizing that the appointment of a board of managers is a fundamental change in the operation of the district and allowing time for that fundamental change to impact the academic, financial, and programmatic performance of the district.

In addition, the adopted amendment updates cross references to align with Senate Bill 1488, 85th Texas Legislature, Regular Session, 2017, which recodified TEC, Chapter 39, Subchapter E, into TEC, Chapter 39A.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began June 29, 2018, and ended July 30, 2018. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §39.051, which requires the commissioner to determine accreditation statuses; and TEC, §39.052, which establishes the requirements for the commissioner to consider when determining accreditation statuses.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §39.051 and §39.052.

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 September 28, 2018.

TRD-201804240

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: October 18, 2018

Proposal publication date: June 29, 2018

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



PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §§233.1 - 233.15, 233.17

The State Board for Educator Certification (SBEC) adopts amendments to §§233.1 - 233.15 and 233.17 concerning categories of classroom teaching certificates. The amendments to §§233.1 - 233.13, 233.15 and 233.17 are adopted without changes to the proposal text as published in the June 22, 2018 issue of the *Texas Register* (43 TexReg 3978) and will not be republished. The amendment to §233.14 is adopted with changes. The adopted amendments implement legislation from the 85th Texas Legislature, Regular Session, 2017, to establish new certificates for Early Childhood: Prekindergarten-Grade 3 and Trade and Industrial Workforce Training: Grades 6-12; specify procedures for an interested party to request an additional foreign language certificate; and identify any additional requirements to obtain certification and/or be eligible to teach specific courses. Additional adopted amendments and technical changes provide clarification for consistent application of these rules, remove duplicative language specifying assignments into which certificate holders are eligible to be placed, and establish consistent information related to the classroom certificates issued by the SBEC.

REASONED JUSTIFICATION: The Texas Education Code (TEC), §21.041(b)(2), authorizes the SBEC to adopt rules that specify the classes of educator certificates to be issued, including emergency certificates. The SBEC rules in 19 Texas Administrative Code (TAC) Chapter 233 establish the general categories of classroom teaching certificates, identify specific grade levels and subject areas of classroom certificates, and

where appropriate, state the general area(s) of assignments that may be taught by the holder of each certificate.

The adopted amendments remove assignment-specific text from most sections of the rule as this information is duplicative and already resides in 19 TAC Chapter 231, Requirements for Public School Personnel Assignments. Information relevant to either legislative mandates, training requirements, or other qualifications necessary for issuance of a specific certificate prior to placement into the assignment is maintained. The following is a description of the adopted amendments.

§233.1. *General Authority*

Language was amended in subsection (e) to reference §230.21, Educator Assessment, to clarify and establish a single, specific list of examinations that must be successfully completed prior to issuance of an initial standard classroom teaching certificate. Duplicative language referencing test requirements was deleted.

New subsection (f) allows staff to extend rule deadlines when rules in this chapter cannot be complied with because of a disaster that results in the governor declaring a state of disaster. This amendment allows Texas Education Agency (TEA) staff to extend deadlines in this chapter for up to 90 days to accommodate persons in the disaster areas identified by the governor's declaration.

Language in subsection (h) was amended to add the text, "where applicable," to clarify that only certain certificates have general assignment descriptions that make them subject to legislative mandates, federal requirements, or other training or guidelines specific to issuance of the certificate.

§233.2. *Early Childhood; Core Subjects*

Language was amended in the heading to add "Early Childhood" and delete "Generalist" since those certificates will no longer be issued. This adopted amendment does not change the eligibility status for classroom assignments for individuals issued a Generalist certificate through the provisions of this chapter. New subsection (a) adds the Early Childhood: Prekindergarten-Grade 3 certificate to implement Senate Bill 1839 and House Bill (HB) 2039, 85th Texas Legislature, Regular Session, 2017.

The Core Subjects: Early Childhood-Grade 6 and Core Subjects: Grades 4-8 certificate references previously listed in subsections (a) and (b) were re-lettered as subsections (b) and (c).

Language referencing the certificates for Generalist: Early Childhood-Grade 6 and Generalist: Grades 4-8 was deleted since they were issued for the last time in fall 2017.

§233.3. *English Language Arts and Reading; Social Studies*

Language that specified what the certificate holder can teach was deleted as this information is duplicative and already resides in 19 TAC Chapter 231, Requirements for Public School Personnel Assignments. Language referencing the Journalism: Grades 8-12 certificate was deleted since it was issued for the last time in 2016. Remaining subsections were re-lettered accordingly.

§233.4. *Mathematics; Science*

Language that specified what the certificate holder can teach was deleted as this information is duplicative and already resides in 19 TAC Chapter 231, Requirements for Public School Personnel Assignments. Language referencing the certificates for Physics/Mathematics: Grades 8-12 and Mathematics/Physical Science/Engineering: Grades 8-12 was deleted since those

certificates were issued for the last time in 2016. Remaining subsections were re-lettered accordingly.

§233.5. Technology Applications and Computer Science

Language in subsections (a)-(c) that specified what the certificate holder can teach was deleted as this information is duplicative and already resides in 19 TAC Chapter 231, Requirements for Public School Personnel Assignments.

§233.6. Bilingual Education

Language referencing the certificates for Bilingual Generalist: Early Childhood-Grade 6 and Bilingual Generalist: Grades 4-8 was deleted since those certificates were issued for the last time in fall 2017. Language referencing what the certificate holder can teach was deleted as it is duplicative language that already resides in 19 TAC Chapter 231, Requirements for Public School Personnel Assignments. Remaining subsections were re-lettered accordingly.

§233.7. English as a Second Language

Language referencing the certificates for English as a Second Language Generalist: Early Childhood-Grade 6 and English as a Second Language Generalist: Grades 4-8 was deleted since those certificates were issued for the last time in fall 2017. In addition, language in this section that specified what the certificate holder can teach was deleted as it is duplicative language that already resides in 19 TAC Chapter 231, Requirements for Public School Personnel Assignments.

§233.8. Special Education

Language in subsection (a) specific to qualifications for assignment as a special education teacher and language in subsections (a)-(d) that specified what the certificate holder can teach was deleted as this information is duplicative and already resides in 19 TAC Chapter 231, Requirements for Public School Personnel Assignments.

§233.9. Gifted and Talented

Language that specified what the certificate holder can teach was deleted as this information is duplicative and already resides in 19 TAC Chapter 231, Requirements for Public School Personnel Assignments.

§233.10. Fine Arts

Language in subsections (a), (b), and (e) that specified what the certificate holder can teach was deleted as this information is duplicative and already resides in 19 TAC Chapter 231, Requirements for Public School Personnel Assignments.

§233.11. Health

Language that specified what the certificate holder can teach was deleted as this information is duplicative and already resides in 19 TAC Chapter 231, Requirements for Public School Personnel Assignments.

§233.12. Physical Education

Language that specified what the certificate holder can teach was deleted as this information is duplicative and already resides in 19 TAC Chapter 231, Requirements for Public School Personnel Assignments.

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

Language in subsections (a)-(f) that specified what the certificate holder can teach was deleted as this information is duplicative and already resides in 19 TAC Chapter 231, Requirements for Public School Personnel Assignments.

Language referencing the certificates for Agricultural Science and Technology: Grades 6-12 and Business Education: Grades 6-12 was deleted since those certificates were issued for the last time in fall 2017.

Language that referenced the certificate for Science, Technology, Engineering, and Mathematics (STEM): Grades 6-12 certificate was deleted as there are currently no approved educator preparation programs (EPPs) to prepare candidates, no adopted educator standards to guide the foundation of educator preparation or test development, and no examination available to assess an individual's preparedness and readiness for issuance of a certificate in this subject area. There are other classroom certificates already available for issuance under provisions of this chapter that qualify an individual to be placed in an assignment to teach STEM courses as specified in 19 TAC Chapter 231, Requirements for Public School Personnel Assignments.

Remaining subsections were re-lettered accordingly.

§233.14. Career and Technical Education (Certificates requiring experience and preparation in a skill area)

Language referencing the certificates for Marketing Education: Grades 8-12 and Health Science Technology Education: Grades 8-12 was deleted since those certificates were issued for the last time in fall 2017. Language referencing Trade and Industrial Education: Grades 8-12 certificate was deleted as this information is duplicative and already resides in 19 TAC Chapter 231, Requirements for Public School Personnel Assignments.

Remaining subsections were re-lettered accordingly.

Adopted new subsection (e) adds the Trade and Industrial Workforce Training Certificate: Grades 6-12, mandated in HB 3349, 85th Texas Legislature, Regular Session, 2017. The adopted new subsection aligns with legislation as it relates to the minimal educational requirement, the recency and duration of experience, and licensure for a specific trade. The adopted new subsection also supports agency-wide and statewide efforts to open pathways into career and technical areas for candidates with knowledge, skills, experience, and licensure to be successful in this area of certification. Eligibility and coursework requirements for individuals interested in pursuing this area of certification currently are addressed in 19 TAC Chapter 227, Provisions for Educator Preparation Candidates, and 19 TAC Chapter 228, Requirements for Educator Preparation Programs.

A technical edit was made at adoption to correct a cross reference in §233.14(b)(2).

§233.15. Languages Other Than English

Adopted new subsection (a) provides introductory text specific to certificates for languages other than English (LOTE) issued by the SBEC. Subsections that identify each foreign language certificate area relating to subsection (a) were renumbered as paragraphs (1)-(16), and language specifying what the certificate holder can teach was deleted as this information is duplicative and already resides in 19 TAC Chapter 231, Requirements for Public School Personnel Assignments.

At the October 2017 SBEC meeting, the SBEC received public testimony related to the languages of Tamil and Esperanto. Realizing that there is a district need to add additional language

choices for students in order to be responsive to the needs and interests of their multicultural communities, as well as to continue to prepare their students for the increasing globalization of our economy, there are existing provisions in 19 TAC §231.97, Innovative Course, and 19 TAC §231.99, Local Credit Course, that allow school districts flexibility to assign an individual to teach a foreign language course for which a certification does not exist; however, the course offering will not count for the foreign language graduation requirement. An assignment for an innovative course is allowed with a valid certificate that matches the grade level of the assignment determined by TEA. An assignment where local credit is given is allowed with a valid certificate that matches the grade level of the assignment or appropriate qualifications as determined by the school district. Districts that are interested in offering a foreign language course for which there is no educator certification and that do want it to count for the foreign language graduation requirement, can identify a language proficiency examination in that foreign language and provide for credit by examination.

Because districts are required to ensure that instructors are appropriately certified to teach any Texas Essential Knowledge and Skills-based course, some school districts have eliminated LOTE courses because SBEC does not issue a certificate for some languages. Beyond existing options for districts to offer LOTE courses for which there are no SBEC certificates, adopted new subsection (b) establishes procedures to allow an interested person to submit a request for an additional LOTE certificate utilizing the provisions in 19 TAC §250.20, Petition for Adoption of Rules or Rule Changes, to petition the SBEC for rulemaking. Adopted new subsection (b)(1) requires the petitioner to clarify the desired certificate and confirm the number of students designated to receive instruction in the language other than English; adopted new subsection (b)(2) requires the petitioner to clarify the number of individuals interested in adding certification in the new language; and adopted new subsection (b)(3) requires the petitioner to describe the rationale and student benefit for the additional LOTE certificate. These requirements allow TEA staff to determine the extent of the need for the additional foreign language and will inform staff's recommendation to the SBEC. Also, having in rule the specific process necessary for the SBEC to consider a request for a new LOTE certification provides clarification and guidance to interested school districts and individuals.

§233.17. Junior Reserve Officer Training Corps.

Language was amended in paragraph (4) to replace the specific test name reference, Pedagogy and Professional Responsibilities, with more general wording that confirms the appropriate examination must still be passed for issuance of the certificate. This change mirrors other technical edits in this chapter to verify that information about required examinations for issuance of licensure is retained and updated in the figure adopted in rule in 19 TAC §230.21(e), Educator Assessment.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began June 22, 2018, and ended July 23, 2018. The SBEC also provided an opportunity for registered oral and written comments at the August 3, 2018, meeting in accordance with the SBEC board operating policies and procedures. The following is a summary of the public comments received on the proposal and the responses.

Comments on Teaching Tamil under the New LOTE Certificate Process

Comment: One hundred and forty individuals commented in support of the proposed process in 19 TAC §233.15(b), indicating that Tamil is a language that should be taught under the new LOTE certificate for various reasons, including it is one of the oldest surviving languages that is still spoken and should be recognized as such and passed down to future generations; both native and non-native speakers would benefit from learning Tamil and the history that accompanies the language; and over 3,000 Texas students are currently enrolled in private Tamil schools to learn the language.

One of the 140 individuals commenting in support of teaching Tamil under the new LOTE, the president of the Greater Houston Tamil School, commented that Tamil schools already exist in major Texas cities and are accredited through AdvancED, noting that there is an increasing enrollment in those schools. The commenter added that there are Texas-certified teachers who are willing to obtain the Tamil certification should the SBEC approve the LOTE course. Further, the commenter stated that California is currently teaching Tamil, as well as universities throughout the country, including Texas, Pennsylvania, California, and Illinois.

Of the 140 individuals in support of teaching Tamil under the new LOTE, 81 are Texas parents; two are Texas administrators, representing the Sastha Tamil Foundation, Austin Tamil School, Greater Houston Tamil School, Katy branch; 10 are out-of-state commenters; one is a member of the Tamil Association of Dallas Fort Worth; 12 are community members, one is a Texas counselor; and 33 are parents, community members, faculty, or staff representing the Greater Houston Tamil Schools of Katy, Pearland, the Woodlands, Sugarland, and Central Texas, as well as the Austin Tamil School and Coppell Tamil Learning Center.

Response: The SBEC agrees. The SBEC has determined that the amendments ensure consistency in the review and completion of all requests submitted to the SBEC to consider new certificates for languages other than English. TEA staff also acknowledges the numerous, positive comments submitted about Tamil and respects the longstanding history of this language.

Comments Offering General Support to the Proposed Amendments

Comment: Seventeen commenters offered their general or full support of the proposed amendments. Three of these commenters cited that the links between education and employment cannot be overestimated and that the proposed amendments would ensure qualified teachers in all areas, would broaden the current rule to reflect the diversity of Texas; and are an important change in the lives of their children. Of the 17 commenters offering their general support, three are out-of-state commenters, two are Texas teachers, one is a retired Texas teacher, one identified as a community member, and 10 are Texas parents.

Response: The SBEC agrees. The SBEC has determined that the amendments support many of the goals echoed in the public comments for education, employment, diversity, and student impact.

Comments Against the Proposed Amendments Regarding Early Childhood-Grade 3 (EC-3) Certificates

Comment: Five Texas administrators stated they are against the EC-Grade 3 component of the rule for several reasons, including the difficulty the proposed amendment would create in staffing teachers in Grades 4 and 5, as those grades are the most difficult to fill because they are testing grades and teachers are reluctant to teach them. One administrator from Dumas ISD stated that

the limited certification would make it difficult to meet student and staffing needs, particularly at an EC-Grade 4 campus. Two Texas administrators stated they are against the EC-Grade 6 component of the rule.

One administrator from Amarillo ISD explained his or her opposition to the proposed amendments because they could create financial hardship on the district due to elementary campuses with high mobility. The commenter added that the proposed amendments would require a teacher to take an additional test to become certified to move to a different grade level, for example, from Grade 2 to Grade 4, which eventually could create an over-staffing and over-budget problem for the district. The administrator further explained that he or she foresees a phasing out of EC-Grade 6 certification because of the proposal and that it is not segmenting the EC-Grade 6 tests that create better teachers, but rather it is the training that the districts provide that makes for better teachers.

Response: The SBEC disagrees. The Texas Legislature mandated the creation of a new certificate for Early Childhood: Prekindergarten through Grade 3. Additionally, the current certificate for Core Subjects: Early Childhood through Grade 6 is still in place to provide certification and employment flexibility for candidates and districts. The SBEC acknowledged the comments regarding staffing challenges for certain grades and agreed that appropriate placement of educators in the classroom is a key component critical to student success and teacher support and retention. The addition of a new EC-3 certificate does not eliminate the current EC-6 certificate. The SBEC has determined that the two administrator comments against the EC-6 component of the rule were likely meant to reference EC-3, as there are no changes for the EC-6 certificate. The SBEC has maintained language as proposed.

Comments in Support of the Proposed Amendments Concerning Trade and Industrial Workforce Training

Comment: Eleven commenters shared their support of the trade and industrial component of the proposed amendments, citing distinct reasons. A Texas teacher commented that trade and industrial certifications would offer instructional positions for many retiring, trained professionals in the areas of masonry, culinary arts, carpentry, mechanics, etc., and that instruction in vocational programs, though funding has previously been a problem, is necessary. The commenter added that not every student will attend college and such training offers education for everyone, consequently, improving many lives.

A retired teacher commented that after having seen students struggle with challenging secondary curriculum--students who would have dropped out of school had it not been for the opportunity to experience success via working with their hands in vocational programs-- the commenter supports the abbreviated certification program in HB 3349 and knows first-hand the significance of offering trade and industrial, health science, and marketing programs to students.

Eight Texas community members expressed that returning the trades to schools, along with skilled individuals to teach students is highly important, imperative, and the right direction for educating the next generation, allowing both theory and hands-on learning. The commenters further mentioned that it is educators' duty to bridge the gaps from the classroom to independence for the next generation by means of offering students a clear and direct path to technology programs. One commenter added that offering vocational programs provides access to areas lacking

skilled trained workers to provide essential services and bolsters the workforce for undermanned professions.

Of the 11 commenters, eight are Texas community members, one a retired Texas teacher, one a parent, and one active Texas teacher.

Response: The SBEC agrees. The SBEC has determined that the amendments align with sentiments shared through public comments and will also lead to effective implementation of the new certificate mandated by legislation for Trade and Industrial Workforce Training: Grades 6-12.

Comments Offering Support for LOTE and Offering Students Language Options

Comment: Forty-four commenters stated they support the proposed amendments because adding new LOTE certificates offers all students the opportunity to learn more languages, along with or in addition to Tamil, citing that providing children with many opportunities to learn different languages and cultures is important, as is giving students more language choices, including historic languages. Commenters stated benefits to learning Tamil include learning the world's oldest classical language and that students from more than 10 countries would benefit from Tamil curriculum, helping them to maintain or better understand their multicultural heritages. Of the 44 commenters who share support for the proposed amendments providing language options, 35 are Texas parents, seven are Texas teachers, one is a Texas counselor, and one identified as a Texas educator preparation program administrator, faculty, or staff member.

Response: The SBEC agrees. The SBEC has determined that the amendments will ensure consistency in the review and completion of all requests submitted to the SBEC to consider new certificates for LOTE. The SBEC also acknowledges the numerous, positive comments submitted about Tamil and respects the longstanding history of this language. In addition, the SBEC agrees with the stated support for foreign language courses and their positive impact on student learning.

The State Board of Education (SBOE) took no action on the adoption of the amendments to 19 TAC Chapter 233 at the September 14, 2018, SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted 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, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; 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), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each

class of educator certificate is valid; 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, §21.041(b)(6), which requires the SBEC to propose rules that provide for special or restricted certification of educators, including certification of instructors of American Sign Language; TEC, §21.044(e), which provides the requirements that SBEC rules must specify for a person to obtain a certificate to teach a health science technology education course; TEC, §21.044(f), which provides that SBEC rules for obtaining a certificate to teach a health science technology education course shall not specify that a person must have a bachelor's degree or establish any other credential or teaching experience requirements that exceed the requirements under TEC, §21.044(e); TEC, §21.0442, as added by House Bill (HB) 3349, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to create an abbreviated educator preparation program for trade and industrial workforce training; TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC. TEC, §21.048(a), also specifies that the commissioner of education shall determine the satisfactory level of performance required for each certification examination and require a satisfactory level of examination performance in each core subject covered by the generalist certification examination; TEC, §21.0489, as added by Senate Bill 1839 and HB 2039, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to create a prekindergarten-Grade 3 certificate; and TEC, §21.0491, as added by HB 3349, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §§21.003(a); 21.031; 21.041(b)(1)-(4) and (6); 21.044(e) and (f); 21.048(a); 21.0442 and 21.0491, as added by House Bill (HB) 3349, 85th Texas Legislature, Regular Session, 2017; and 21.0489, as added by Senate Bill 1839 and HB 2039, 85th Texas Legislature, Regular Session, 2017.

§233.14. Career and Technical Education (Certificates requiring experience and preparation in a skill area).

(a) All individuals seeking a career and technical education certificate specified in this section must have the required number of years of qualified work experience and preparation in a skill area approved in accordance with the provisions of subsection (f) of this section prior to issuance of the certificate and assignment in a Texas school.

(b) Marketing: Grades 6-12. The Marketing: Grades 6-12 certificate may be issued no earlier than September 1, 2014. A candidate for the Marketing: Grades 6-12 certificate must:

(1) hold a bachelor's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB; and

(2) have two years of full-time wage-earning experience in a marketing occupation as specified in subsection (f) of this section.

(c) Health Science: Grades 6-12 certificate. The standard Health Science: Grades 6-12 certificate may be issued no earlier than September 1, 2014. A standard Health Science: Grades 6-12 certificate shall be based on experience and academic preparation in the skill area and require the following:

(1) an associate or more advanced degree from an accredited institution of higher education that at the time was accredited or

otherwise approved by an accrediting organization recognized by the THECB;

(2) current licensure, certification, or registration by a nationally recognized accrediting agency as a health professions practitioner; and

(3) approval, by the certification officer of an approved EPP, of two years of full-time wage-earning experience using the licensure requirement described in paragraph (2) of this subsection.

(d) Trade and Industrial Education: Grades 6-12 certificate. The certificate may be issued no earlier than September 1, 2014. A standard Trade and Industrial Education: Grades 6-12 certificate shall be based on academic preparation and experience in the skill areas to be taught and completion of specified pedagogy and professional responsibilities training.

(1) The standard Trade and Industrial Education: Grades 6-12 certificate shall require the following academic preparation and wage-earning experience.

(A) Option I. An individual must:

(i) hold a bachelor's degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB; and

(ii) have two years of full-time wage-earning experience within the past ten years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP approved to prepare teachers for the Trade and Industrial Education: Grades 6-12 certificate. Up to 18 months of the wage-earning experience can be met through a formal documented internship.

(B) Option II. An individual must:

(i) hold an associate degree from an accredited institution of higher education that at the time was accredited or otherwise approved by an accrediting organization recognized by the THECB; and

(ii) have two years of full-time wage-earning experience within the past ten years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP approved to prepare teachers for the Trade and Industrial Education: Grades 6-12 certificate.

(C) Option III. An individual must:

(i) hold a high school diploma or the equivalent; and

(ii) have five years of full-time wage-earning experience within the past ten years in one or more approved occupations for which instruction is offered. The experience must be approved by the certification officer of an EPP approved to prepare teachers for the Trade and Industrial Education: Grades 6-12 certificate.

(2) The standard Trade and Industrial Education: Grades 6-12 certificate shall require current licensure, certification, or registration by a nationally recognized accrediting agency based on a recognized test or measurement. If the licensure, certification, or registration is not based on a recognized test or measurement, then passing the appropriate NOCTI assessment is required. A cosmetology teacher must hold a current cosmetology instructor license issued by the Texas Department of Licensing and Regulation.

(3) An individual must complete one year of creditable classroom teaching experience, as defined in Chapter 153, Subchapter

CC, of this title, on an emergency permit or probationary certificate in the specific area of trade and industrial education.

(4) The holder of a standard or provisional Trade and Industrial Education: Grades 6-12 certificate or Vocational Trades and Industry certificate may be approved for additional trade and industrial education assignments provided he or she meets the required number of years of wage-earning experience as indicated in this subsection. Work experience must be approved according to the provisions of this subsection. The EPP must submit a statement of qualifications to the TEA within 60 calendar days of approval.

(e) Trade and Industrial Workforce Training: Grades 6-12 certificate. The certificate may be issued no earlier than September 1, 2018. A standard Trade and Industrial Workforce Training: Grades 6-12 certificate shall be based on academic preparation and experience in the skill areas to be taught and completion of specified pedagogy and professional responsibilities training.

(1) The standard Trade and Industrial Workforce Training: Grades 6-12 certificate shall require all of the following academic preparation and wage-earning experience.

(A) An individual must have been issued a high school diploma or its equivalent or a postsecondary credential, certificate or degree.

(B) An individual must have seven years of full-time wage-earning experience within the preceding 10 years in an approved occupation for which instruction is offered, and have not been the subject of a complaint filed with a licensing entity or other agency that regulates the occupation of the person, other than a complaint that was determined baseless or unfounded by that entity or agency.

(C) An individual must hold with respect to that occupation a current license, certificate, or registration, as applicable, issued by a nationally recognized accrediting agency based on a recognized test or measurement.

(2) The standard Trade and Industrial Workforce Training: Grades 6-12 certificate shall require current licensure, certification, or registration by a nationally recognized accrediting agency based on a recognized test or measurement.

(f) Career and technical education certificates. Approval of career and technical education certificates in this section shall be based on prior experience and preparation in a skill area.

(1) Prospective career and technical education teachers shall submit a statement of qualifications detailing prior experience and skill area preparation to the EPP approved to prepare teachers for the career and technical education certificate sought. The certification officer of the EPP shall review the applicant's statement of qualifications to determine whether the applicant meets the appropriate approval criteria specified in this subsection. In the case of an educator who otherwise qualifies for certification by examination in Marketing: Grades 6-12, Health Science: Grades 6-12, or Trade and Industrial Education: Grades 6-12, the review and approval of required work experience may be performed by a certified school administrator.

(2) Under this subsection, 12 months of wage-earning experience consisting of at least 40 hours per week shall equal one year of full-time experience. Wage-earning experience consisting of less than 40 hours, but at least 20 hours per week, shall be calculated at a 50% rate in determining years of full-time experience. Wage-earning experience consisting of less than 20 hours per week shall not be considered acceptable in determining full-time experience.

(3) Postsecondary and proprietary school teaching experience in the specific occupational area for which the candidate is seek-

ing certification may be counted on a year-for-year basis in lieu of on-the-job experience. Proprietary schools must be accredited or otherwise approved by the Texas Workforce Commission. Recency of experience requirements must be met, as well as current licensure, certification, or registration by a state or nationally recognized accrediting agency.

The agency certifies that legal counsel has reviewed the 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 October 1, 2018.

TRD-201804242

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State Board for Educator Certification

Effective date: October 21, 2018

Proposal publication date: June 22, 2018

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



CHAPTER 247. EDUCATORS' CODE OF ETHICS

19 TAC §247.1, §247.2

The State Board for Educator Certification (SBEC) adopts amendments to §247.1 and §247.2, concerning the Educators' Code of Ethics. The amendments to §247.1 and §247.2 are adopted without changes to the proposal text as published in the June 22, 2018 issue of the *Texas Register* (43 TexReg 3988) and will not be republished. The adopted amendment to 19 Texas Administrative Code (TAC) §247.1 adds the definitions of "sexual harassment" and "under the influence of alcohol." The adopted amendment to 19 TAC §247.2 makes educators who act recklessly in diverting money for personal gain or misrepresenting the educator's employment history subject to discipline by the SBEC, clarifies language regarding an educator's illegal use of drugs, and adds a standard regarding educator-on-educator workplace sexual harassment. The adopted amendment to 19 TAC §247.2 also strikes Standard 1.14 (a prohibition on assisting an educator with getting a new job when the educator had an inappropriate relationship with a student or minor) because the provision was moved to 19 TAC §249.15.

REASONED JUSTIFICATION: The adopted amendment to §247.1(e)(17) adds a new definition for "sexual harassment," defining the term that is used later in the adopted new §247.2(2)(H) that makes it a violation of the Educators' Code of Ethics for an educator to intentionally or knowingly subject a colleague to sexual harassment. This provision addresses educator-on-educator sexual misconduct and is tailored to exclude concepts such as hostile work environment that can be better addressed by employment law actions than by educator disciplinary proceedings.

The adopted amendment to §247.1(e)(22) defines "under the influence of alcohol" for purposes of §247.2(1)(M), which makes educators subject to discipline when they are "under the influence of alcohol" at school or at school-related activities. The adopted definition includes any educator with a blood-alcohol content of .04% or higher because this is the blood alcohol level at which standard school district policy prohibits individuals from driving school buses and at which a commercial driver is considered to be driving while intoxicated under both state and federal

law. The definition also includes any physical or mental symptoms to allow evidence of such symptoms to suffice to prove a violation of the Educators' Code of Ethics if evidence of the educator's blood-alcohol content is not available or admissible.

The adopted amendment to §247.2(1)(B) changes the level of intent required to prove that an educator violated the Educators' Code of Ethics by diverting money or property for personal gain from "knowingly" to "intentionally, knowingly, or recklessly." This allows SBEC to discipline educators for misappropriation when the educator was reckless in book-keeping or in how the educator kept the money or property, as well as when the educator acted intentionally or knowingly to divert the money or property.

The adopted amendment to §247.2(1)(K) changes the level of intent required to prove that an educator violated the Educators' Code of Ethics by misrepresenting personal history when applying for employment to include educators who act recklessly. The change is intended to inspire educators to take extra care in the information they provide school districts and to allow SBEC to discipline educators who make such misrepresentations even when there is insufficient evidence that the educator acted knowingly or intentionally.

The adopted change to §247.2(1)(L) revises the wording of the prohibition on educators illegally using, distributing, or abusing drugs to make it clearer and more enforceable. The changes are not intended to significantly alter the meaning of the provision.

The adopted amendment strikes §247.2(1)(N), which prohibited an educator from assisting another educator in getting a new job as an educator or any position in a school if the educator knows that the job-seeker engaged in sexual misconduct with a student or minor. This provision was initially adopted to implement the Every Student Succeeds Act, 20 United States Code, §7926. Texas Education Agency received feedback from stakeholders who felt that 19 TAC Chapter 249 was a more appropriate location for educator disciplinary rules that reiterate or implement separate statutory authority and that the Educators' Code of Ethics should be reserved for ethical requirements that were not otherwise reflected in the law. To that end, the language of this provision is simultaneously being adopted for inclusion in 19 TAC §249.15, Disciplinary Action by State Board for Educator Certification, which can be found in the Adopted Rules section of this issue.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began June 22, 2018, and ended July 23, 2018. The SBEC also provided an opportunity for registered oral and written comments at the August 3, 2018 meeting in accordance with the SBEC board operating policies and procedures. The following is a summary of the public comments received on the proposal and the responses.

Comment: The Texas State Teachers Association (TSTA) commented that it opposes the addition of "recklessly" to 19 TAC §247.2(B), which gives the SBEC authority to sanction educators that "misappropriate, divert, or use monies, personnel, property, or equipment committed to his or her charge for personal gain or advantage." TSTA noted that the rule had no limit on how little money could be involved and could implicate educators who only accidentally mishandle money.

TSTA also objected to the addition of "recklessly" to 19 TAC §247.2(K), which gives SBEC authority to sanction educators that "misrepresent his or her employment history, criminal history, and/or disciplinary record when applying for subsequent

employment." TSTA stated that an educator may genuinely misunderstand the questions on the employment application due to the convoluted nature of teacher nonrenewal or termination processes at the district level. TSTA further commented that whether a teacher is hired based on an employment application is for the school district to decide, not the commissioner of education.

Response: The SBEC disagrees and maintains language as proposed. With regard to the use of "recklessly" in 19 TAC §247.2, TSTA seems to have overlooked the applicable definition of "recklessly" in 19 TAC §247.1(15), which only includes situations where the educator "is aware of but consciously disregards a substantial and unjustifiable risk." The situations TSTA describes, where educators accidentally mishandle money or misunderstand an application question, should not be implicated in the amendment because they do not involve the awareness and conscious disregard of a substantial and unjustifiable risk.

To the extent that an educator's actions involving money handling or filling out an employment application do involve awareness and conscious disregard for a substantial and unjustifiable risk, the educator should be subject to sanction. An educator entrusted with student money or school assets should ensure that he or she has kept the funds or equipment as safe as possible and accounted for them well and should not be aware of and ignore a substantial and unjustifiable risk that the money or assets will go missing. This ethical principle is true regardless of the amount of money or assets in question. Similarly, an educator who applies for a job should make efforts to ensure that he or she understands the questions on the application and his or her own employment history when he or she is aware of an unjustifiable risk that he or she has answered the question incorrectly. Educators should not be allowed to escape discipline when they have failed to take basic and necessary precautions in handling funds or failed to ensure that they understand the questions and their own history when filling out an employment application.

Finally, it is the SBEC and not the commissioner of education that has authority to discipline educators and to make these amendments. Moreover, the decision to hire an educator is always one that the district makes on its own without intervention from either the commissioner of education or the SBEC. The proposed amendments and SBEC's authority directly impact only educators' certification status, not their employment status.

The State Board of Education (SBOE) took no action on the adoption of the amendments to 19 TAC Chapter 247 at the September 14, 2018 SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.031(a), which charges the State Board for Educator Certification (SBEC) with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.041, which authorizes the SBEC to adopt rules as necessary to regulate educators, administer statutory requirements, and provide for educator disciplinary proceedings; and Every Student Succeeds Act, 20 United States Code, §7926, which requires state educational agencies to make rules forbidding an educator from aiding other school employees, contractors, or agents in getting jobs when the educator knows the job-seeker has committed sexual misconduct with a student or minor in violation of the law.

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

(b)(1), (7), and (8); and Every Student Succeeds Act, 20 United States Code, §7926.

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 October 1, 2018.

TRD-201804244

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: October 21, 2018

Proposal publication date: June 22, 2018

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



CHAPTER 249. DISCIPLINARY PROCEEDINGS, SANCTIONS, AND CONTESTED CASES

The State Board for Educator Certification (SBEC) adopts amendments to §§249.3, 249.5, and 249.15, concerning disciplinary proceedings, sanctions, and contested cases. The amendments to §§249.3, 249.5, and 249.15 are adopted without changes to the proposed text as published in the June 22, 2018 issue of the *Texas Register* (43 TexReg 3992) and will not be republished. The adopted amendments add language creating a legal presumption based on an educator's violation of written directives from school administrators regarding the educator's behavior toward a student. This presumption is included in the definition of "solicitation of a romantic relationship," and in the rules that define and address the term "unworthy to instruct or to supervise the youth of this state." The adopted amendments also add the existing prohibition on assisting an educator with getting a new job when the educator had an inappropriate relationship with a student or minor to the list of reasons the SBEC can take disciplinary action. This provision complies with both the Every Student Succeeds Act (ESSA), 20 United States Code, §7926, and Texas Education Code (TEC), §21.009(e), and is adopted to be stricken from 19 Texas Administrative Code (TAC) Chapter 247, Educators' Code of Ethics.

REASONED JUSTIFICATION: In many cases involving an educator's solicitation of a romantic relationship with a student, an educator's violation of educator-student relationship boundaries, or an educator's violence toward or inappropriate discipline of students, the evidence in the cases shows that the educator has violated a written directive from a supervising administrator regarding the educator's inappropriate behavior toward a student. This evidence is important because it shows that the educator was warned, that the behavior toward students was inappropriate, and that the educator was either unable or unwilling to stop the inappropriate behavior. The existence of such evidence shows that the educator did not make a one-time mistake, misestimation, or miscommunication, and thereby proves that the educator's conduct was serious and intentional. To ensure that the State Office of Administrative Hearings understands the importance of this sort of evidence and to make the disciplinary consequences of violating a written directive regarding behavior toward students more predictable for educators, the amendments contain several provisions regarding such directives.

Section 249.3, Definitions, lists acts in paragraph (51)(A)-(K) that may constitute prima facie evidence of solicitation by an educator of a romantic relationship with a student. The adopted amendment to §249.3 adds to the list of acts, as a new subparagraph (J), the act of violating written directives from school administrators regarding the educator's behavior toward a student. The adopted amendment re-letters existing subparagraphs, respectively.

The adopted amendment to §249.3 also adds language in paragraph (60) to the definition of the term "unworthy to instruct or to supervise the youth of this state" that creates a rebuttable presumption that an educator who violates written directives from school administrators regarding the educator's behavior toward a student is unworthy to instruct or to supervise the youth of this state.

The adopted amendment to §249.5, Purpose; Policy Governing Disciplinary Proceedings, adds in subsection (b)(2)(E) the same rebuttable presumption to the general principle listed in subsection (b) to further explain the concept of "unworthy to instruct or supervise the youth of this state."

The adopted amendment to §249.15, Disciplinary Action by State Board for Educator Certification, adds a new paragraph (13) to include a provision that makes educators subject to discipline for helping another educator, school employee, contractor, or agent obtain a new job when the educator knows that the job-seeker engaged in an inappropriate relationship with a student or minor. This provision existed in 19 TAC §247.2, Educators' Code of Ethics, to fulfill the requirements of the ESSA. Stakeholders subsequently suggested that the Educators' Code of Ethics should only include ethical standards that are not required by any other statute, while 19 TAC Chapter 249 should house the disciplinary rules that implement other sources of statutory authority. To that end, the provision, §247.2(1)(N), was stricken from Chapter 247 and added to Chapter 249. The adopted language in §249.15(b)(13) is amended to reflect the requirements of TEC, §21.009(e), which is similar to the ESSA but uses the term "inappropriate relationship" rather than "sexual misconduct." Subsequent paragraphs are renumbered, respectively.

Technical edits were also made to comply with style and formatting requirements.

SUMMARY OF COMMENTS AND BOARD RESPONSES: The public comment period on the proposal began June 22, 2018, and ended July 23, 2018. The SBEC also provided an opportunity for registered oral and written comments at the August 3, 2018, meeting in accordance with the SBEC board operating policies and procedures. The following is a summary of the public comments received on the proposal and the responses.

Comment: The Texas State Teachers Association (TSTA) opposed adding "violating written directives from school administrators regarding the educator's behavior toward a student" to the list of prima facie evidence of solicitation by an educator of a romantic relationship with a student under 19 TAC §249.3(51)(J). TSTA commented that the addition of this provision would allow an educator to be sanctioned "solely based upon a memo" reflecting the opinion of an administrator who may be biased or incorrect.

TSTA further commented that it opposed the addition of a similar rebuttable presumption "that an educator who violates written directives from school administrators regarding the educator's behavior toward a student is unworthy to instruct or to supervise

the youth of this state" to 19 TAC §249.3(60). TSTA expressed concern that the presumption would require teachers to disprove allegations in a written directive. TSTA asserted that this was a violation of the educator's due process rights and noted that the commissioner of education does not have authority under the TEC to shift the burden of disproving an allegation on to an educator.

Response: The SBEC disagrees and maintains language as proposed. First, it is important to recognize that the existence of a directive regarding an educator's behavior toward students is not sufficient under the rule to show prima facie evidence that an educator is unworthy to instruct or is soliciting a romantic relationship with a student. Rather, it is the educator's subsequent violation of the written directive that the adopted amendment identifies as prima facie evidence of solicitation of a romantic relationship and as creating a presumption that the educator is unworthy to instruct. An educator's violation of a directive regarding his or her behavior toward students shows that the educator received a warning and still could not stop the improper behavior. The educator's violation of a directive shows that there was no accident, misunderstanding, or simple misinterpretation: an administrator told the educator that his or her behavior was wrong, and the educator still chose to persist in the same inappropriate behavior toward a student. An educator who cannot stop himself or herself from misbehavior with students is an educator who should not be allowed in a classroom.

Moreover, an educator who has violated a directive regarding behavior toward a student still receives due process. The educator has an opportunity at the contested case hearing before the administrative law judge at the State Office of Administrative Hearings to show that the administrator who made the directive was biased or incorrect, that the directive was unreasonable, or that the directive in some other way is not evidence of solicitation and does not show that the educator is unworthy to instruct. Such evidence would overcome and rebut the rebuttable presumption and the prima facie assumption created by these adopted amendments and would allow an innocent educator to escape discipline by the SBEC even if he or she had violated a directive regarding behavior toward students.

Finally, TEA staff agreed that the TEC does not give the commissioner of education authority to create a rule shifting the burden of proof regarding educator discipline cases. Indeed, the commissioner of education does not have any authority to make any rules regarding the discipline of certified educators, only the SBEC has that authority. The SBEC has the broad rulemaking authority under the TEC, §21.041(b), to "provide for the regulation of educators" and to "provide for disciplinary proceedings, including the suspension or revocation of an educator certificate." That vast authority includes the ability to make rules that tell the administrative law judges at the SOAH what kinds of evidence are sufficient to prove violations of the Educators' Code of Ethics and what weight to put on certain types of evidence. These adopted amendments are squarely within the authority of the SBEC under the TEC, §21.041.

The State Board of Education (SBOE) took no action on the adoption of the amendments to 19 TAC Chapter 249 at the September 14, 2018, SBOE meeting.

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §249.3, §249.5

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.009, which states that

the State Board for Educator Certification (SBEC) may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a student or minor; 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, §21.035, which states that Texas Education Agency (TEA) staff provides administrative functions and services for SBEC and gives the SBEC the authority to delegate to either the commissioner of education or to TEA staff the authority to settle or otherwise informally dispose of contested cases involving educator certification; TEC, §21.041, which authorizes the SBEC to adopt rules as necessary to regulate educators, administer statutory requirements, and provide for educator disciplinary proceedings; TEC, §21.060, which sets out crimes that relate to the education profession and authorizes the SBEC to sanction or refuse to issue a certificate to any person who has been convicted of one of these offenses; Every Student Succeeds Act, 20 United States Code, §7926, which requires state educational agencies to make rules forbidding educators from aiding other school employees, contractors, or agents in getting jobs when the educator knows the job-seeker has committed sexual misconduct with a student or minor in violation of the law.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §§21.009, 21.031(a), 21.035, 21.041, and 21.060; and Every Student Succeeds Act, 20 United States Code, §7926.

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 October 1, 2018.

TRD-201804246

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: October 21, 2018

Proposal publication date: June 22, 2018

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



SUBCHAPTER B. ENFORCEMENT ACTIONS AND GUIDELINES

19 TAC §249.15

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §21.009, which states that the State Board of Educator Certification (SBEC) may revoke the certificate of an administrator if the board determines it is reasonable to believe that the administrator employed an applicant despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a student or minor; 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, §21.035, which states that Texas Education Agency staff provides administrative functions and services for SBEC and gives SBEC the authority to delegate to either the commis-

sioner of education or to TEA staff the authority to settle or otherwise informally dispose of contested cases involving educator certification; TEC, §21.041, which authorizes the SBEC to adopt rules as necessary to regulate educators, administer statutory requirements, and provide for educator disciplinary proceedings; TEC, §21.060, which sets out crimes that relate to the education profession and authorizes the SBEC to sanction or refuse to issue a certificate to any person who has been convicted of one of these offenses; Every Student Succeeds Act, 20 United States Code, §7926, which requires state educational agencies to make rules forbidding educators from aiding other school employees, contractors, or agents in getting jobs when the educator knows the job-seeker has committed sexual misconduct with a student or minor in violation of the law.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§21.009, 21.031(a), 21.035, 21.041, and 21.060; and Every Student Succeeds Act, 20 United States Code §7926.

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 October 1, 2018.

TRD-201804247

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: October 21, 2018

Proposal publication date: June 22, 2018

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



CHAPTER 250. ADMINISTRATION

The State Board for Educator Certification (SBEC) adopts amendments to §250.1 and §250.20, concerning administration. The amendments to §250.1 and §250.20 are adopted without changes to the proposal text as published in the June 22, 2018 issue of the *Texas Register* (43 TexReg 4000) and will not be republished. The adopted amendment to §250.1 reflects a technical change that updates in rule relevant cross references to the state's Historically Underutilized Business (HUB) program. The adopted amendment to §250.20 implements legislation from the 84th Texas Legislature, 2015, to update the petition form for adoption of rules or rule changes to require the petitioner to indicate that the petitioner meets one of the four definitions of an *interested person*.

REASONED JUSTIFICATION: Texas Government Code (TGC), §2161.003, requires state agencies to adopt the Comptroller of Public Accounts' rules under TGC, §2161.002, as the SBEC's own rules regarding the purchases of goods or services paid for with appropriated money. Section 250.1, Historically Underutilized Business (HUB) Program, states that the SBEC adopts the rules of the Comptroller of Public Accounts found in Title 34 concerning the HUB Program. The section numbers in 34 TAC cross-referenced in §250.1 have been renumbered; therefore, a technical change was made to update relevant cross references in rule. The adopted amendment to §250.1 replaces the current cross references to §§20.11 - 20.22 and §§20.24 - 20.28, and updates the rule with the correct, renumbered sections, §§20.281 - 20.298.

Section 250.20, Petition for Adoption of Rules or Rule Changes, provides the process for interested persons to petition the SBEC for changes to rules, in accordance with the TGC, §2001.021.

House Bill (HB) 763, 84th Texas Legislature, 2015, amended the TGC, §2001.021, to define the term *interested person* for the purposes of petitioning a rule change. The statute states that an *interested person* must be one of the following: (1) a resident of Texas; (2) a business entity located in Texas; (3) a governmental subdivision located in Texas; or (4) a public or private organization located in Texas that is not a state agency.

The adopted amendment to Figure: 19 TAC §250.20(a) implements HB 763 to update the petition form in rule by adding the four definitions of an *interested person* and requiring the petitioner to indicate all applicable definitions.

SUMMARY OF COMMENTS AND BOARD RESPONSES. The public comment period on the proposal began June 22, 2018, and ended July 23, 2018. The SBEC also provided an opportunity for registered oral and written comments at the August 3, 2018, meeting in accordance with the SBEC board operating policies and procedures. No public comments were received on the proposed amendments.

The State Board of Education (SBOE) took no action on the adoption of the amendments to 19 TAC Chapter 250 at the September 14, 2018, SBOE meeting.

SUBCHAPTER A. PURCHASING

19 TAC §250.1

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §21.035(b), which requires the Texas Education Agency (TEA) to provide the State Board for Educator Certification's (SBEC's) administrative functions and services; TEC, §21.040(6), which requires the SBEC to develop and implement policies that clearly define the respective responsibilities of the SBEC and TEA staff; TEC, §21.041(a), which authorizes the SBEC to adopt rules as necessary to implement its procedures; and Texas Government Code, §2161.003, which requires the SBEC to adopt the Comptroller's rules under §2161.002, as the SBEC's own rules regarding the purchase of goods or services paid for with appropriated money.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code §§21.035(b), 21.040(6), and 21.041(a), and Texas Government Code, §2161.003.

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 October 1, 2018.

TRD-201804248

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: October 21, 2018

Proposal publication date: June 22, 2018

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



SUBCHAPTER B. RULEMAKING PROCEDURES

19 TAC §250.20

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), 21.035(b), which requires the Texas Education Agency to provide the State Board for Educator Certification's (SBEC's) administrative functions and services; 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; Texas Government Code (TGC), §2001.021, as amended by House Bill 763, 84th Texas Legislative Session, 2015, which authorizes a state agency to prescribe by rule the form for a petition and the procedure for the submission, consideration, and disposition.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §21.035(b) and §21.041(a) and (b)(1), and Texas Government Code, §2001.021, as amended by House Bill 763, 84th Texas Legislature, 2015.

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 October 1, 2018.

TRD-201804249

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Effective date: October 21, 2018

Proposal publication date: June 22, 2018

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



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER R. ADVISORY COMMITTEES

25 TAC §37.401

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts amendments to §37.401, concerning the Maternal Mortality and Morbidity Task Force (committee). Section 37.401 is adopted without changes to the proposed text as published in the June 22, 2018, issue of the *Texas Register* (43 TexReg 4017). Therefore, the adopted amendments will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments to §37.401(c), §37.401(e), §37.401(f), and §37.401(i) are necessary to comply with Senate Bill 17, 85th Legislature, First Called Session, 2017, which amended Texas Health and Safety Code, Chapter 34, to expand the duties of the committee and increase the committee's composition. Senate Bill 17 also requires the committee meetings to be subject to the Open Meetings Act, Texas Government Code, Chapter 551,

except when reviewing cases. The amendments to §37.401(f) and §37.401(l) are being made to remove duplicative language from the committee's bylaws and are based on program staff initiative.

COMMENTS

The 30-day comment period ended July 23, 2018.

During this period, DSHS received comments in support of the proposed rule from the Texas Medical Association.

Comment: Regarding proposed §37.401(e), (Maternal Mortality and Morbidity Task Force), the commenter supports the proposed changes and recognizes the Task Force as key to identifying opportunities to protect the health of Texas women.

Response: DSHS agrees with the comment.

Comment: Regarding proposed §37.401(c), (Maternal Mortality and Morbidity Task Force), the commenter supports the proposed revision as it provides additional clarity to the committee's charge, including the study of identified disparities and health conditions or factors affecting women most at-risk. The commenter supports the direction to consult with the Perinatal Advisory Committee to ensure that utilization data and other observations about hospital-based maternity care are included when developing recommendations.

Response: DSHS agrees with the comment.

Comment: Regarding proposed §37.401(f), (Maternal Mortality and Morbidity Task Force), the commenter supports the addition of a physician specializing in critical care and a nurse specializing in labor and delivery to expand the collective expertise of the group.

Response: DSHS agrees with the comment.

STATUTORY AUTHORITY

The rule is authorized by Texas Government Code, §531.012, which requires DSHS to adopt rules necessary to establish an Advisory Committee, and by Chapter 2110 in general; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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

Filed with the Office of the Secretary of State on September 27, 2018.

TRD-201804203

Barbara L. Klein

General Counsel

Department of State Health Services

Effective date: October 17, 2018

Proposal publication date: June 22, 2018

For further information, please call: (512) 776-7321



TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 25. MEMBERSHIP CREDIT SUBCHAPTER B. COMPENSATION

34 TAC §25.26

The Teacher Retirement System of Texas (TRS) adopts amendments to §25.26, concerning annual compensation creditable for benefit calculation in Chapter 25, Subchapter B of TRS' rules. Chapter 25 concerns membership credit, and Subchapter B addresses various types of compensation typically paid to public education employees, whether such compensation is creditable for TRS benefit calculation purposes, and the contributions that must be made to TRS on the compensation. Section 25.26 establishes how TRS will determine a member's annual compensation for benefit calculation purposes. The amendments are adopted without changes to the proposed text as published in the August 17, 2018, issue of the *Texas Register* (43 TexReg 5330) and will not be republished.

The adopted amendments to §25.26 permit TRS to credit an additional month of compensation to a TRS member who loses a month of salary credit due to an employer changing payroll reporting dates to comply with TRS' "report when paid" rule, contained in §25.28. In 2014, TRS amended §25.26(e) to address anticipated consequences of TRS standardizing its employer reporting to require that all employers report compensation in the same month it is paid. TRS anticipated that, when the "report when paid" rule went into effect, TRS members could lose one month of compensation credit in the year of transition. Thus, in 2014, TRS adopted amendments to §25.26(e) that allowed TRS to attribute an additional month of compensation to a member in the 2014-2015 school year for purposes of benefit calculation. However, TRS' attribution of an additional month of compensation was limited only to the 2014-2015 school year.

Following the implementation of its new employer reporting system in the fall of 2017, TRS discovered that some employers had not yet complied with the "report when paid" rule. The adopted amendments to §25.26(e) will encourage employers to comply with the "report when paid" rule and ensure that no TRS member loses a month of salary credit due to an employer changing payroll reporting dates to comply with the "report when paid" rule. The adopted amendments to §25.26 do not limit TRS' ability to attribute an additional month of compensation to any particular time period.

Comments: No comments on the proposed adoption of the amendments were received.

Statutory Authority: The amendments to §25.26 are adopted under the authority of §825.102, Government Code, which authorizes the TRS Board of Trustees to adopt rules for eligibility for membership, the administration of the funds of the system, and the transaction of business of the board.

Cross-Reference to Statute: The adopted amendments to §25.26 affect Chapter 824, Subchapter C, Government Code, concerning service retirement benefits.

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 September 27, 2018.

TRD-201804187

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Effective date: October 17, 2018

Proposal publication date: August 17, 2018

For further information, please call: (512) 542-6513



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.11

The Texas Department of Public Safety (the department) adopts amendments to §4.11, concerning General Applicability and Definitions. This rule is adopted without changes to the proposed text as published in the August 24, 2018, issue of the *Texas Register* (43 TexReg 5488). The amendments will not be republished.

The proposed amendments are necessary to harmonize updates to 49 CFR with those laws adopted by Texas. This proposal harmonizes 37 TAC §4.11 with the federal definition of "agricultural commodity" to include product stored in its natural state at a facility not owned by its producer. The proposal also includes the Federal Motor Carrier Safety Administration's guidance on commercial vehicle "personal conveyance."

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

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 September 26, 2018.

TRD-201804173



37 TAC §4.12

The Texas Department of Public Safety (the department) adopts amendments to §4.12, concerning Exemptions and Exceptions. This rule is adopted with changes to the proposed text as published in the August 24, 2018, issue of the *Texas Register* (43 TexReg 5490) and will be republished.

This proposal clarifies that the interstate requirements in 49 CFR §395.3, including maximum driving times and rest breaks, do not apply for intrastate hours of service limitations. These amendments are intended to provide clarity to both enforcement personnel and the industry regarding the requirements in 49 CFR §395.3.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

§4.12. Exemptions and Exceptions.

(a) Exemptions to the adoptions in §4.11 of this title (relating to General Applicability and Definitions) are made pursuant to Texas Transportation Code, §§644.052 - 644.054, and are adopted as follows:

(1) Such regulations shall not apply to the vehicles detailed in subparagraph (A) - subparagraph (D) of this paragraph when operated intrastate:

(A) a vehicle used in oil or water well servicing or drilling which is constructed as a machine consisting in general of a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for such purpose or purposes;

(B) a mobile crane which is an unladen, self-propelled vehicle constructed as a machine used to raise, shift, or lower weights;

(C) a vehicle transporting seed cotton; or

(D) concrete pumps.

(2) The provisions of Title 49, Code of Federal Regulations, §395.3 shall not apply to intrastate commerce. Drivers in intrastate commerce will be permitted to drive 12 hours following 8 consecutive hours off duty. Drivers in intrastate commerce may not drive after having been on duty 15 hours, following 8 consecutive hours off duty. Drivers in intrastate commerce violating the 12 or 15 hour limits provided in this paragraph shall be placed out-of-service for 8 consecutive hours. Drivers of vehicles operating in intrastate commerce shall be permitted to accumulate the equivalent of 8 consecutive hours off duty by taking a combination of at least 8 consecutive hours off duty and sleeper berth time; or by taking two periods of rest in the sleeper berth, providing:

(A) neither rest period in the sleeper berth is shorter than 2 hours duration;

(B) the driving time in the period immediately before and after each rest period in the sleeper berth, when added together, does not exceed 12 hours;

(C) the on duty time in the period immediately before and after each rest period in the sleeper berth, when added together, does not include any driving time after the 15th hour; and

(D) the driver may not return to driving subject to the normal hours of service requirements in this subsection without taking at least 8 consecutive hours off duty, at least 8 consecutive hours in the sleeper berth, or a combination of at least 8 consecutive hours off duty and sleeper berth time.

(3) Drivers in intrastate commerce who are not transporting placardable hazardous materials and were regularly employed in Texas as commercial vehicle drivers prior to August 28, 1989, are not required to meet the medical standards contained in the federal regulations.

(A) For the purpose of enforcement of this regulation, those drivers who reached their 18th birthday on or after August 28, 1989, shall be required to meet all medical standards.

(B) The exceptions contained in subsection (a)(3) of this section shall not be deemed as an exemption from drug and alcohol testing requirements contained in Title 49, Code of Federal Regulations, Part 40 and Part 382.

(4) The maintenance of a driver's record of duty status is not required if the vehicle is operated within a 150 air-mile radius of the driver's normal work reporting location if:

(A) the driver returns to the normal work reporting location and is released from work within 12 consecutive hours;

(B) the driver has at least 8 consecutive hours off duty separating each 12 hours on duty; and

(C) the motor carrier that employs the driver maintains and retains for a period of 6 months true and accurate time and business records which include:

(i) the time the driver reports for duty each day;

(ii) the total number of hours the driver is on duty each day;

(iii) the time the driver is released from duty each day;

(iv) the total time on duty for the preceding seven days in accordance with Title 49, Code of Federal Regulations, §395.8(j)(2) for drivers used for the first time or intermittently; and

(v) the motor carrier maintains business records that provide the date, time, quantity, and location of the delivery of a product or service, including delivery tickets or sales invoices.

(5) The maintenance of a driver's record of duty status is not required for the driver of a ready-mix concrete delivery vehicle if the vehicle is operated intrastate within a 150 air-mile radius of the driver's normal work reporting location if:

(A) the driver returns to the normal work reporting location and is released from work within 14 consecutive hours;

(B) the driver has at least 8 consecutive hours off duty separating each 14 hours on duty;

(C) the driver does not exceed 12 hours maximum driving time following 8 consecutive hours off duty; and

(D) the motor carrier that employs the driver maintains and retains for a period of 6 months true and accurate time and business records which include:

- (i) the time the driver reports for duty each day;
- (ii) the total number of hours the driver is on duty each day;
- (iii) the time the driver is released from duty each day;
- (iv) the total time on duty for the preceding 7 days in accordance with Title 49, Code of Federal Regulations, §395.8(j)(2) for drivers used for the first time or intermittently; and
- (v) the motor carrier maintains business records that provide the date, time, quantity, and location of the delivery of a product or service, including delivery tickets or sales invoices.

(6) An electronic logging device (ELD) and an automatic on-board recording device have the meaning as defined in Title 49, Code of Federal Regulations, §395.2.

(7) Unless otherwise exempted, until December 16, 2019, a motor carrier operating commercial motor vehicles intrastate shall require each of its drivers to record the driver's record of duty status:

(A) Using an ELD that meets the requirements of subpart B of Title 49, Code of Federal Regulations, Part 395;

(B) Using an automatic on-board recording device that meets the requirements of Title 49, Code of Federal Regulations, §395.15; or

(C) Manually, recorded as specified in Title 49, Code of Federal Regulations, §395.8. The record of duty status must be recorded in duplicate for each 24-hour period for which recording is required.

(8) Unless otherwise exempted, a motor carrier operating commercial motor vehicles intrastate must install and require each of its drivers to use an ELD to record the driver's duty status in accordance with Title 49, Code of Federal Regulations, Part 395 no later than December 16, 2019.

(9) The provisions of Title 49, Code of Federal Regulations, Part 395 shall not apply to drivers transporting agricultural commodities in intrastate commerce for agricultural purposes within a 150 air-mile radius from the source of the commodities or the distribution point for the farm supplies during planting and harvesting seasons.

(b) Exceptions adopted by the director of the Texas Department of Public Safety not specified in Texas Transportation Code, §644.053, are:

(1) Title 49, Code of Federal Regulations, §393.86, requiring rear-end protection shall not be applicable provided the vehicle was manufactured prior to September 1, 1991 and is used solely in intrastate commerce.

(2) Drivers of vehicles under this section operating in intrastate transportation shall not be permitted to drive after having worked and/or driven for 70 hours in any consecutive seven-day period. A driver may restart a consecutive seven-day period after taking 34 or more consecutive hours off-duty. Drivers in intrastate transportation violating the 70 hour limit provided in this paragraph will be placed out-of-service until no longer in violation.

(3) For drivers of commercial motor vehicles operating in intrastate transportation and used exclusively in the transportation of oilfield equipment, including the stringing and picking up of pipe used

in pipelines, and servicing of the field operations of the natural gas and oil industry, any period of 7 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(4) For drivers of a commercial motor vehicle operating in intrastate transportation and used primarily in the transportation of construction materials and equipment, any period of 7 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours. "Transportation of construction materials and equipment" has the meaning assigned by Title 49, Code of Federal Regulations, §395.2.

(5) Drivers of vehicles operating in intrastate transportation claiming the 150 air-mile radius exemption in subsection (a)(4) of this section must return to the work reporting location; be released from work within 12 consecutive hours; and have at least 8 consecutive hours off-duty separating each 12 hours on-duty.

(6) The provisions of Title 49, Code of Federal Regulations, §391.11(b)(1) shall not apply to intrastate commerce. The minimum age for an intrastate driver shall be 18 years of age. Intrastate drivers in violation of this paragraph shall be placed out-of-service until no longer in violation.

(7) The provisions of Title 49, Code of Federal Regulations, §391.11(b)(2) shall not apply to intrastate commerce. An intrastate driver must have successfully passed the examination for a Texas Commercial Driver's License and be a minimum age of 18 years old.

(8) Texas Transportation Code, §547.401 and §547.404, concerning brakes on trailers weighing 15,000 pounds gross weight or less take precedence over the brake requirements in the federal regulations for trailers of this gross weight specification unless the vehicle is required to meet the requirements of Federal Motor Vehicle Safety Standard No. 121 (Title 49, Code of Federal Regulations §571.121) applicable to the vehicle at the time it was manufactured.

(9) Title 49, Code of Federal Regulations, §390.23 (Relief from Regulations), is adopted for intrastate motor carriers with the exceptions detailed in subparagraph (A) and subparagraph (B) of this paragraph:

(A) Title 49, Code of Federal Regulations, §390.23(a)(2) is not applicable to intrastate motor carriers making emergency residential deliveries of heating fuels or responding to a pipeline emergency, provided the carrier:

(i) documents the type of emergency, the duration of the emergency, and the drivers utilized; and

(ii) maintains the documentation on file for a minimum of six months. An emergency under this paragraph is one that if left unattended would result in immediate serious bodily harm, death or substantial property damage but does not include routine requests to re-fill empty propane gas tanks.

(B) The requirements of Title 49, Code of Federal Regulations, §390.23(c)(1) and (2), for intrastate motor carriers shall be:

(i) the driver has met the requirements of Texas Transportation Code, Chapter 644; and

(ii) the driver has had at least eight consecutive hours off-duty when the driver has been on duty for 15 or more consecutive hours, or the driver has had at least 34 consecutive hours off duty when the driver has been on duty for more than 70 hours in seven consecutive days.

(10) The provisions of Title 49, Code of Federal Regulations, Part 380 (Subparts A - D) shall not apply to intrastate motor car-

riers and drivers. Title 49, Code of Federal Regulations, Part 380 (Subpart E) is adopted for intrastate motor carriers and drivers. Intrastate motor carriers and drivers must complete the requirements of Title 49, Code of Federal Regulations, §380.500 on or before July 31, 2005.

(11) In accordance with §4132 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETA-LU) (Pub. L. 109-59), the hours of service regulations in this subchapter are not applicable to utility service vehicles that operate in either interstate or intrastate commerce. Utility service vehicles are those vehicles operated by public utilities, as defined in the Public Utility Regulatory Act, the Gas Utility Regulatory Act, the Texas Water Code, Title 49, Code of Federal Regulations, §395.2, or other applicable regulations, and charged with the responsibility for maintaining essential services to the public to protect health and safety.

(12) The United States Department of Transportation number requirements in Texas Transportation Code, Chapter 643 do not apply to vehicles/motor carriers operating exclusively in intrastate commerce and that are exempted from the requirements by Texas Transportation Code, §643.002.

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 September 26, 2018.

TRD-201804174

D. Phillip Adkins
General Counsel

Texas Department of Public Safety

Effective date: October 16, 2018

Proposal publication date: August 24, 2018

For further information, please call: (512) 424-5848



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER E. PROCEDURES IN CONTESTED CASE

43 TAC §§1.24, 1.25, 1.36

The Texas Department of Transportation (department) adopts amendments to §§1.24, 1.25, and 1.36 concerning the filing and service of documents in contested cases. The amendments to §§1.24, 1.25, and 1.36 are adopted without changes to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4720) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

This rulemaking concerns the filing of documents with the department in contested cases. Currently, those documents may be filed using the United States mail, an overnight delivery service, hand delivery, or facsimile transmission. This rulemaking replaces facsimile transmission with electronic mail, which is more widely available and generally easier to use.

Amendments to §1.24, Filing of Petition; Procedure for Filing Petition and Other Documents, remove the option of filing documents related to contested cases using facsimile transmission and delete the procedures used for filing by facsimile transmission. Additionally, Subsection (a) is amended to provide that only one copy of a document is required if the document is sent by electronic mail. Amendments to subsection (e) provide the email address and subject line requirements for electronically filing documents in a contested case. Under new subsection (f), when a document is received by the department electronically, it is considered to be filed at the time the header of the email used to transmit the document indicates the email was sent.

Amendments to §1.25, Procedure for Service of Documents, remove the option to serve a document in a contested case using facsimile transmission because the department will no longer accept that type of transmission.

Amendments to §1.36, Proposal for Decision; Filing of Exceptions and Replies, substitute "electronic mail" for "facsimile" delivery to be consistent with other changes made by this rulemaking.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.112, which provides the commission with the authority to establish rules governing procedures in certain contract claims, and Government Code, §2001.004, which requires each agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.112 and Government Code, §2001.004.

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 September 27, 2018.

TRD-201804195

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Effective date: October 17, 2018

Proposal publication date: July 13, 2018

For further information, please call: (512) 463-8630



CHAPTER 15. FINANCING AND CONSTRUCTION OF TRANSPORTATION PROJECTS

SUBCHAPTER P. SHIP CHANNEL IMPROVEMENT REVOLVING LOAN PROGRAM

43 TAC §§15.250 - 15.261

The Texas Department of Transportation (department) adopts new §§15.250 - 15.261, concerning the Ship Channel Improvement Revolving Loan Program. The new §§15.250 - 15.261 are adopted without changes to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4722). The new sections will not be republished.

EXPLANATION OF ADOPTED NEW SECTIONS

Section 4 of Senate Bill 28, 85th Legislature, Regular Session, 2017 (SB 28), amended the Transportation Code by adding Chapter 56, Funding of Ship Channel Improvements, which creates the ship channel improvement revolving fund as an account in the general revenue fund to be administered by the Texas Transportation Commission (commission). Transportation Code, §56.003, requires the commission by rule to establish a revolving loan program to use money from the fund to finance qualified projects for navigation districts. New §§15.250 - 15.261 (Chapter 15, Subchapter P) establish that program.

New §15.250, Purpose; Delegation Authority, describes the purpose of the ship channel improvement revolving fund as defined by law in SB 28. The section also gives the executive director the authority to delegate to a department employee any power or duty assigned to the executive director by Chapter 15, Subchapter P.

New §15.251, Definitions, provides definitions of terms used throughout this subchapter to distinguish between the commission, the department, and the executive director of the department.

New §15.252, Eligible Applicant, identifies an eligible applicant as a navigation district, as defined by Transportation Code, §56.001, or an entity that is authorized to finance a project for a navigation district.

New §15.253, Qualified Projects, identifies the types of projects for which the proceeds of a loan from the program may be used. As required by Transportation Code, §56.003, the project must deepen or widen a ship channel and be authorized by the United States Congress; however, that section also provides that a project for maintenance dredging is not a qualified project for the program.

New §15.254, Application Procedures, provides that an application for a loan from the program must be submitted to the executive director in a form prescribed by the department.

New §15.255, Department Action, provides that the department will advise the applicant of any required information or data that is missing and may require additional information or explanations from the applicant. When the application is complete, the executive director will submit findings and recommendations to the commission for consideration.

New §15.256, Commission Action, sets forth the requirements for the commission's minute order approving or disapproving an application, and requiring that the commission include the rationale, findings, and conclusions on which approval or disapproval is based.

New §15.257, Compliance Requirements, requires that an entity that receives a loan comply with applicable state and federal law and maintain its books and records related to the project in accordance with generally accepted accounting principles.

New §15.258, Audits and Reports, requires annual audits and provides for the submission of an annual report detailing project expenditures, providing an accounting of loan proceeds, and providing any other information requested by the department.

New §15.259, Document Retention and Access, requires an entity receiving a loan to retain all work papers and supporting documents for the project for a specified time. All original documents shall be retained and be made available for state or federal audits until the later of the date that the project is completed, all loans have been repaid, or the retention period required by applicable state or federal law ends.

New §15.260, Financial and Credit Requirements, requires an entity receiving a loan to repay the loan in accordance with terms specified by the commission; to submit annual and supplemental operating and capital budgets within 30 days of their adoption; and to submit to the department, for any debt payable from the same revenue that is to repay a loan, notices of material events within 30 days after their submission to Electronic Municipal Market Access System (EMMA) of the Municipal Securities Rulemaking Board, or advise the department in writing that the submission to EMMA has been made.

New §15.261, Delivery of Documents After Project Completion, requires an entity that receives a loan to submit to the department upon project completion all project files and reports as requested by the department.

COMMENTS

Comments concerning the rules were received from Sean C. Strawbridge, Chief Executive Officer of the Port of Corpus Christi Authority on behalf of the Port.

Comment: The Port suggests specific language to provide that to qualify for a loan, a project must deepen or widen a ship channel authorized by the United States Congress.

Response: The department disagrees with the changes proposed to §15.253. Transportation Code, §56.003, requires that a project must deepen or widen a ship channel and be authorized by the United States Congress. The proposed changes would require the ship channel to be authorized by the United States Congress as opposed to the project being authorized by the Congress, as required by statute. An administrative agency may not adopt a rule that is inconsistent with the statute that authorizes the rule adoption.

Comment: The Port suggests specific language that limits the use of loan proceeds only for qualified project costs incurred after the effective date of Senate Bill 28, 85th Legislature, Regular Session, 2017 (May 26, 2017).

Response: The department disagrees with the changes to §15.257 proposed by the Port of Corpus Christi Authority. While Transportation Code, §56.003(b)(3), authorizes the commission to establish additional standards for a qualified project, Chapter 56, does not limit the use of loan proceeds to finance only qualified projects costs incurred after the effective date of SB 28 and the department does not recommend such a limitation.

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §56.003, which requires the commission to adopt rules to implement Transportation Code, Chapter 56, relating to the establishment of the ship channel improvement revolving loan program.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 56.

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 September 27, 2018.

TRD-201804196

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Effective date: October 17, 2018

Proposal publication date: July 13, 2018

For further information, please call: (512) 463-8630



CHAPTER 25. TRAFFIC OPERATIONS

SUBCHAPTER O. CRASH RECORDS INFORMATION SYSTEM

43 TAC §25.977

The Texas Department of Transportation (department) adopts amendments to §25.977, Reporting by Investigating Officers. The amendments to §25.977 are adopted without changes to the proposed text as published in the July 13, 2018, issue of the *Texas Register* (43 TexReg 4724). The amendments will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The adopted amendment to §25.977(c) implements Section 45 of Senate Bill 312, passed by the 85th Legislature, Regular Ses-

ion, 2017, which amends Transportation Code §550.062(b) to require web-based filing of crash reports by investigating law enforcement officers. Beginning September 1, 2019, law enforcement officers will be required to file CR-3 Texas Peace Officer Crash Reports using a web-based format, resulting in more accurate and timely receipt of crash reports by TxDOT as the custodian of crash reports and crash data for the state of Texas. The department's Traffic Operations Division is reaching out to agencies that are not currently set up to submit the reports through a web-based format to assist them in ensuring that they will be able to meet the statutory deadline. In addition, the adopted amendment deletes §25.977(d) to eliminate reference to Form CR-3 Alternate, the Texas Peace Officer's Alternate Crash Report, which was discontinued as of January 1, 2018.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code §550.062(b)

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 September 27, 2018.

TRD-201804197

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Effective date: October 17, 2018

Proposal publication date: July 13, 2018

For further information, please call: (512) 463-8630



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 62, Commissioner's Rules Concerning the Equalized Wealth Level, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 62 continue to exist.

The public comment period on the review of 19 TAC Chapter 62 begins October 12, 2018, and ends November 12, 2018. A form for submitting public comments on proposed rule reviews is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/2017-2021_Commissioner_Rules_Currently_Under_Review/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/2017-2021_Commissioner_Rules_Currently_Under_Review/). Comments on the proposed review may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

TRD-201804304

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: October 3, 2018



The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 161, Commissioner's Rules Concerning Advisory Committees, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 161 continue to exist.

The public comment period on the review of 19 TAC Chapter 161 begins October 12, 2018, and ends November 12, 2018. A form for submitting public comments on proposed rule reviews is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/2017-2021_Commissioner_Rules_Currently_Under_Review/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/2017-2021_Commissioner_Rules_Currently_Under_Review/). Comments on the proposed review may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

TRD-201804306

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: October 3, 2018



Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 9, Training.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 9 continue to exist.

Comments regarding suggested changes to the rules in Chapter 9 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rule-making action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 9. Written comments may be submitted to Paige Bond MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808.

Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2018-031-009-AS. Comments must be received by November 12, 2018. For further information, please contact Amber Kaskie, Human Resources and Staff Services Division, at (512) 239-0137.

TRD-201804285

David Timberger

Director, General Law Division

Texas Commission on Environmental Quality

Filed: October 2, 2018



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 91, Alternative Pub-

lic Notice and Public Participation Requirements for Specific Designated Facilities.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 91 continue to exist.

Comments regarding suggested changes to the rules in Chapter 91 may be submitted but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rule-making action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 91. Written comments may be submitted to Derek Baxter, Register Rule/Agenda Coordinator, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2018-032-091-AI. Comments must be received by November 12, 2018. For further information, please contact Sherry Davis, Air Permits Division at (512) 239-2141.

TRD-201804282

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: October 2, 2018



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 217, Design Criteria for Domestic Wastewater Systems.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 217 continue to exist.

Comments regarding suggested changes to the rules in Chapter 217 may be submitted, but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 217. Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2018-009-217-OW. Comments must be received by November 12, 2018. For further information, please contact Laurie Fleet, Water Quality Division, at (512) 239-5445.

TRD-201804286

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: October 2, 2018



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 317, Design Criteria Prior to 2008.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 317 continue to exist.

Comments regarding suggested changes to the rules in Chapter 317 may be submitted, but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 317. Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Non-Rule Project Number 2018-008-317-OW. Comments must be received by November 12, 2018. For further information, please contact Laurie Fleet, Water Quality Division, at (512) 239-5445.

TRD-201804287

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: October 2, 2018



The Texas Commission on Environmental Quality (commission) files this Notice of Intention to Review 30 TAC Chapter 337, Dry Cleaner Environmental Response.

This proposal is *limited* to the review in accordance with the requirements of Texas Government Code, §2001.039, which requires a state agency to review and consider its rules for readoption, readoption with amendments, or repeal every four years. During this review, the commission will assess whether the reasons for initially adopting the rules in Chapter 337 continue to exist.

Comments regarding suggested changes to the rules in Chapter 337 may be submitted, but will not be considered for rule amendments as part of this review. Any such comments may be considered in a future rulemaking action by the commission.

Submittal of Comments

The commission invites public comment on this preliminary review of the rules in Chapter 337. Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system.

tem. All comments should reference Non-Rule Project Number 2018-033-337-WS. Comments must be received by November 12, 2018. For further information, please contact Anna R. Brulloths, Project Manager, Remediation Division, at (512) 239-5052.

TRD-201804284

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 2, 2018



Texas Department of Transportation

Title 43, Part 1

Notice of Intention to Review

In accordance with Government Code, §2001.039, the Texas Department of Transportation (department) files this notice of intention to review Title 43 TAC, Part 1, Chapter 10, Ethical Conduct by Entities Doing Business with the Department and Chapter 16, Planning and Development of Transportation Projects.

The department will accept comments regarding whether the reasons for adopting these rules continue to exist. Comments regarding this rule review may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Rule Review." The deadline for receipt of comments is 5:00 p.m. on November 12, 2018.

In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

TRD-201804172

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: September 26, 2018



Adopted Rule Reviews

Teacher Retirement System of Texas

Title 34, Part 3

The Teacher Retirement System of Texas (TRS) adopts the four-year review of its rules in Texas Administrative Code, Title 34, Part 3 Chapters 21, 23, 25, 27, 29, 31, 33, 35, 39, 41, 43, 47, 49, and 51. TRS conducted its review in accordance with the requirements set forth in §2001.039 of the Government Code. TRS received no comments on its proposed review, which was published in the May 18, 2018, issue of the *Texas Register* (43 TexReg 3250).

Relating to the review of Chapter 21, TRS finds that the reasons for adopting Chapter 21 continue to exist and readopts the rules without changes.

Relating to the review of Chapter 23, TRS finds that the reasons for adopting Chapter 23 continue to exist and readopts the rules at this time without changes. At a later date, §§23.1, 23.5, 23.7, and 23.8 will be amended in separate rulemaking proceedings in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 25, TRS finds that the reasons for adopting Chapter 25 continue to exist and readopts the rules at this time without changes. At a later date, §§25.4, 25.113, 25.191, 25.302, and 25.303 will be amended in separate rulemaking proceedings in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 27, TRS finds that the reasons for adopting Chapter 27 continue to exist and readopts the rules at this time without changes. At a later date, §27.6, will be amended in a separate rulemaking proceeding in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 29, TRS finds that the reasons for adopting Chapter 29 continue to exist and readopts the rules at this time without changes. At a later date, §§29.11, and 29.81 will be amended in separate rulemaking proceedings in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 31, TRS finds that the reasons for adopting Chapter 31 continue to exist and readopts the rules without changes.

Relating to the review of Chapter 33, TRS finds that the reasons for adopting Chapter 33 continue to exist and readopts the rules without changes.

Relating to the review of Chapter 35, TRS finds that the reasons for adopting Chapter 35 continue to exist and readopts the rules without changes.

Relating to the review of Chapter 39, TRS finds that the reasons for adopting Chapter 39 continue to exist and readopts the rules without changes.

Relating to the review of Chapter 41, TRS finds that the reasons for adopting Chapter 41 continue to exist and readopts the rules at this time without changes. At a later date, §§41.1, 41.2, 41.3, 41.4, 41.7, 41.8, 41.9, 41.11, 41.15, 41.31, 41.32, 41.34, 41.39, 41.41, and 41.50 will be amended in separate rulemaking proceedings in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 43, TRS finds that the reasons for adopting Chapter 43 continue to exist and readopts the rules at this time without changes. At a later date, §§43.1, 43.12, and 43.45 will be amended in separate rulemaking proceedings in accordance with the Texas Administrative Procedure Act.

Relating to the review of Chapter 47, TRS finds that the reasons for adopting Chapter 47 continue to exist and readopts the rules without changes.

Relating to the review of Chapter 49, TRS finds that the reasons for adopting Chapter 49 continue to exist and readopts the rules without changes.

Relating to the review of Chapter 51, TRS finds that the reasons for adopting Chapter 51 continue to exist and readopts the rules at this time without changes. At a later date, §§51.1, 51.2, and 51.11 will be amended in separate rulemaking proceedings in accordance with the Texas Administrative Procedure Act.

This concludes the review of Texas Administrative Code, Title 34, Part 3 Chapters 21, 23, 25, 27, 29, 31, 33, 35, 39, 41, 43, 47, 49, and 51.

TRD-201804186

Brian K. Guthrie

Executive Director

Teacher Retirement System of Texas

Filed: September 27, 2018

