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IN THIS ISSUE

GOVERNOR

Appointments	7079
Appointments	7079
Proclamation 41-3770	7079
Proclamation 41-3771	7080
Proclamation 41-3772	7080

ATTORNEY GENERAL

Requests for Opinions	7083
Opinions	7083

EMERGENCY RULES

COUNCIL ON SEX OFFENDER TREATMENT

COUNCIL ON SEX OFFENDER TREATMENT

22 TAC §810.4	7085
---------------------	------

DEPARTMENT OF STATE HEALTH SERVICES

HOSPITAL LICENSING

25 TAC §133.51	7085
----------------------	------

HEALTH AND HUMAN SERVICES COMMISSION

COVID-19 EMERGENCY HEALTH CARE FACILITY LICENSING

26 TAC §500.2	7086
26 TAC §500.20	7087

PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

26 TAC §510.48	7088
----------------------	------

LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

26 TAC §550.213	7089
-----------------------	------

LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

26 TAC §558.960	7090
-----------------------	------

CERTIFICATE OF PUBLIC ADVANTAGE

26 TAC §§567.1 - 567.6	7092
26 TAC §§567.21 - 567.26	7092
26 TAC §§567.31 - 567.33	7092
26 TAC §567.41	7092
26 TAC §§567.51 - 567.54	7092

GENERAL LAND OFFICE

COASTAL AREA PLANNING

31 TAC §15.18	7093
---------------------	------

DEPARTMENT OF AGING AND DISABILITY SERVICES

DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

40 TAC §98.65	7096
---------------------	------

PROPOSED RULES

OFFICE OF THE ATTORNEY GENERAL

PROCUREMENT

1 TAC §69.35	7099
--------------------	------

TEXAS ALCOHOLIC BEVERAGE COMMISSION

LICENSING

16 TAC §§33.1, 33.4, 33.6, 33.7, 33.13	7100
16 TAC §§33.21, 33.22, 33.24, 33.27	7100
16 TAC §§33.31 - 33.34	7101
16 TAC §33.41	7101

LICENSING

16 TAC §§33.2 - 33.6, 33.10	7102
16 TAC §§33.90 - 33.94	7105
16 TAC §§33.40 - 33.45	7107
16 TAC §§33.70 - 33.79	7112
16 TAC §§33.100 - 33.105	7117

SCHEDULE OF SANCTIONS AND PENALTIES

16 TAC §34.3	7118
16 TAC §34.3	7119
16 TAC §34.6	7121

TEXAS EDUCATION AGENCY

STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

19 TAC §66.15	7122
---------------------	------

TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SCIENCE

19 TAC §§112.41 - 112.45	7125
--------------------------------	------

TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR HEALTH EDUCATION

19 TAC §§115.11 - 115.17	7137
19 TAC §§115.25 - 115.27	7151
19 TAC §§115.37 - 115.40	7159

TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR PHYSICAL EDUCATION

19 TAC §§116.11 - 116.17	7168
19 TAC §§116.25 - 116.28	7182
19 TAC §§116.61 - 116.64	7189

TEXAS BOARD OF CHIROPRACTIC EXAMINERS

SCOPE OF PRACTICE	
22 TAC §78.5.....	7194
COMPLAINTS	
22 TAC §80.12.....	7195
TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS	
COMPLIANCE AND PROFESSIONALISM FOR SURVEYORS	
22 TAC §§138.31, 138.33, 138.35, 138.37.....	7198
22 TAC §§138.51, 138.53, 138.55, 138.57, 138.59, 138.61, 138.63, 138.65	7200
22 TAC §§138.73, 138.75, 138.77, 138.79.....	7202
22 TAC §§138.81, 138.83, 138.85, 138.87, 138.89, 138.91, 138.93, 138.95, 138.97	7203
ENFORCEMENT	
22 TAC §139.35, §139.37.....	7204
TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION	
GENERAL MEDICAL PROVISIONS	
28 TAC §133.307.....	7207
TEXAS WORKFORCE COMMISSION	
INTEGRITY OF THE TEXAS WORKFORCE SYSTEM	
40 TAC §802.170.....	7210
WIOA ELIGIBLE TRAINING PROVIDERS	
40 TAC §840.1, §840.2.....	7214
40 TAC §840.10, §840.11.....	7216
40 TAC §§840.20 - 840.23	7216
40 TAC §840.30, §840.31.....	7217
40 TAC §§840.40 - 840.42	7218
40 TAC §§840.50 - 840.55	7219
40 TAC §§840.60 - 840.64	7220
WORKFORCE INVESTMENT ACT	
40 TAC §841.1, §841.2.....	7222
40 TAC §841.11.....	7222
40 TAC §§841.31 - 841.47	7223
40 TAC §841.94.....	7223
40 TAC §§841.201 - 841.215	7223
WIOA NONDISCRIMINATION AND EQUAL OPPORTUNITY	
40 TAC §§842.1 - 842.15	7224
TEXAS DEPARTMENT OF TRANSPORTATION	

DESIGN	
43 TAC §§11.403 - 11.406, 11.411	7229
TOLL PROJECTS	
43 TAC §27.86.....	7232
WITHDRAWN RULES	
OFFICE OF THE GOVERNOR	
GENERAL ADMINISTRATION	
1 TAC §5.211.....	7235
DEPARTMENT OF STATE HEALTH SERVICES	
HOSPITAL LICENSING	
25 TAC §133.51.....	7235
HEALTH AND HUMAN SERVICES COMMISSION	
PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS	
26 TAC §510.48.....	7235
GENERAL LAND OFFICE	
COASTAL AREA PLANNING	
31 TAC §15.19.....	7235
TEXAS WORKFORCE COMMISSION	
UNEMPLOYMENT INSURANCE	
40 TAC §815.1.....	7236
40 TAC §§815.170 - 815.172, 815.174	7236
40 TAC §815.173.....	7236
ADOPTED RULES	
OFFICE OF THE GOVERNOR	
GENERAL ADMINISTRATION	
1 TAC §§5.201 - 5.210, 5.212, 5.213	7237
TEXAS ALCOHOLIC BEVERAGE COMMISSION	
LICENSING	
16 TAC §§33.50 - 33.63	7241
MARKETING PRACTICES	
16 TAC §§45.1 - 45.19	7244
16 TAC §§45.41 - 45.51	7244
16 TAC §§45.71 - 45.91, 45.94, 45.96	7244
MARKETING PRACTICES	
16 TAC §§45.1 - 45.12	7245
16 TAC §§45.20 - 45.27	7246
16 TAC §45.30.....	7246
16 TAC §§45.40 - 45.43	7246
16 TAC §45.50.....	7247

TEXAS EDUCATION AGENCY	
CURRICULUM REQUIREMENTS	
19 TAC §74.1005.....	7247
ASSESSMENT	
19 TAC §101.5001.....	7249
STATE BOARD FOR EDUCATOR CERTIFICATION	
PROVISIONS FOR EDUCATOR PREPARATION CANDIDATES	
19 TAC §227.10, §227.15.....	7250
REQUIREMENTS FOR EDUCATOR PREPARATION PROGRAMS	
19 TAC §228.1.....	7253
19 TAC §§228.2, 228.10, 228.15, 228.20, 228.30, 228.35, 228.40	7255
PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION	
19 TAC §230.21.....	7257
CATEGORIES OF CLASSROOM TEACHING CERTIFICATES	
19 TAC §§233.1 - 233.3.....	7259
CLASSROOM TEACHER CERTIFICATION STANDARDS	
19 TAC §235.15, §235.19.....	7263
19 TAC §235.25.....	7263
19 TAC §235.59.....	7264
19 TAC §235.89.....	7264
19 TAC §235.101.....	7265
19 TAC §235.117.....	7265
19 TAC §§235.131, 235.133, 235.135.....	7266
TEXAS PARKS AND WILDLIFE DEPARTMENT	
LAW ENFORCEMENT	
31 TAC §55.1.....	7266
RESOURCE PROTECTION	
31 TAC §69.20.....	7268
31 TAC §69.30.....	7268
COMPTROLLER OF PUBLIC ACCOUNTS	
TAX ADMINISTRATION	
34 TAC §3.9.....	7268
34 TAC §3.285.....	7269
34 TAC §3.292.....	7270
34 TAC §3.305.....	7270
TEXAS DEPARTMENT OF PUBLIC SAFETY	
COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES	
37 TAC §4.12.....	7271
TEXAS WORKFORCE COMMISSION	
UNEMPLOYMENT INSURANCE	
40 TAC §815.1.....	7277
40 TAC §815.12.....	7278
40 TAC §815.29.....	7278
40 TAC §§815.170 - 815.172, 815.174.....	7278
40 TAC §815.173.....	7278
40 TAC §§815.180 - 815.185.....	7278
TEXAS DEPARTMENT OF TRANSPORTATION	
MANAGEMENT	
43 TAC §1.84.....	7279
<i>RULE REVIEW</i>	
Proposed Rule Reviews	
Office of the Attorney General.....	7281
Texas Department of Licensing and Regulation.....	7281
<i>TABLES AND GRAPHICS</i>	
.....	7283
<i>IN ADDITION</i>	
Texas Alcoholic Beverage Commission	
Penalty Policy for Regulatory Violations.....	7309
Office of Consumer Credit Commissioner	
Notice of Rate Ceilings.....	7312
Texas Education Agency	
Request for Applications Concerning the 2021-2022 Nita M. Lowey 21st Century Community Learning Centers (CCLC), Cycle 11, Year 1 Grant Program.....	7312
Commission on State Emergency Communications	
Notice Concluding Annual Review of 1 TAC §255.4.....	7313
Texas Board of Professional Engineers and Land Surveyors	
Hearing on Proposed Rules.....	7313
Texas Commission on Environmental Quality	
Agreed Orders.....	7314
Amended Notice of Hearing (to Change Hearing Date.) Quail Run Services, LLC: SOAH Docket No. 582-20-4375; TCEQ Docket No. 2019-1472-MWD; Proposed Permit No. WQ0015711001.....	7316
Enforcement Orders.....	7317
Notice of District Petition.....	7318
Notice of District Petition.....	7319

Notice of District Petition7320

Notice of District Petition7320

Notice of District Petition7321

Notice of Hearing Jupiter Brownsville, LLC: SOAH Docket No. 582-21-0111; TCEQ Docket No. 2020-1080-AIR; Proposed Permit Nos. 147681, PSDTX1522, and GHGPSDTX1727322

Notice of Intent to Perform Removal Action at the Kingsland Proposed State Superfund Site, Kingsland, Llano County, Texas7324

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions7325

Notice of Opportunity to Request a Public Meeting for a Development Permit Application for Construction Over a Closed Municipal Solid Waste Landfill: Proposed Permit No. 620407325

Notice of Water Rights Application.....7326

Texas Ethics Commission

List of Late Filers.....7327

General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program7327

Department of State Health Services

Licensing Actions for Radioactive Materials7330

Texas Lottery Commission

Scratch Ticket Game Number 2288 "JOKER'S WILD"7334

South East Texas Regional Planning Commission

Regionally Coordinated Transportation Planning.....7339

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for September 22, 2020

Appointed to the Continuing Advisory Committee for Special Education, for a term to expire February 1, 2021, Susan M. Nichols, Ph.D. of Carrollton, Texas (replacing Robin H. Lock, Ph.D. of Lubbock, who resigned).

Appointments for September 29, 2020

Appointed to the OneStar National Service Commission, for a term to expire March 15, 2023, Mary Grace Landrum of Houston, Texas (Ms. Landrum is being reappointed).

Appointed to the OneStar National Service Commission, for a term to expire March 15, 2023, Lillian G. Lucero of Austin, Texas (Ms. Lucero is being reappointed).

Appointed to the OneStar National Service Commission, for a term to expire March 15, 2023, James K. Senegal of Spring, Texas (Mr. Senegal is being reappointed).

Appointed to the OneStar National Service Commission, for a term to expire March 15, 2023, Corey D. Tabor of Manor, Texas (Mr. Tabor is being reappointed).

Greg Abbott, Governor

TRD-202004066



Appointments

Appointments for September 23, 2020

Appointed to the Podiatric Medical Examiners Advisory Board, for a term to expire February 1, 2021, Nancy C. Windham of Nacogdoches, Texas (pursuant to Occupations Code Sec. 202.051).

Appointed to the Podiatric Medical Examiners Advisory Board, for a term to expire February 1, 2023, Maria "Yvette" Hernandez of Rio Grande City, Texas (pursuant to Occupations Code Sec. 202.051).

Appointed to the Podiatric Medical Examiners Advisory Board, for a term to expire February 1, 2025, James M. "Michael" Lunsford, D.P.M. of Spring Branch, Texas (Dr. Lunsford is being reappointed).

Appointed to the Podiatric Medical Examiners Advisory Board, for a term to expire February 1, 2025, Joe E. Martin, Jr., D.P.M. of College Station, Texas (Dr. Martin is being reappointed).

Appointed to the Podiatric Medical Examiners Advisory Board, for a term to expire February 1, 2025, Cirenia H. Terrazas of Austin, Texas (pursuant to Occupations Code Sec. 202.051).

Appointments for September 24, 2020

Appointed to the Family Practice Residency Advisory Committee, for a term to expire August 29, 2023, Zoey Z. Wang of Houston, Texas (replacing Adrienne Peña-Garza of Pharr, whose term expired).

Greg Abbott, Governor

TRD-202004069



Proclamation 41-3770

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2020, certifying under Section 418.014 of the Texas Government Code that the threats and incidents of violence starting on May 29, 2020, which have endangered public safety, constitute and pose an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have issued proclamations renewing the disaster declaration for all Texas counties; and

WHEREAS, these events have caused or imminently threatened widespread or severe damage, injury, and property loss, among other harms, at a time when the State of Texas is responding to the novel coronavirus (COVID-19) disaster; and

WHEREAS, while all Americans are entitled to exercise their First Amendment rights, it is imperative that order is maintained, all persons are kept safe and healthy, and property is protected; and

WHEREAS, peaceful protestors, many of whom are responding to the senseless taking of life by the reprehensible actions of a few, should themselves be protected from harm; and

WHEREAS, the declaration of a state of disaster has facilitated and expedited the use and deployment of resources to enhance preparedness and response to the ongoing threats, including by ensuring that federal law enforcement officers can fully assist with the efforts; and

WHEREAS, a state of disaster continues to exist in all counties due to threats of widespread or severe damage, injury, and property loss, among other harms;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation for all counties in Texas.

Pursuant to Section 418.017, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016(a), I hereby continue the suspension of all relevant provisions within Chapter 1701 of the Texas Occupations Code, as well as Title 37, Chapters 211-229 of the Texas Administrative Code, to the extent necessary for the Texas Commission on Law Enforcement to allow federal law enforcement officers to perform peace officer duties in Texas. Additionally, pursuant to Section 418.016, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or ad-

ministrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to cope with this declared disaster, I hereby suspend such statutes and rules for the duration of this declared disaster for that limited purpose.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 27th day of September, 2020.

Greg Abbott, Governor

TRD-202004020



Proclamation 41-3771

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that the presence of *Naegleria fowleri*, which can cause a rare and devastating infection of the brain called primary amebic meningoencephalitis, was identified in three of 11 tests of the water supply, posing an imminent threat to public health and safety, including loss of life, in Brazoria County;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.14 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed county based on the existence of such threat.

Pursuant to Section 418.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 27th day of September, 2020.

Greg Abbott, Governor

TRD-202004021



Proclamation 41-3772

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, in each subsequent month effective through today, I have renewed the disaster declaration for all Texas counties; and

WHEREAS, the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, has determined that COVID-19 continues to represent a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, pursuant to legislative authorization under Chapter 418 of the Texas Government Code, I have issued executive orders, proclamations, and suspensions of Texas laws in response to the COVID-19 disaster, aimed at using the least restrictive means available to protect the health and safety of Texans and ensure an effective response to this disaster; and

WHEREAS, on July 27, 2020, I issued a proclamation suspending certain provisions of the Texas Election Code to provide additional time for early voting and to provide additional time in which a voter can deliver a marked mail ballot in person to the early voting clerk's office, such that this may be done prior to and including on election day; and

WHEREAS, the suspension of the limitation on the in-person delivery of marked mail ballots, as made in the July 27, 2020 proclamation, merely increased the amount of time for an eligible voter to return a marked mail ballot in person to the early voting clerk's office and did not suspend or otherwise affect the other applicable requirements that a voter must comply with when returning a marked mail ballot, including presenting an acceptable form of identification described by Section 63.0101 of the Election Code; and

WHEREAS, an amendment to the suspension of the limitation on the in-person delivery of marked mail ballots, as made in the July 27, 2020, proclamation, is appropriate to add ballot security protocols for when a voter returns a marked mail ballot to the early voting clerk's office; and

WHEREAS, Section 41.001(a) of the Texas Election Code provides that a general or special election in this state shall be held on a uniform election date, and the next uniform election date is occurring on November 3, 2020; and

WHEREAS, I issued a proclamation on March 18, 2020, suspending Sections 41.0052(a) and (b) of the Texas Election Code and Section 49.103 of the Texas Water Code to the extent necessary to allow political subdivisions that would otherwise have held elections on May 2, 2020, to move their general and special elections for 2020 only to the November 3, 2020 uniform election date; and

WHEREAS, Texas law provides that eligible voters have a right to cast a vote in person; and

WHEREAS, as counties across Texas prepare for the upcoming elections on November 3, 2020, and establish procedures for eligible voters to exercise their right to vote in person, it is necessary that election officials implement health protocols to conduct elections safely and to protect election workers and voters; and

WHEREAS, in order to ensure that elections proceed efficiently and safely when Texans go to the polls to cast a vote in person during early voting or on election day for the November 3, 2020 elections, it is necessary to increase the number of days in which polling locations will be open during the early voting period, such that election officials can implement appropriate social distancing and safe hygiene practices; and

WHEREAS, Section 85.001(a) of the Texas Election Code provides that the period for early voting by personal appearance begins 17 days before election day; and

WHEREAS, Section 86.006(a-1) of the Texas Election Code provides that a voter may deliver a marked mail ballot in person to the early voting clerk's office while the polls are open on election day; and

WHEREAS, in consultation with the Texas Secretary of State, it has become apparent that for the November 3, 2020 elections, strict

compliance with the statutory requirements in Sections 85.001(a) and 86.006(a-1) of the Texas Election Code would prevent, hinder, or delay necessary action in coping with the COVID-19 disaster, and that providing additional time for early voting will provide Texans greater safety while voting in person; and

WHEREAS, in the Texas Disaster Act of 1975, the legislature charged the governor with the responsibility "for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and expressly granted the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders hav[ing] the force and effect of law;" and

WHEREAS, pursuant to Section 418.016 of the Texas Government Code, the legislature has expressly authorized the governor to suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster; and

WHEREAS, under Section 418.018(c), the "governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area;"

NOW, THEREFORE, I, GREG ABBOTT, Governor of Texas, under the authority vested in me by the Constitution and laws of the State of Texas, do hereby suspend Section 85.001(a) of the Texas Election Code to the extent necessary to require that, for any election ordered or authorized to occur on November 3, 2020, early voting by personal appearance shall begin on Tuesday, October 13, 2020, and shall continue through the fourth day before election day.

I further suspend Section 86.006(a-1) of the Texas Election Code, for any election ordered or authorized to occur on November 3, 2020, to the extent necessary to allow a voter to deliver a marked mail ballot in person to the early voting clerk's office prior to and including on election day; provided, however, that beginning on October 2, 2020, this suspension applies only when:

(1) the voter delivers the marked mail ballot at a single early voting clerk's office location that is publicly designated by the early voting clerk for the return of marked mail ballots under Section 86.006(a-1) and this suspension; and

(2) the early voting clerk allows poll watchers the opportunity to observe any activity conducted at the early voting clerk's office location related to the in-person delivery of a marked mail ballot pursuant to Section 86.006(a-1) and this suspension, including the presentation of an acceptable form of identification described by Section 63.0101 of the Election Code by the voter.

Any poll watchers operating under this suspension must comply with the requirements of Chapter 33 of the Election Code as if they were serving at an early voting polling place, as applicable to observing the in-person delivery of a marked mail ballot pursuant to Section 86.006(a-1) and this suspension.

Any marked mail ballot delivered in person to the early voting clerk's office prior to October 2, 2020, shall remain subject to the July 27, 2020 proclamation.

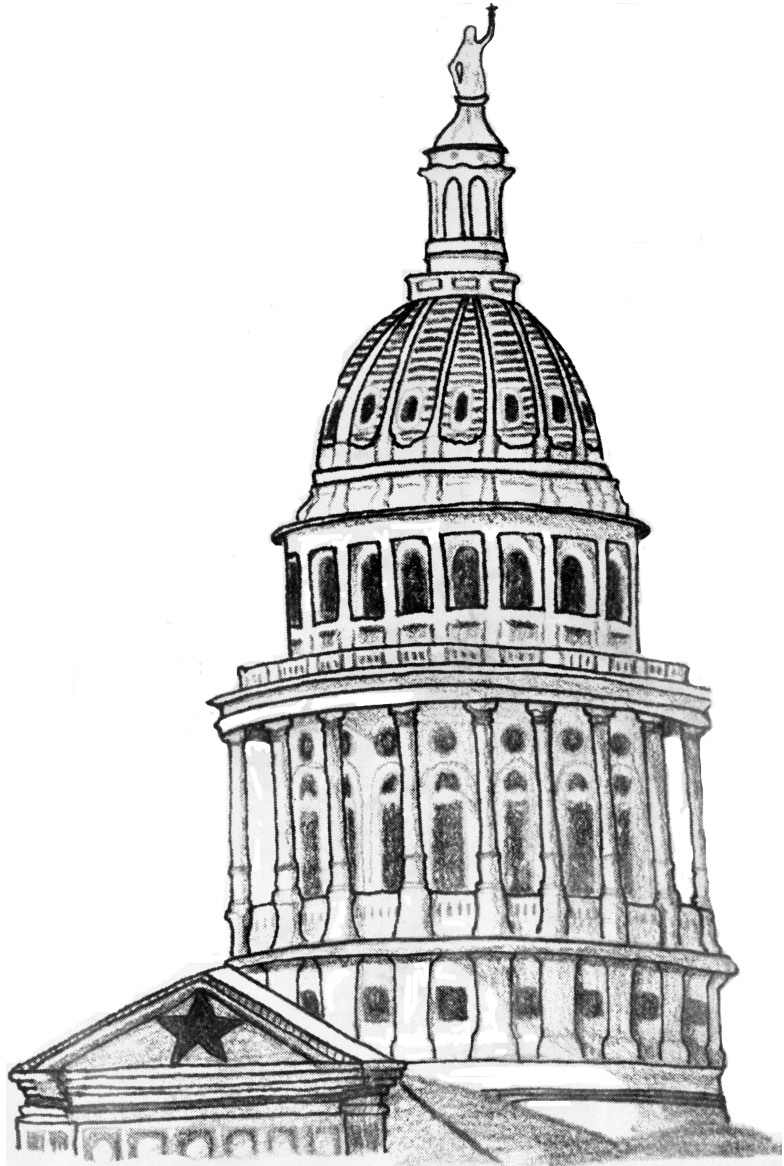
The Secretary of State shall take notice of this proclamation and shall transmit a copy of this order immediately to every County Judge of this state and all appropriate writs will be issued and all proper proceedings will be followed to the end that said elections may be held and their results proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 1st day of October, 2020.

Greg Abbott, Governor

TRD-202004080

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THE ATTORNEY GENERAL

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

An index to the full text of these documents is available on the Attorney General's website at <https://www.texas.attorneygeneral.gov/attorney-general-opinions>. For information about pending requests for opinions, telephone (512) 463-2110.

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

Requests for Opinions

RQ-0379-KP

Requestor:

Mr. Steven C. McCraw

Director

Texas Department of Public Safety

Post Office Box 4087

Austin, Texas 78773-0001

Re: Whether a political subdivision may require the Department of Public Safety to lift driver license renewal holds requested under Transportation Code chapter 706 if the political subdivision has not met the requirements for sending a clearance notice under section 706.005 or has not collected the reimbursement fee under section 706.006 (RQ-0379-KP)

Briefs requested by September 29, 2020

RQ-0380-KP

Requestor:

Ms. Jennifer D. Robison, CPA

Brown County Auditor

200 South Broadway

Brownwood, Texas 76801

Re: Whether Texas Constitution article III, section 53 prohibits salary supplements for the administrative staff of the county's justices of the peace paid out of the justice court's technology fund (RQ-0380-KP)

Briefs requested by October 26, 2020

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

TRD-202004043

Lesley French

General Counsel

Office of the Attorney General

Filed: September 29, 2020

Opinions

Opinion No. KP-0334

The Honorable Andrew Lucas

Somervell County Attorney

Post Office Box 1335

Glen Rose, Texas 76043

Re: Whether article II, section 1 of the Texas Constitution, relating to the separation of powers, applies to municipal government and the management of personnel (RQ-0343-KP)

S U M M A R Y

The separation of powers provisions of article II, section 1 of the Texas Constitution do not apply to municipal government.

Chapters 22 and 25 of the Local Government Code, which provide for possible forms of government of a Type A general-law municipality, do not address the appeal of municipal employee discipline or grievance decisions or employee management generally.

A Type A municipality generally may regulate its affairs by adopting ordinances that are consistent with state law. This office does not advise municipal officials about how to comply with their own ordinances.

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

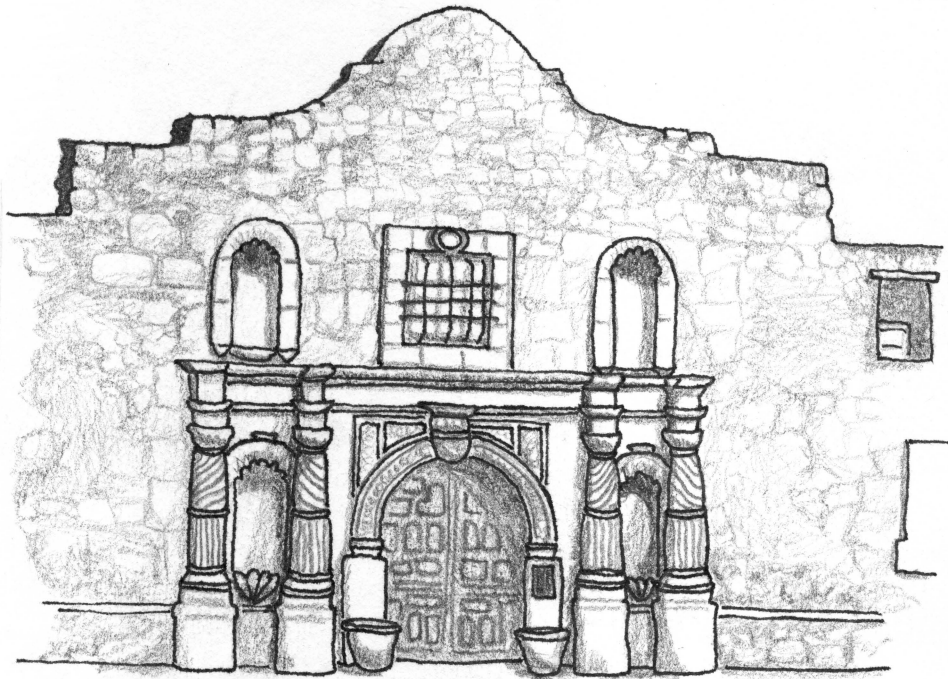
TRD-202004044

Lesley French

General Counsel

Office of the Attorney General

Filed: September 29, 2020



EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 22. EXAMINING BOARDS

PART 36. COUNCIL ON SEX OFFENDER TREATMENT

CHAPTER 810. COUNCIL ON SEX OFFENDER TREATMENT

SUBCHAPTER A. LICENSED SEX OFFENDER TREATMENT PROVIDERS

22 TAC §810.4

The Council on Sex Offender Treatment is renewing the effectiveness of emergency amended §810.4 for a 60-day period. The text of the emergency rule was originally published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3951).

Filed with the Office of the Secretary of State on September 25, 2020.

TRD-202004013

Aaron Pierce, PhD, LPC, LSOTP-S
Chairman

Council on Sex Offender Treatment

Original effective date: June 2, 2020

Expiration date: November 28, 2020

For further information, please call: (512) 834-4530



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.51

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 25 Texas Administrative Code, Chapter 133 Hospital Licensing, new §133.51, concerning Visitor Screening and Access During the COVID-19 Pandemic. This emergency rule will provide guidance to hospitals regarding limiting and screening visitors in order to reduce the risk of COVID-19 transmission.

As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health,

safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule, Visitor Screening and Access During the COVID-19 Pandemic.

To protect patients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require hospitals to adopt, implement, and enforce written policies and procedures to screen each person entering the hospital and to restrict visitor access as determined necessary by the hospital to limit the spread of COVID-19. The emergency rule also specifies that a hospital may not prohibit government personnel performing their official duty from entering the hospital, unless they fail to meet the hospital's screening criteria.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §241.026. Texas Government Code §2001.034 authorizes the adoption of an emergency rule without prior notice and hearing if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §241.026 authorizes the Executive Commissioner of HHSC to adopt rules governing the development, establishment, and enforcement of standards for the construction, maintenance, and operation of licensed hospitals.

This new rule implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 241.

§133.51. Visitor Screening and Access During the COVID-19 Pandemic.

(a) Based on Governor Greg Abbott's March 13, 2020, declaration of a state of disaster in all Texas counties, the Texas Health and Human Services Commission adopts this emergency rule to establish continuing requirements and flexibilities to protect public health and

safety during the COVID-19 pandemic. The requirements and flexibilities established in this section are applicable during an active declaration of a state of disaster in all Texas counties due to the COVID-19 pandemic, declared pursuant to §418.014 of the Texas Government Code.

(b) In order to protect the health and safety of patients, hospital staff, and the public, a hospital shall limit visitors allowed in the facility to the extent the hospital determines such limitation is necessary to prevent or control a COVID-19-related health and safety risk.

(c) In order to protect the health and safety of patients, hospital staff, and the public, a hospital shall adopt, implement, and enforce written policies and procedures to screen each person entering the hospital, using criteria based on state, local, and federal guidance in the event of a public health disaster, and prohibit entry of any person who does not meet the screening criteria.

(d) A hospital shall implement and enforce written policies and procedures in accordance with this section regarding:

(1) the visitation rights of patients;

(2) any clinically necessary or reasonable restriction or limitation on such rights; and

(3) the reasons for the clinical restriction or limitation.

(e) A hospital may not prohibit government personnel performing their official duty, from entering the hospital, unless the individual fails to meet the hospital's screening criteria.

(f) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority that is more restrictive than this section or any minimum standard relating to a hospital, the hospital must comply with the executive order or other direction.

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

Filed with the Office of the Secretary of State on September 25, 2020.

TRD-202004012

Karen Ray

Chief Counsel

Department of State Health Services

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For further information, please call: (512) 834-4591



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 500. COVID-19 EMERGENCY HEALTH CARE FACILITY LICENSING SUBCHAPTER A. HOSPITALS

26 TAC §500.2

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis new

§500.2, Waiver of 36-Month Requirement During the COVID-19 Pandemic, in Title 26 Texas Administrative Code, Chapter 500, to allow HHSC flexibility in implementing an emergency rule in §500.1, Hospital Off-Site Facilities in Response to COVID-19. The new emergency rule will enable hospitals to treat and house patients more effectively in response to COVID-19 by allowing HHSC to waive the requirement that an emergency off-site facility must have been licensed or open within the past 36 months.

As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state exists and requires immediate adoption of this emergency rule for Waiver of 36-Month Requirement During the COVID-19 Pandemic.

To protect current and future patients in health care facilities and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC previously adopted an emergency rule to allow a currently licensed hospital to operate an off-site inpatient facility without obtaining a new license. To allow operation of additional off-site facilities, HHSC is adopting this emergency rule to allow a waiver of the requirement for off-site facilities to be open or licensed within the past 36 months, at HHSC's discretion.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §241.026. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §241.026 requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals.

This emergency rule implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 241.

§500.2. Waiver of 36-Month Requirement During the COVID-19 Pandemic.

(a) Based on Governor Greg Abbott's March 13, 2020 declaration of a state of disaster in all Texas counties, the Texas Health and Human Services Commission (HHSC) adopts this emergency rule to establish continuing requirements and flexibilities to protect public

health and safety during the COVID-19 pandemic. The requirements and flexibilities established in this section are applicable during an active declaration of a state of disaster in all Texas counties due to the COVID-19 pandemic, declared pursuant to §418.014 of the Texas Government Code.

(b) At its sole discretion, HHSC may waive the requirement that an off-site facility must have been licensed or open within the past 36 months under §500.1(b) of this subchapter (relating to Hospital Off-Site Facilities in Response to COVID-19), if the hospital applying to use the off-site facility provides evidence satisfactory to HHSC that such waiver will not detrimentally affect the health or safety of patients, hospital staff, or the public.

(c) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority that is more restrictive than this section or any minimum standard relating to a hospital, the hospital must comply with the executive order or other direction.

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

Filed with the Office of the Secretary of State on September 29, 2020.

TRD-202004056

Karen Ray

Chief Counsel

Health and Human Services Commission

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Expiration date: January 28, 2021

For further information, please call: (512) 428-1929



SUBCHAPTER B. END STAGE RENAL DISEASE FACILITIES

26 TAC §500.20

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis new §500.20, ESRD Off-Site Facilities During the COVID-19 Pandemic, in Texas Administrative Code (TAC) Title 26, Chapter 500, Subchapter B. This emergency rule will allow end stage renal disease (ESRD) facilities to treat and train dialysis patients more effectively during the COVID-19 pandemic.

As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed

that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state exists and requires immediate adoption of this emergency rule for ESRD Off-Site Facilities During the COVID-19 Pandemic.

To protect current and future patients in health care facilities and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to allow a currently licensed ESRD facility to apply to operate an off-site outpatient facility without obtaining a new license at: (1) an ESRD facility that is no longer licensed that closed within the past 36 months; (2) a mobile, transportable, or relocatable medical unit; (3) a physician's office; or (4) an ambulatory surgical center or freestanding emergency medical care facility that is no longer licensed that closed within the past 36 months.

STATUTORY AUTHORITY

The emergency rule is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §251.003 and §251.014. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §251.003 requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an ESRD facility. Texas Health and Safety Code §251.014 requires these rules to include minimum standards to protect the health and safety of a patient of an ESRD facility.

This new section implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 251.

§500.20. ESRD Off-Site Facilities During the COVID-19 Pandemic.

(a) Based on Governor Greg Abbott's March 13, 2020, declaration of a state of disaster in all Texas counties, the Texas Health and Human Services Commission (HHSC) adopts this emergency rule to establish continuing requirements and flexibilities to protect public health and safety during the COVID-19 pandemic. The requirements and flexibilities established in this section are applicable during an active declaration of a state of disaster in all Texas counties due to the COVID-19 pandemic, declared pursuant to §418.014 of the Texas Government Code.

(b) An end stage renal disease (ESRD) facility licensed under Texas Health and Safety Code Chapter 251 that meets the requirements of this emergency rule may use an off-site facility under its current license for added services or an increased number of stations to meet patient needs in response to COVID-19 for the duration this emergency rule is in effect or any extension of this emergency rule is in effect.

(c) The off-site facility must be:

(1) An ESRD facility no longer licensed under Texas Health and Safety Code Chapter 251 that closed within the past 36 months, or a facility with a pending application for such a license that has passed its final architectural review inspection, which:

(A) shall be capable of meeting the current licensing requirements in the Texas Administrative Code (TAC) Title 25 §117.32(a) - (e) (relating to Water Treatment, Dialysate Concentrates, and Reuse); or

(B) shall provide integrated hemodialysis machines, which incorporate water treatment and dialysis preparation and delivery into one system.

(2) A mobile, transportable, or relocatable medical unit utilizing integrated dialysis systems and defined as any trailer or self-propelled unit:

(A) equipped with a chassis on wheels;

(B) without a permanent foundation; and

(C) intended for provision of medical services on a temporary basis.

(3) A physician's office built after January 1, 2015, that is currently in use, which shall be used only for home training of COVID-19-negative dialysis patients.

(4) A physician's office built after January 1, 2015, that has closed within the past 12 months, which shall be used only for home training of COVID-19-negative dialysis patients and complies with the following:

(A) the office shall be well maintained with all building systems in good working condition; and

(B) manual fire extinguishers shall be provided in accordance with NFPA 10: Standard for Portable Fire Extinguishers.

(5) An ambulatory surgical center no longer licensed under Texas Health and Safety Code, Chapter 243 that closed within the past 36 months and will be used for either home training or providing in-center dialysis treatment where both of the following are met:

(A) the ESRD facility shall only provide integrated hemodialysis machines; and

(B) the building layout shall provide a direct view of all patient stations from a nurse's station.

(6) A freestanding emergency medical care facility no longer licensed under Texas Health and Safety Code, Chapter 254 that closed within the past 36 months and will be used for either for home training services or providing in-center dialysis treatment where both of the following are met:

(A) the ESRD facility shall only provide integrated hemodialysis machines; and

(B) the building layout shall provide a direct view of all patient stations from a nurse's station.

(d) Prior to receiving approval to use an off-site facility under this emergency rule, the ESRD facility must submit to INFO-HFLC@hhs.texas.gov on a form provided by HHSC:

(1) an application to use an off-site facility for the addition of services or increased number of stations; and

(2) water culture testing results that meet the requirements of 25 TAC §117.32(c)(4).

(e) HHSC has the discretion to approve or deny any application to use an off-site facility under this emergency rule. HHSC may require an inspection of the off-site facility or additional documentation prior to considering an application.

(f) In order to protect the health, safety, and welfare of patients and the public, HHSC may withdraw its approval for an ESRD facility to use the off-site facility under this emergency rule at any time. Any patients being treated in the off-site facility at the time approval is withdrawn shall be safely relocated as soon as practicable according to the ESRD facility's policies and procedures.

(g) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority that is more restrictive than this section or any minimum standard relating to an ESRD facility, the ESRD facility must comply with the executive order or other direction.

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

Filed with the Office of the Secretary of State on September 29, 2020.

TRD-202004055

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: September 30, 2020

Expiration date: January 27, 2021

For further information, please call: (512) 834-4591



CHAPTER 510. PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §510.48

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 510, Private Psychiatric Hospitals and Crisis Stabilization Units, new §510.48, concerning an emergency rule in response to COVID-19 in order to provide guidance to facilities regarding limiting and screening visitors in order to reduce the risk of COVID-19 transmission. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rule, Visitor Screening and Access During the COVID-19 Pandemic.

To protect patients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require facilities to adopt, implement, and enforce written policies and procedures to screen each person en-

tering the facility. The emergency rule also specifies that a facility may not prohibit government personnel performing their official duty from entering the facility, unless they fail to meet the facility's screening criteria.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §577.010. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §577.010 authorizes the Executive Commissioner of HHSC to adopt rules governing rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

This new rule implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

§510.48. Visitor Screening and Access During the COVID-19 Pandemic.

(a) Based on Governor Greg Abbott's March 13, 2020, declaration of a state of disaster in all Texas counties, the Texas Health and Human Services Commission adopts this emergency rule to establish continuing requirements and flexibilities to protect public health and safety during the COVID-19 pandemic. The requirements and flexibilities established in this section are applicable during an active declaration of a state of disaster in all Texas counties due to the COVID-19 pandemic, declared pursuant to Texas Government Code §418.014.

(b) In order to protect the health and safety of patients, hospital staff, and the public, a hospital shall limit visitors allowed in the facility to the extent the hospital determines such limitation is necessary to prevent or control a COVID-19-related health and safety risk.

(c) In order to protect the health and safety of patients, facility staff, and the public, a facility shall adopt, implement, and enforce written policies and procedures to screen each person entering the facility, using criteria based on state, local, and federal guidance in the event of a public health disaster, and prohibit entry of any person who does not meet the screening criteria.

(d) A facility shall implement and enforce written policies and procedures in accordance with this section regarding:

- (1) the visitation rights of patients;
- (2) any clinically necessary or reasonable restriction or limitation on such rights; and
- (3) the reasons for the clinical restriction or limitation.

(e) A facility may not prohibit government personnel performing their official duty from entering the facility, unless the individual fails to meet the facility's screening criteria.

(f) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority that is more restrictive than this section or any minimum standard relating to a facility, the facility must comply with the executive order or other direction.

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

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TRD-202004011

Karen Ray

Chief Counsel

Health and Human Services Commission

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Expiration date: January 22, 2021

For further information, please call: (512) 834-4591



CHAPTER 550. LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

SUBCHAPTER C. GENERAL PROVISIONS

DIVISION 1. OPERATIONS AND SAFETY PROVISIONS

26 TAC §550.213

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 550, Licensing Standards for Prescribed Pediatric Extended Care Centers, Subchapter C, General Provisions, Division 1, Operations and Safety Provisions, new §550.213, concerning an emergency rule in response to COVID-19 in order to reduce the risk of transmission of COVID-19. As authorized by Texas Government Code §2001.034 the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule for Prescribed Pediatric Extended Care Center Response to COVID-19.

To protect minors being served in a prescribed pediatric extended care center and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to update screening requirements for certain persons authorized to enter a pediatric extended care center.

The updates are consistent with current guidance provided by the Centers for Disease Control and Prevention.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §248A.101. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §248A.101, authorizes the Executive Commissioner of HHSC to adopt rules to implement Health and Safety Code §248A, including rules prescribing minimum standards to protect the health and safety of minors being served in prescribed pediatric extended care centers.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code 248A.101, Chapter 550, §550.213.

§550.213. Emergency Rule for Prescribed Pediatric Extended Care Center Response to COVID-19.

(a) Based on state law and federal guidance, the Texas Health and Human Services (HHSC) finds COVID-19 to be a health and safety risk and requires a prescribed pediatric extended care center to take the following measures. The screening required by this section does not apply to emergency services personnel entering the center in an emergency.

(b) In this section:

(1) Providers of essential services include, but are not limited to, contract doctors, contract nurses, therapists, dietitians, social workers, and home health workers whose services are necessary to ensure minors' health and safety.

(2) Persons with legal authority to enter include, but are not limited to, law enforcement officers, representatives of Disability Rights Texas, representatives of the long-term care ombudsman's office, and government personnel performing their official duties.

(3) Persons providing critical assistance include providers of essential services and persons with legal authority to enter.

(c) A prescribed pediatric extended care center must take the temperature of every person upon arrival and may not allow a person with a fever as described in subsection (e) of this section to enter or remain in the center.

(d) A prescribed pediatric extended care center must prohibit visitors, except as provided in subsection (e) of this section.

(e) A prescribed pediatric extended care center may allow entry of persons providing critical assistance, unless the person meets one or more of the following screening criteria:

(1) Fever, defined as a temperature of 100.4 Fahrenheit and above, or by the most current Centers for Disease Control and Prevention (CDC) guidance;

(2) Signs or symptoms of COVID-19, including chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;

(3) Additional signs and symptoms as outlined by the CDC in Symptoms of Coronavirus at [cdc.gov](https://www.cdc.gov); or

(4) Contact in the last 14 days, unless to provide critical assistance, with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness.

(f) A facility must not prohibit government personnel performing their official duty from entering the facility, unless the individual meets the above screening criteria.

(g) If this emergency rule is more restrictive than any minimum standard relating to a prescribed pediatric extended care center, this emergency rule will prevail so long as this emergency rule is in effect.

(h) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this emergency rule or any minimum standard relating to a prescribed pediatric extended care center, the prescribed pediatric extended care center must comply with the executive order or other direction.

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

Filed with the Office of the Secretary of State on September 29, 2020.

TRD-202004054

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: September 30, 2020

Expiration date: January 27, 2021

For further information, please call: (512) 438-3161



CHAPTER 558. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

SUBCHAPTER I. RESPONSE TO COVID-19 AND PANDEMIC-LEVEL COMMUNICABLE DISEASE

26 TAC §558.960

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 558, Licensing Standards for Home and Community Support Services Agencies, new §558.960, concerning an emergency rule in response to COVID-19 in order to reduce the risk of transmission of COVID-19. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing critical essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule for HCSSA Response to COVID-19.

To protect clients served by home and community support services agencies and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to require screening of staff, clients, and household members and offer alternative methods to provide non-essential services. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this COVID-19 Response.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §142.012. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Health and Safety Code §142.012, authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement Chapter 142 of the Texas Health and Safety Code, concerning, Home and Community Support Services. Texas Health and Safety Code §142.012 authorizes the Executive Commissioner of HHSC to adopt rules governing minimum standards for home and community support services agencies that are necessary to protect the public.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code §142.012.

§558.960. Emergency Rule for HCSSA Response to COVID-19.

(a) Based on state law and federal guidance, the Texas Health and Human Services Commission (HHSC) finds COVID-19 to be a health safety risk and requires a home and community support services agency to take the following measures. The screening required by this section does not apply to emergency services personnel entering an agency in an emergency situation.

(b) For the purposes of this section, personal protective equipment means specialized clothing or equipment, worn by agency staff for protection against transmission of infectious diseases such as COVID-19, including surgical or N95 masks, goggles, gloves, and disposable gowns.

(c) Agency staff have legal authority to enter a facility licensed under Health and Safety Code Chapters 242, 247, or 252, or Human Resources Code Chapter 103, to provide services to the facility's residents who are agency clients. Agency staff entering a licensed facility must follow the infection control protocols of the facility including COVID-19 testing requirements.

(d) An agency must screen its staff and must not allow staff to remain in the agency, enter a licensed facility, or make home visits if the employee, volunteer or contractor meets one or more of the following screening criteria:

(1) fever defined as a temperature of 100.4 Fahrenheit and above, or by the most current Centers for Disease Control and Prevention (CDC) guidance relating to fever or signs or symptoms of a respiratory infection;

(2) signs or symptoms of COVID-19, including chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;

(3) additional signs and symptoms as outlined by CDC in Symptoms of Coronavirus at [cdc.gov](https://www.cdc.gov); or

(4) contact in the last 14 days, unless to provide critical assistance in a licensed facility or essential services through the HCSSA, with someone who has a confirmed diagnosis of COVID-19, is under investigation for COVID-19, or is ill with a respiratory illness.

(e) The agency must determine if a home visit requires essential services or non-essential services.

(1) If the visit requires non-essential services, the visit:

(A) must be conducted by phone or video conference, if possible; or

(B) must be rescheduled for a later date.

(2) If the visit requires essential services, staff must conduct the visit in person and screen the client and household members using the same criteria for staff that is described in subsection (d) of this section and proceed as described below.

(A) If the client or a member of the household meet one or more of the screening criteria, use appropriate personal protective equipment during the visit.

(B) If the client or a member of the household does not meet one or more of the screening criteria, conduct the visit as indicated for the type of service provided.

(3) An agency must document any missed visits in the plan of care, care plan, or individualized services plan and notify the attending physician, if applicable.

(f) Providers of essential services include HCSSA employees and contractors, including but not limited to physicians, nurses, hospice aides, home health aides, attendants, social workers, therapists, spiritual counselors, and volunteers in any of those roles.

(g) A parent agency administrator or alternate administrator, or supervising nurse or alternate supervising nurse may make the monthly supervisory visit required for branch supervision by §558.321(d)(1) of this chapter (relating to Standards for Branch Offices) or as required for alternative delivery site by §558.322(c)(1) of this chapter (relating to Standards for Alternate Delivery Sites) by virtual communication, such as video or telephone conferencing systems.

(h) A hospice RN may make the supervisory visit required in §558.842(d) of this chapter (relating to Hospice Aide Services) by virtual communication, such as video or telephone conferencing systems.

(i) If this emergency rule is more restrictive than any minimum standard relating to a home and community support services agency, this emergency rule will prevail so long as this emergency rule is in effect.

(j) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this emergency rule or any minimum standard relating to a home and community support services agency, the home and community support services agency must comply with the executive order or other direction.

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

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Karen Ray
Chief Counsel
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For further information, please call: (512) 834-4591



CHAPTER 567. CERTIFICATE OF PUBLIC ADVANTAGE

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §§567.1 - 567.6

The Health and Human Services Commission is renewing the effectiveness of emergency new §§567.1 - 567.6 for a 60-day period. The emergency rules were originally published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3951).

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SUBCHAPTER B. APPLICATION OF PUBLIC ADVANTAGE

26 TAC §§567.21 - 567.26

The Health and Human Services Commission is renewing the effectiveness of emergency new §§567.21 - 567.26 for a 60-day period. The text of the emergency rule was originally published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3951).

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SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §§567.31 - 567.33

The Health and Human Services Commission is renewing the effectiveness of emergency new §§567.31 - 567.33 for a 60-day period. The text of the emergency rule was originally published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3951).

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SUBCHAPTER D. RATE REVIEW

26 TAC §567.41

The Health and Human Services Commission is renewing the effectiveness of emergency new §567.41 for a 60-day period. The text of the emergency rule was originally published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3951).

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SUBCHAPTER E. ENFORCEMENT

26 TAC §§567.51 - 567.54

The Health and Human Services Commission is renewing the effectiveness of emergency new §§567.51 - 567.54 for a 60-day period. The text of the emergency rule was originally published in the June 12, 2020, issue of the *Texas Register* (45 TexReg 3951).

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.18

The General Land Office adopts, on an emergency basis, new §15.18, concerning Emergency Provisions for Dune Restoration and Stabilization and Repair of Damaged Habitable Structures in response to Hurricane Laura and Tropical Storm Beta. This rule applies to local governments with authority to issue beachfront construction certificates and dune protection permits in Galveston County and Brazoria County, Texas. These jurisdictions have areas where emergency hazard mitigation measures are needed to reestablish the protective barrier provided by dunes damaged or destroyed by storm tidal surges and overwash, and where habitable structures need emergency stabilization and repair. The General Land Office has withdrawn Emergency §15.19 for Hurricane Laura, published in the September 11, 2020, issue of the *Texas Register* (45 TexReg 6301), and adopts this new rule for Hurricane Laura and Tropical Storm Beta.

This emergency rule is adopted on an emergency basis due to the imminent peril to public health, safety, and welfare represented by the damage to structures and protective barriers caused by storm surge, high tides, and erosion resulting from Hurricane Laura and Tropical Storm Beta. As a result of both Hurricane Laura and Tropical Storm Beta, hurricane and tropical storm winds, storm surge, high tides, and overwash caused coastal flooding and severe erosion of the sand dunes and shoreline. Hurricane Laura made landfall at 1:00 a.m. on August 27, 2020, near Cameron, Louisiana, although its destructive force impacted the upper Texas coast. Tropical Storm Beta made landfall at 10:00 p.m. on September 21, 2020, near Matagorda Peninsula. These two storms resulted in a loss in elevation of beach sand in both Galveston and Brazoria Counties. The protective barrier provided by dunes in these areas has been severely impacted by both events. In addition, the structural integrity of many houses has been adversely impacted as a result of these natural forces. GLO finds that this emergency rule is necessary because coastal residences, public beaches, and coastal natural resources are extremely vulnerable to ongoing injury, damage, and destruction. Since it is still hurricane season, this threat is ongoing, and the repairs need to be completed as quickly as possible.

The General Land Office has determined it is necessary to adopt an emergency rule with provisions that provide for temporary suspension of certain beachfront construction certificate and dune protection permit application and permitting requirements for certain specified activities and provide for an alternative authorization process. The emergency rule will enable local governments to permit immediate stabilization and repair of habitable structures and authorize the restoration of dunes in jurisdictions most impacted by Hurricane Laura and Tropical Storm Beta. The emergency rule shall be effective for 120 days from the date of filing with the Office of the Secretary of State and may be extended once by the Land Commissioner for not longer than 60 days as necessary to protect public health, safety, and welfare.

Emergency new §15.18 provides procedures for issuance of local authorization to undertake emergency dune restoration and emergency stabilization and repairs of structures impacted by Hurricane Laura and Tropical Storm Beta. Section 15.18(c) provides definitions applicable to this new section. Section 15.18(d) allows the local government to issue authorizations for emergency dune restoration and emergency stabilization and emergency repair of habitable structures as necessary to eliminate the danger and threat to public health, safety, and welfare. Section 15.18(e) provides an alternative authorization process that shall apply to emergency authorizations and specifies that emergency authorizations are valid for no more than six months from issuance. Section 15.18(f) provides that the local government is required to maintain a written record of any emergency dune restoration or emergency stabilization and emergency repair actions that are authorized. Section 15.18(g) provides requirements and limitations with regard to the location of emergency dune restoration projects. Section 15.18(h) provides guidelines for authorized methods and materials with regard to emergency dune restoration projects. Section 15.18(i) contains prohibitions with regard to dune restoration projects. Section 15.18(j) provides authorizations and limitations with regard to authorizations by the local government of emergency stabilization and repair of habitable structures. Section 15.18(k) provides that houses under enforcement will require a standard permit and may not use the emergency rule. Sections 15.18(l) and (m) provide additional limitations and requirements related to the repair of septic and sewage systems and the placement of materials on the beach. Section 15.18(n) and (o) allow a local government to remove portions of damaged bulkheads that threaten public health, safety and welfare and prohibit a local government from authorizing construction or repair of a bulkhead or structural shore protection project under this rule and acknowledge that houses repaired under this section may also be an encroachment on and interference with the public beach easement.

Under emergency §15.18(j) and (k), a local government may permit the some repairs to a habitable structure; however, a local government is prohibited from authorizing the following under the emergency rule: repairing or constructing a slab of concrete, fibercrete, or other impervious material; increasing the footprint of the habitable structure; repairing a habitable structure previously built, repaired, or renovated in violation of the Land Office's beach/dune rules, Texas Natural Resources Code Ch. 61 or Ch. 63, or the local government's dune protection and beach access plan or without an approved certificate or permit; or constructing, repairing, or maintaining an erosion response structure or structural shore protection project. These activities and others not specifically authorized in this emergency rule must follow the permitting rules and limitations in the provisions of §15.4, relat-

ing to Dune Protection Standards; §15.5, relating to Beachfront Construction Standards; and §15.6, relating to Concurrent Dune Protection and Beachfront Construction Standards. To the extent these activities are allowed under existing law, Applicants must go through the standard application process and obtain a certificate and permit. Specifically, impervious cover can only be authorized through the standard, non-emergency permitting process.

The General Land Office has determined that a takings impact assessment (TIA), pursuant to §2007.043 of the Texas Government Code, is not required for the adoption of this emergency rule. This rule is adopted in response to a grave and immediate threat to life and property and is, therefore, exempt under §2007.003(b) of the Texas Government Code from the TIA requirements.

The new section is adopted on an emergency basis under the Texas Natural Resources Code, §§63.121 and 61.011, which provide the General Land Office with the authority to identify and protect critical dune areas, preserve and enhance the public's right to use and have access to and from Texas's public beaches, protect the public beach easement from erosion or reduction caused by development or other activities on adjacent land, and establish other measures needed to mitigate for adverse effects on access to public beaches and the beach/dune system. The emergency section is also adopted pursuant to Texas Natural Resources Code §33.601, which provides the General Land Office with the authority to adopt rules on erosion, and Texas Water Code §16.321, which provides the General Land Office with the authority to adopt rules on coastal flood protection. Finally, the new sections are adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

The new section affects Texas Natural Resources Code §63.056, 31 TAC §15.3, and 31 TAC §15.4.

§15.18. Emergency Provisions for Emergency Dune Restoration and Stabilization and Repair of Damaged Habitable Structures.

(a) The purpose of this section is to allow a local government to authorize a property owner to immediately undertake certain emergency repairs to restore dunes and to stabilize and repair a habitable structure damaged as the result of Hurricane Laura or Tropical Storm Beta, so as to minimize further threat or damage to coastal residents and littoral property.

(b) Applicability. This section applies only to emergency dune restoration projects and structure stabilization and emergency repairs in jurisdictions that have authority to issue beachfront construction certificates and dune protection permits in Brazoria County and Galveston County, Texas. This section shall be in effect for 120 days from the date of filing with the Office of the Secretary of State and may be extended once by the Land Commissioner for not longer than 60 days as necessary to protect public health, safety and welfare.

(c) Definitions. The following words and terms, as used in this section, shall have the following meanings:

- (1) The Code--The Texas Natural Resources Code.
- (2) Habitable--The condition of the premises which permits the inhabitants to live free of serious threats to health and safety.
- (3) Habitable Structure--Structures suitable for human habitation including, but not limited to, single or multi-family residences, hotels, condominium buildings, and buildings for commercial

purposes. Each building of a condominium regime is considered a separate habitable structure, but if a building is divided into apartments, then the entire building, not the individual apartments, is considered a single habitable structure.

(4) Emergency dune restoration--those immediate and authorized response measures that must be undertaken to construct a dune, repair a damaged dune, or stabilize an existing dune in order to minimize further threat or damage to coastal residents and littoral property.

(5) Emergency repair--Those immediate and authorized response actions that must be undertaken to render a structure habitable or to prevent further damage or loss of property to high tides.

(6) Emergency stabilization--Those immediate and authorized response actions that must be undertaken to stabilize a habitable structure that is subject to imminent collapse or substantial damage as a result of erosion or undermining caused by waves or currents of water exceeding normally anticipated cyclical levels.

(7) Restoration Area--

(A) An area where dunes existed pre-storm;

(B) An area no more than 10 feet seaward of a habitable structure if no dunes existed in the area before the storm;

(C) In no case does the Restoration Area include the area seaward of the mean high tide line or an area where placement of restored dunes would result in substantial interference with the public's ability to access the beach at mean high tide.

(d) Local government authorization. The local governments with the authority to issue dune protection permits and beachfront construction certificates in Brazoria County and Galveston County may, in accordance with this section, authorize emergency dune restoration projects or the emergency stabilization and emergency repair of a habitable structure damaged by Hurricane Laura or Tropical Storm Beta.

(1) The local government is responsible for assessing damage to dunes and structures, determining whether the proposed dunes and structures are eligible for restoration or emergency stabilization and emergency repair, and determining appropriate restoration methods and emergency stabilization and emergency repair procedures. Under this section, the local government may only authorize emergency dune restoration or emergency stabilization and emergency repair as necessary to eliminate the danger and threat to public health, safety, and welfare, or to minimize the danger and threat to coastal residents and littoral property.

(2) Any proposed emergency dune restoration project or emergency stabilization and emergency repair of a habitable structure must strictly comply with the standards and requirements provided in this section and §15.6(e) of this title. In order to be eligible for use of emergency rules for emergency repair or emergency stabilization, no portion of the habitable structure may be located seaward of mean high tide, the habitable structure must not have been damaged more than 50 percent or destroyed, and the habitable structure must not present an imminent threat to public health and safety.

(e) Procedures. The permit and certificate application requirements and procedures of §15.3(s)(4) of this title (relating to Administration) are not applicable to emergency dune restoration projects or emergency stabilization and emergency repair of habitable structures that are authorized under this rule. However, any person eligible to undertake an emergency dune restoration project or emergency stabilization and emergency repair must receive prior approval for such actions from the local government officials responsible for approving such actions. Any action that is not necessary for the emergency dune

restoration or emergency stabilization and emergency repair of habitable structures under this section must undergo the standard application and approval process before such action is undertaken. An authorization issued by a local government under this section shall be valid only for six months from the date of issuance, after which it will expire. A local government shall not renew an authorization issued under this section.

(f) Written Record. The local government authorizing emergency dune restoration or emergency stabilization and emergency repair of habitable structures shall compile and maintain a record of the names and addresses of the property owners that receive such authorization. For each emergency dune restoration authorization, the local government must maintain a written record of the actions that it authorized, including the location of the dune and pictures of the emergency dune restoration project before and after completion of the authorized activities. For each emergency stabilization and emergency repair of a habitable structure, the local government must maintain a written record of the actions that it authorized, including the address of the structure, a description of the repairs, and pictures of the structure before and after completion of the authorized activities. The local government will make such record available for inspection by the General Land Office upon request. Within one week of the expiration of this rule, the local government shall submit to the General Land Office copies of the complete written record of all actions authorized under this section.

(g) Authorized emergency dune restoration. The local government shall require persons to locate restored dunes in the restoration area, as defined in subsection (c)(7) of this section. The local government may authorize the restoration of dunes only under the following conditions:

(1) if the restored dunes would not substantially restrict or interfere with access points or public access to or use of the public beach at normal high tide, including causing pedestrian or vehicular traffic to enter the water in order to traverse the beach at normal high tide;

(2) if the placement of sand or other authorized materials will be above the mean high tide line; and

(3) if derelict structures and debris have been removed from the area before placement of allowable materials.

(h) Authorized methods and materials for emergency dune restoration. The local government may allow persons to use the following methods or materials for emergency dune restoration:

(1) beach-quality sand having similar grain size and mineralogy as the surrounding beach;

(2) organic brushy material including seaweed and dune vegetation; and

(3) sand obtained by scraping accreting beaches only if the scraping is approved by the local government and the areas where scraping is authorized is monitored to determine any effect on the public beach, including, but not limited to, increased erosion of the public beach.

(i) Prohibitions regarding emergency dune restoration. The local government shall not allow any person to undertake dune restoration projects using any of the following materials:

(1) materials such as bulkheads, sandbags, riprap, concrete, asphalt rubble, building construction materials, and any non-biodegradable items;

(2) sediments containing the hazardous substances listed in Appendix A to §302.4 in Volume 40 of the Code of Federal Regulations, Part 302 in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments;

(3) sand obtained by scraping or grading dunes or eroding beaches; or

(4) sand that is not beach-quality sand or an acceptable mineralogy and grain size when compared to the sediments found in the beach/dune system.

(j) Authorized Stabilization and Repair of Damaged Habitable Structures. The local government may authorize emergency stabilization and repair of a habitable structure only if the local government determines that the proposed action is necessary to render the structure habitable, to prevent further damage, or to protect public health, safety and welfare.

(1) Repairs may include:

(A) repairs solely to make the structure habitable or prevent further damage, including reconnecting the structure to utilities;

(B) placing fill material under the footprint of habitable structures if it consists only of beach quality sand or a sandy clay mixture. Sandy clay may be placed to fill voids only directly under the footprint of a residential structure; provided, however, that sandy clay used for this purpose must be covered with beach quality sand, where practicable, to a depth of at least 12 inches. Such actions are only authorized in situations where stabilization of the structure is required to prevent foreseeable undermining of habitable structures in the event of future storms and high tide events;

(C) repairing or constructing an enclosed space under a habitable structure if it is constructed of breakaway walls or louvered walls and is consistent with the local dune protection and beach access plan and the National Flood Insurance Program;

(D) construction of wooden decking or stairs under or directly adjacent to the footprint of the habitable structure only as necessary to make the house accessible;

(E) installation of new pilings or repair of existing pilings; and

(F) placement of beach-quality sand on the lot in the area up to ten feet seaward of a habitable structure where necessary to prevent further erosion due to wind or water. The sand must remain loose and cannot be placed in bags. Such actions are authorized in situations where protection of the land immediately seaward of a habitable structure is required to prevent foreseeable undermining of habitable structures in the event of such erosion.

(2) Repairs may not include:

(A) increasing the footprint of the habitable structure;

(B) the use of impervious material, including but not limited to concrete or fibercrete;

(C) the repair or construction of a bulkhead, retaining wall, other erosion response structure, or structural shore protection project;

(D) the use of sandbags;

(E) repairs that occur seaward of mean high tide; and

(F) placement of beach-quality sand or sandy clay must not be placed seaward of the mean high tide line.

(k) Repair of structures subject to ongoing enforcement. Any repairs to structures that are subject to an ongoing enforcement action under this subchapter, the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), or a local government beach access and dune protection plan must go through standard permitting process.

(l) Repair of sewage or septic systems. If the Texas Commission on Environmental Quality or its designated local authority, the Texas Department of Health, or a local health department has made a determination that a sewage or septic system located on or adjacent to the post-storm line of vegetation poses a threat to the health of the occupants of the property or public health, safety or welfare, and requires removal of the sewage or septic system, the sewage or septic system shall be located in accordance with §15.5(b)(1) of this title (relating to Beachfront Construction Standards) and §15.6(b) and §15.6(e)(1) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards).

(m) This emergency rule does not authorize the placement of materials seaward of the mean tide line.

(n) The local government is not authorized under this rule to allow the use of concrete or the construction, maintenance, or repair of bulkheads or other erosion response structures, or construct or repair a structural shore protection project. This rule does not prohibit a local government from authorizing the removal of portions of damaged bulkheads that threaten public health safety and welfare.

(o) Effect on actions for removal. This section does not create a property right of any kind in the littoral property owner. Houses eligible for repairs to maintain habitability under this section may also be encroachments on and interferences with the public beach easement. The right of the commissioner, the attorney general, a county attorney, district attorney, criminal district attorney or local authority to file suit in the future to pursue enforcement or obtain an injunction, to remove a house from the public beach is preserved regardless of whether the house is eligible for emergency stabilization and repairs under this section.

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

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Mark Havens
Deputy Land Commissioner and Chief Clerk
General Land Office
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 98. DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

SUBCHAPTER D. LICENSURE AND PROGRAM REQUIREMENTS

40 TAC §98.65

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC or Commission) adopts on an emergency basis in Title 40, Texas Administrative Code, Chapter 98, Day Activity and Health Services Requirements, new §98.65, concerning an emergency rule in response to COVID-19 in order to reduce the risk of transmission of COVID-19. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

The purpose of the emergency rulemaking is to support the Governor's March 13, 2020, proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this Emergency Rule for Day Activity and Health Services Response to COVID-19.

To protect day activity and health services clients and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to update screening requirements for certain persons authorized to enter a day activity and health services facility. The updates are consistent with current guidance provided by the Centers for Disease Control and Prevention.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Human Resources Code §103.004 and §103.005. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Human Resources Code §103.004 authorizes the Executive Commissioner of HHSC to adopt rules implementing Texas Human Resources Code Chapter 103, concerning Day Activity and Health Services Facilities. Texas Human Resources Code §103.005 authorizes the Executive Commissioner of HHSC to adopt rules governing the standards for safety and sanitation of a licensed day activity and health services facility.

The new section implements Texas Government Code §531.0055 and Texas Human Resources Code Chapter 103.005.

§98.65. Emergency Rule for Day Activity and Health Services Response to COVID-19.

(a) Based on state law and federal guidance, the Texas Health and Human Services Commission (HHSC) finds COVID-19 to be a health and safety risk and requires a day activity and health services facility to take the following measures. The screening required by this section does not apply to emergency services personnel entering the facility in an emergency situation.

(b) In this section:

(1) Providers of essential services include, but are not limited to, contract doctors, contract nurses, and home health workers whose services are necessary to ensure client health and safety.

(2) Persons with legal authority to enter include, but are not limited to, law enforcement officers and government personnel performing their official duties.

(3) Persons providing critical assistance include providers of essential services and persons with legal authority to enter.

(c) A day activity and health services facility must take the temperature of every person upon arrival and must not allow a person with a fever as described in subsection (e) of this section to enter or remain in the facility.

(d) A day activity and health services facility must prohibit visitors, except as provided in subsection (e) of this section.

(e) A day activity and health services facility may allow entry of persons providing critical assistance, unless the person meets one or more of the following screening criteria:

(1) Fever, defined as a temperature of 100.4 Fahrenheit and above, or by the most current Centers for Disease Control and Prevention (CDC) guidance;

(2) Signs or symptoms of COVID-19, including chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea;

(3) Additional signs and symptoms as outlined by the CDC in Symptoms of Coronavirus at [cdc.gov](https://www.cdc.gov); or

(4) Contact in the last 14 days, unless to provide critical assistance, with someone who has a confirmed diagnosis of COVID-19, someone who is under investigation for COVID-19, or someone who is ill with a respiratory illness.

(f) A facility must not prohibit government personnel performing their official duty from entering the facility, unless the individual meets the above screening criteria.

(g) If this emergency rule is more restrictive than any minimum standard relating to a day activity and health services facility, this emergency rule will prevail so long as this emergency rule is in effect.

(h) If an executive order or other direction is issued by the Governor of Texas, the President of the United States, or another applicable authority, that is more restrictive than this emergency rule or any minimum standard relating to a day activity and health services facility, the day activity and health services facility must comply with the executive order or other direction.

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

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3161





PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 69. PROCUREMENT

SUBCHAPTER C. MANAGEMENT OF VEHICLES

1 TAC §69.35

The Office of the Attorney General (OAG) proposes an amendment to Chapter 69, Subchapter C, §69.35, concerning the State Vehicle Management Plan (SVMP). Section 69.35 adopts the SVMP, and the proposed non-substantive amendment to §69.35 updates the reference to the SVMP.

Tom Taylor, Division Chief, Facilities and Asset Management Division, has determined that for each of the first five years the proposed amendment is in effect, there are no foreseeable fiscal implications for state or local governments as a result of enforcing or administering the amendment.

Mr. Taylor has determined that for each of the first five years the proposed amendment is in effect, the public will benefit from having accurate and current information regarding the SVMP. Mr. Taylor has determined: there is no probable economic cost to persons required to comply with the amendment; the proposed amendment will not impact local economies; and the proposed amendment will not have an adverse economic effect on small businesses, micro-businesses, or rural communities.

In compliance with Government Code §2001.0221, the OAG has prepared the following government growth impact statement. The proposed amendment will not: create or eliminate a government program; require the creation of new employee positions or the elimination of existing employee positions; require an increase or decrease in future legislative appropriations to the OAG; require an increase or decrease in fees paid to the OAG; create a new regulation; expand, limit, or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability; or positively or adversely affect this state's economy.

Written comments on the proposed amendment may be submitted for 30 days following the publication of this notice to Karen Hattaway, Assistant Attorney General, General Counsel Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, Karen.Hattaway@oag.texas.gov.

The amendment to §69.35 is proposed in accordance with Government Code §2171.1045, which requires each state agency to adopt rules, consistent with the SVMP, relating to the assignment and use of the agency's vehicles.

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

§69.35. *State Vehicle Management Plan.*

To the extent applicable, the agency adopts the State Vehicle Management Plan developed [as adopted] by the Comptroller of Public Accounts' Office of Vehicle Fleet Management[~~, under the direction of the Council on Competitive Government, on October 11, 2000~~].

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

Filed with the Office of the Secretary of State on September 24, 2020.

TRD-202003969

Lesley French

General Counsel

Office of the Attorney General

Earliest possible date of adoption: October 8, 2020

For further information, please call: (512) 475-3210



TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes the repeal of Title 16, Texas Administrative Code §§33.1, 33.4, 33.6, 33.7, 33.13, 33.21, 33.22, 33.24, 33.27, 33.31 - 33.34, and 33.41, effective December 31, 2020. Related rules have been proposed concurrently with these repeals.

Background and Summary of Basis for the Proposed Repeals

In 2019, the Texas Legislature adopted House Bill 1545, which made significant amendments throughout the Alcoholic Beverage Code (Code). HB 1545 further required the commission to adopt a variety of new rules and amend others to implement its provisions. To adopt the necessary new and amended rules, the commission either has to or will make changes to every subchapter in existing Chapter 33, Licensing. With these proposed rules and other related rulemaking packages, the commission is taking the opportunity presented by the extensive necessary changes to Chapter 33 to streamline and reorganize Chapter 33 to be more intuitive and user-friendly.

The proposed repeals are not intended to make substantive changes. Rather, the majority of repealed rules will be contem-

poraneously adopted at a different rule number. The remainder of the repeals are dictated by changes to the Alcoholic Beverage Code or a prior repeal of the underlying law.

The repeals are proposed pursuant to the commission's general powers and duties under §5.31 of the Code.

Fiscal Note: Costs to State and Local Government

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed repeals will be in effect, they are not expected to have a significant fiscal impact upon the agency. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed repeals.

Rural Communities Impact Assessment

The proposed repeals will not have any material adverse fiscal or regulatory impacts on rural communities. The repeals will apply statewide and have the same effect in rural communities as in urban communities. Likewise, the proposed repeals will not adversely affect a local economy in a material way.

Small Business and Micro-Business Assessment/Flexibility Analysis

No material fiscal implications are anticipated for small or micro-businesses due to the proposed repeals.

Takings Impact Assessment

The proposed repeals do not affect a taking of private real property, as described by Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

Public Benefits and Costs

Ms. Horton has determined that for each year of the first five years that the proposed repeals would be in effect, the public would benefit from the more streamlined, user-friendly and intuitively organized rules. There is no increase in costs to the public.

Government Growth Impact Statement

This paragraph constitutes the commission's government growth impact statement for the proposed repeals. The analysis addresses the first five years the proposed amendments would be in effect. The proposed repeals neither create nor eliminate a government program. The proposed repeals do not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed repeals requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed repeals are not expected to result in a significant change in fees paid to the agency. The proposed repeals do not create new regulations. The proposed repeals do not expand the applicability of any rules or increase the number of individuals subject to existing rules' applicability beyond current rule requirements.

The proposed repeals are not anticipated to have any material impact on the state's overall economy.

Comments on the proposed repeals may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, attention Shana Horton, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3498,

or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed repeals on October 19, 2020, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. **DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY.** Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 487-9905.

SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §§33.1, 33.4, 33.6, 33.7, 33.13

The proposed repeals are authorized by Alcoholic Beverage Code §5.31, which authorizes the TABC to prescribe and publish rules necessary to carry out the provisions of the code.

The proposed repeals do not impact any other statutes or rules.

§33.1. *Deferred Adjudication.*

§33.4. *Manufacturer's Warehouse License Fee.*

§33.6. *Renewal of Licenses and Permits after Expiration.*

§33.7. *Monitoring Sales Data.*

§33.13. *Process to Apply for License or Permit.*

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

Filed with the Office of the Secretary of State on September 25, 2020.

TRD-202003998

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: November 8, 2020

For further information, please call: (512) 487-9905



SUBCHAPTER B. LICENSE AND PERMIT SURCHARGES

16 TAC §§33.21, 33.22, 33.24, 33.27

The proposed repeals are authorized by Alcoholic Beverage Code §5.31, which authorizes the TABC to prescribe and publish rules necessary to carry out the provisions of the code.

The proposed repeals do not impact any other statutes or rules.

§33.21. *When Excise Tax Bonds are Necessary.*

§33.22. *Excise Tax Bonds.*

§33.24. *Conduct Surety Bonds and Performance Bonds.*

§33.27. *Bonds for Alternating Brewery Proprietorships and Contract Brewing Arrangements.*

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

Filed with the Office of the Secretary of State on September 25, 2020.

TRD-202003999

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: November 8, 2020

For further information, please call: (512) 487-9905



SUBCHAPTER C. LICENSE AND PERMIT ACTION

16 TAC §§33.31 - 33.34

The proposed repeals are authorized by Alcoholic Beverage Code §5.31, which authorizes the TABC to prescribe and publish rules necessary to carry out the provisions of the code.

The proposed repeals do not impact any other statutes or rules.

§33.31. *Administrative Inactivation, Reinstatement and Renewal of a License or Permit.*

§33.32. *Notification of Expired or Suspended Licenses and Permits.*

§33.33. *Notification Requirements.*

§33.34. *Reporting Permit or License Changes.*

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

Filed with the Office of the Secretary of State on September 25, 2020.

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Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: November 8, 2020

For further information, please call: (512) 487-9905



SUBCHAPTER D. CONFLICTS OF INTEREST

16 TAC §33.41

The proposed repeals are authorized by Alcoholic Beverage Code §5.31, which authorizes the TABC to prescribe and publish rules necessary to carry out the provisions of the code.

The proposed repeals do not impact any other statutes or rules.

§33.41. *Financial Interest.*

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

Filed with the Office of the Secretary of State on September 25, 2020.

TRD-202004001

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: November 8, 2020

For further information, please call: (512) 487-9905



CHAPTER 33. LICENSING

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes new Chapter 33, Licensing, rules §§33.3, 33.4, 33.6, 33.10, and 33.90 - 33.94 and amended rules §§33.2, 33.5, and 33.10, as part of a reorganization of Chapter 33 of the commission's rules. Related rule repeals are proposed concurrently with this rulemaking package.

Background and Summary of Basis for the Proposed Rules

In 2019, the Texas Legislature adopted House Bill 1545, which made significant amendments throughout the Alcoholic Beverage Code (Code). HB 1545 further required the commission to adopt a variety of new rules and amend others to implement its provisions. To adopt the necessary new and amended rules, the commission either has or will make changes to every subchapter in existing Chapter 33, Licensing. With these proposed rules and other related rulemaking packages, the commission is taking the opportunity presented by the extensive necessary changes to Chapter 33 to streamline and reorganize Chapter 33 to be more intuitive and user-friendly.

The proposed amendments are not intended to make substantive changes. Rather, they are intended to move rule provisions to more appropriate places, update rules to reflect repeals that have already occurred, and make other editorial changes for accuracy and consistency.

The proposed new rules would become effective on December 31, 2020.

The rules are proposed pursuant to the commission's general powers and duties under §5.31 of the Code.

Section by Section Discussion

Subchapter A: Applications

§33.2 *Application and Fee Payment Procedures*

The commission proposes amended §33.2 to make editorial changes for consistency and add subsection (d) regarding submission of license and permit renewal applications, which is moved and concurrently repealed from current §33.6(c)(2).

§33.3 *Process to Apply for License or Permit*

The commission proposes new §33.3 to contain existing provisions regarding the process to apply for a license or permit that are currently located in §33.13 of the commission's rules. Subsection (d) is revised to remove a reference to referral of an application to a county judge, as statutory changes have removed that procedure. Further, the rule includes subsection (h) regarding the requirement for certain applicants to provide sales data, which is currently in §33.7(b).

The effective date for this section is December 31, 2020 to coincide with the effective date of the related statutory change.

§33.4 *Deferred Adjudication*

The commission proposes new §33.4 to contain provisions related to the consideration of deferred adjudication, currently located at §33.1.

§33.5 Food and Beverage Certificate

The commission proposes a non-substantive amendment to §33.5 to correct a misspelling.

§33.6 Financial Interest

The commission proposes new §33.6 to contain the definition of "a person who has a financial interest in a package store permit or wine only package store permit" currently contained in subchapter C of Chapter 33 at §33.41.

§33.10 Citizenship and Status

The commission proposes to amend §33.10(b)(2) to remove references to permits eliminated by recent statutory changes.

§33.90 Renewal of Licenses and Permits After Expiration

The commission proposes new §33.90 to contain provisions related to Renewal of Licenses and Permits after Expiration currently located at §33.6.

§33.91 Administrative Inactivation, Reinstatement and Renewal of a License or Permit

The commission proposes new §33.91 to contain provisions related to Administrative Inactivation, Reinstatement and Renewal of a License or Permit currently located at §33.31 and to change the term "administrator" to "executive director" for consistency within the commission's rules.

§33.92 Notification of Expired or Suspended Licenses and Permits

The commission proposes new §33.92 to contain provisions related to Notification of Expired or Suspended Licenses and Permits currently located at §33.32 and to update a cross-reference.

§33.93 Notification Requirements

The commission proposes new §33.93 to contain provisions related to Notification Requirements currently located at §33.33.

§33.94 Reporting Permit or License Changes

The commission proposes new §33.94 to contain provisions related to Reporting Permit or License Changes currently located at §33.34; to eliminate references to agents' permits, which were eliminated by recent statutory changes; and to update cross-references.

Fiscal Note: Costs to State and Local Government

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed rules will be in effect, they are not expected to have a significant fiscal impact upon the agency. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed rules.

Rural Communities Impact Assessment

The proposed rules will not have any material adverse fiscal or regulatory impacts on rural communities. The rules will apply statewide and have the same effect in rural communities as in urban communities. Likewise, the proposed rules will not adversely affect a local economy in a material way.

Small Business and Micro-Business Assessment/Flexibility Analysis

No material fiscal implications are anticipated for small or micro-businesses due to the proposed rules.

Takings Impact Assessment

The proposed rules do not effect a taking of private real property, as described by Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

Public Benefits and Costs

Ms. Horton has determined that for each year of the first five years that the proposed rules would be in effect, the public would benefit from the more streamlined, user-friendly and intuitively organized rules. There is no increase in costs to the public.

Government Growth Impact Statement

This paragraph constitutes the commission's government growth impact statement for the proposed rules. The analysis addresses the first five years the proposed new rules and amendments would be in effect. The proposed rules neither create nor eliminate a government program. The proposed rules do not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed rules requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed rules are not expected to result in a significant change in fees paid to the agency. The proposed rules do not create new regulations. The proposed rules do not expand the applicability of any rules or increase the number of individuals subject to existing rules' applicability beyond current rule requirements.

The proposed rules are not anticipated to have any material impact on the state's overall economy.

Comments on the proposed rules may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, Attention: Shana Horton, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3498, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed rules on October 19, 2020, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. **DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY.** Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 487-9905.

SUBCHAPTER A. APPLICATIONS [APPLICATION PROCEDURES]

16 TAC §§33.2 - 33.6, 33.10

The proposed rules are authorized by Alcoholic Beverage Code §5.31, which authorizes the TABC to prescribe and publish rules necessary to carry out the provisions of the code.

The proposed rules do not impact any other statutes or rules.

§33.2. *Application and Fee Payment Procedures.*

(a) Applications for licenses, permits and certificates shall be made by an applicant in such a manner as may be directed by the executive director upon forms provided by the commission.

(b) Each application shall include all information required by the executive director to ensure compliance with all applicable statutes and rules and regulations of the agency.

(c) Each applicant for a license, permit or certificate issued by the commission, shall submit with the application the payment of all required fees in accordance with the applicable provisions of the code and rules.

(d) License and permit renewals which are required to be submitted directly to the licensing division in Austin must be postmarked no later than thirty calendar days after expiration or received by the commission no later than thirty calendar days after expiration. The application must be complete in form and accompanied by all state fees, surcharges, and late fees.

§33.3. Process to Apply for License or Permit.

(a) This section relates to any license or permit. The purpose of this section is to clarify the pre-qualification process in subsection (b) of this section and distinguish it from the application process described in subsections (c) and (d) of this section.

(b) Before an application for a license or permit that is required to be certified under §11.37 or §61.37 of the Alcoholic Beverage Code may be filed with the commission, a pre-qualification packet must be completed. A pre-qualification packet is deemed incomplete if it does not contain all required certifications applicable to the type of license or permit sought and for the location requested, and a response to each item requested by the commission in the packet. For purposes of this section, a completed pre-qualification packet is one that contains:

(1) all required certifications signed by the city secretary, where appropriate, and the county clerk that the location for which the license or permit is sought is in a "wet" area for such license or permit and is not prohibited by charter, by ordinance, or by valid order in reference to the sale of any alcoholic beverage allowed by the license or permit;

(2) all other applicable certifications signed by the city secretary, where appropriate, and the county clerk that are in the pre-qualification packet prescribed by the commission;

(3) the required certification by the Comptroller of Public Accounts that the person submitting the packet holds, or has applied for and satisfies all legal requirements for, the issuance of a sales tax permit;

(4) proof of publication of notice of the application, if required by §11.39 and §61.38 of the Alcoholic Beverage Code; and

(5) a response to each item requested by the commission in the packet.

(c) A person or entity may file an application with the commission by submitting all forms, documents and information prescribed by the commission in accordance with the practices, policies, and standards relating to the processing of applications for licenses and permits. If a pre-qualification packet is required by subsection (b) of this section, the packet must be completed before an application is filed. The commission shall process the application to determine whether the application is in compliance with all provisions of the Alcoholic Beverage Code and rules of the commission or whether there is legal reason to deny the application. If additional documentation or information is requested and not provided within the requested period of time, the application will be considered incomplete and withdrawn.

(d) On completion of its processing pursuant to subsection (c) of this section, the commission shall inform the applicant that the application:

(1) has been referred to the State Office of Administrative Hearings;

(2) is granted; or

(3) is refused.

(e) For purposes of §11.391 and §61.381 of the Alcoholic Beverage Code, a notice sign must be posted for 60 days before the date the permit or license is issued.

(f) A notice sign is required for purposes of §11.391 and §61.381 of the Alcoholic Beverage Code unless a license or permit authorizing the on-premises consumption of alcoholic beverages has been active at the requested location any time during the 24 months immediately preceding the filing of the application. For purposes of this subsection, an application is filed on the date a completed application packet is received by the commission.

(g) For the purposes of §61.35(e) of the Alcoholic Beverage Code, the commission will transmit to the county tax assessor 5% of the license fee collected for each issued license in that county. This transmission will occur the month following the issuance of the license.

(h) Each applicant for an original or renewal permit or license that allows on-premise consumption of any alcoholic beverage shall furnish sales data or, if not available, projection of sales for the location at which the license or permit is located or will be located. The projection or sales data should include a sufficient breakdown of sales into the categories of food, alcoholic beverages, and other major categories of sales at the location.

§33.4. Deferred Adjudication.

(a) This section relates to Alcoholic Beverage Code §§11.46, 25.06, 61.42, 61.43, 69.06, and 109.532.

(b) In determining whether an applicant is not qualified or is unsuitable to hold a permit or license under Alcoholic Beverage Code §109.532(b)(1), or whether an application should be cancelled or denied the commission may consider whether the person is currently serving deferred adjudication for:

(1) any felony offense;

(2) any controlled substance offense in the Health and Safety Code Chapter 481;

(3) any firearm or deadly weapon offense in Penal Code Chapter 46;

(4) any prostitution offense in Penal Code Chapter 43;

(5) any gambling offense in Penal Code Chapter 47;

(6) any human trafficking offense in Penal Code Chapter 20A;

(7) any fraud offense in Penal Code Chapters 32 or 35;

(8) any money laundering offense in Penal Code Chapter 34; or

(9) any violation of the Alcoholic Beverage Code.

(c) An applicant currently serving deferred adjudication for one of the offenses listed in subsection (b) of this section shall provide information requested by the commission to allow the commission to determine whether the applicant is qualified or suitable to hold a license or permit. In determining whether an applicant is qualified or suitable to hold a license or permit, the commission shall consider the

relationship between the offense and the particular license or permit being sought, taking into account these factors:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person at the time of the crime;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person prior to and following the criminal activity;
- (5) evidence of the person's rehabilitation; and
- (6) other evidence presented by the person of the person's present suitability, including letters of recommendation.

(d) If an applicant has completed the conditions of a deferred adjudication prior to filing an application, the commission will not consider the offense for which the deferred adjudication was served in deciding whether the applicant is qualified or suitable to hold a permit or license under Alcoholic Beverage Code §109.532(b)(1).

§33.5. *Food and Beverage Certificate.*

(a) This rule relates to §§25.13, 28.18, 32.23 and 69.16 of the Texas Alcoholic Beverage Code.

(b) Each applicant for an original or renewal food and beverage certificate shall include all information required by the commission to ensure ~~insure~~ compliance with all applicable statutes and rules.

(c) Application for the certificate shall be upon forms prescribed by the commission.

(d) The biennial certificate fee for each location is \$200.00 and must be submitted in the form of a cashier's check, U.S. postal money order, or company check made payable to the Texas Alcoholic Beverage Commission. A certificate expires upon expiration or cancellation of the primary permit or license. No prorated certificate fees will be given and no refunds made for issuance of the food and beverage certificate for less than two years.

(e) The following words and terms, when used in this section, shall have the following meaning unless the context clearly indicates otherwise:

(1) Food service--cooking or assembling of food on the location primarily for consumption at the location. Commercially pre-packaged items purchased off of the location which require no cooking or assembly do not constitute food service under this section.

(2) Entree--main dish or course of a meal.

(3) Food service facilities--a designated permanent portion of the licensed location, including commercial cooking equipment, where food is stored and prepared primarily for consumption at the location.

(4) Premises [~~Premise~~]-the designated area at a location that is licensed by the commission for the sale, service or delivery of alcoholic beverages.

(5) Location--the designated physical address of a premises [~~premise~~], but also including all areas at that address where the permit or license holder may sell, serve or deliver alcoholic beverages for immediate consumption at the address, regardless of whether some of those areas are occupied by other businesses, as long as those businesses are contiguous.

(f) An applicant is qualified for a food and beverage certificate if the following conditions, in addition to other requirements, are satisfied:

- (1) multiple entrees are available to customers; and
- (2) permanent food service facilities are maintained at the location.

(g) The hours of operation for sale and service of food and of alcoholic beverages are the same except that food may be sold or served before or after the legal hours for sale of alcoholic beverages.

(h) If the applicant is a hotel that maintains separate area restaurants, lounges or bars, food service facilities must exist for each of the designated licensed premises.

(i) An applicant for an original food and beverage certificate shall furnish the following, as well as any other information requested by the commission to ensure compliance:

(1) the menu or, if no menu is available, a listing of the food and beverage items;

(2) hours of operation of food service and hours of operation for sale or service of alcoholic beverages;

(3) sales data (including complimentary drinks, as recorded pursuant to subsection (n)(3) of this section) or, if not available, a projection of sales. The sales data or projection of sales should include sufficient breakdown of revenues of food, alcoholic beverages and other major sales categories at the location;

(4) listing of commercial cooking equipment used in the preparation and service of food; and

(5) copies of floor plans of the location indicating the licensed premises [~~premise~~] and permanent areas devoted primarily to the preparation and service of food.

(j) Applicants for renewal of food and beverage certificates shall submit sales data described in subsection (n) of this section. The commission may request additional information or documentation to indicate that the licensed location has permanent food service facilities for the preparation and service of multiple entrees.

(k) The commission may review the operation at the location to determine that food service with food service facilities for the preparation and service of multiple entrees is maintained. In doing so the commission may review such items as required in the original or renewal application as well as advertising, promotional items, changes in operations or hours, changes in floor plans, prominence of food items on the menu as compared to alcoholic beverages, name of the business at the location, number of transactions with food components, copies of city or county permits or certificates relating to the type of business operation, and any other item deemed necessary or applicable.

(l) Failure to provide documentation requested or accurately maintain required records is prima facie evidence of non-compliance.

(m) In verifying that food service is being maintained at the location, the commission may examine all books, papers, records, documents, supplies and equipment of the certificate holder.

(n) The following recordkeeping requirements apply to certificate holders:

(1) records must be maintained to reflect separate totals for alcoholic beverage sales or service, food sales and other major sales categories at the location;

(2) purchase invoices must be maintained to reflect the total purchases of alcoholic beverages, food and other major purchase categories at the location;

(3) complimentary alcoholic beverages must be recorded and included in the total alcoholic beverage sales as if they were sold and clearly marked as being complimentary; and

(4) all records must be maintained for four years and made available to authorized representatives of the commission upon reasonable request.

(o) In considering alcoholic beverage sales, the dollar value of complimentary drinks shall be added to total sales or service of alcoholic beverages in determining the percentage of alcoholic beverage sales or service on the licensed premises.

(p) In determining the permanent food service facilities requirement under subsection (f)(2), the gross receipts of all business entities sharing the location (as identified in the original or a supplemental application) will be considered. For audit purposes, it shall be the responsibility of the food and beverage certificate holder to provide financial and accounting records related to food, alcohol, and other major sales categories of all business entities sharing the location. For audit purposes, if such information that is provided is deemed insufficient to determine if a permit or license holder qualifies for issuance of a food and beverage certificate at the location, the computation and determination of the percentage of alcohol sales or service fees to total gross receipts at the licensed location may be based upon any available records of information.

§33.6 Financial Interest.

For the purposes of Alcoholic Beverage Code, §102.06, "a person who has a financial interest in a package store permit or wine only package store permit" shall mean one who holds an ownership interest in the business, or assets thereof, of a package store or wine only package store permittee. This rule shall not be construed as authorizing any unfair trade practice or discrimination in violation of the tied-house provisions of the Alcoholic Beverage Code.

§33.10. Citizenship and Status.

(a) An individual who applies for a license or permit shall, at the time of filing the application, be a United States citizen or legally authorized to work in the United States.

The commission will not issue a permit or license to a person that will cause the person to be in violation of the person's immigration status and/or result in them being illegally in the United States.

(b) No permit shall be issued to a corporation, partnership, firm, association, or other legal entity, other than an individual, unless the entity is formed by filing a certificate of formation or registered to transact business in this state. This requirement does not apply to:

(1) An entity holding a brewer's permit, and other licenses and permits as are necessary to the operation of the brewer's permit,

(2) A holder of a ~~[an agent's, industrial or]~~ carrier's permit, or

(3) A foreign corporation that was engaged in the legal alcoholic beverages business in this State under charter or permit prior to August 24, 1935.

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

Filed with the Office of the Secretary of State on September 25, 2020.

TRD-202004002

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: November 8, 2020

For further information, please call: (512) 487-9905



SUBCHAPTER F. LICENSE AND PERMIT ACTION

16 TAC §§33.90 - 33.94

The proposed rules are authorized by Alcoholic Beverage Code §5.31, which authorizes the TABC to prescribe and publish rules necessary to carry out the provisions of the code.

The proposed rules do not impact any other statutes or rules.

§33.90. Renewal of Licenses and Permits after Expiration.

(a) This rule relates to §6.04 of the Alcoholic Beverage Code.

(b) In addition to the requirements of Alcoholic Beverage Code §61.48 and §5.50, each applicant who files a license or permit renewal under Alcoholic Beverage Code §6.04 and §61.48, must, prior to the close of business of the thirtieth calendar day after expiration, submit a fee of \$100.

(c) In addition to the requirements of Alcoholic Beverage Code §§11.32, 11.35, and 5.50, and any pertinent rule or procedure of the commission, license and permit renewals which are filed under the Alcoholic Beverage Code §6.04, must also meet the following requirements:

(1) mixed beverage permits, private club registration permits, private club exemption certificate permits, subordinate permits and any license or permit renewal required to be presented to any of this agency's offices which are filed after expiration must be presented prior to close of business on the thirtieth calendar day after expiration and must be complete in form, accompanied by all state fees and surcharges as well as the \$100 fee required by Alcoholic Beverage Code §6.04; and

(2) license and permit renewals which are required to be submitted directly to the licensing division in Austin must be post-marked no later than thirty calendar days after expiration or received by the commission no later than thirty calendar days after expiration. The application must be complete in form and accompanied by all state fees, surcharges, and late fees.

(d) Failure to submit any requested information, corrections or forms within fourteen days of demand will constitute non-compliance with Alcoholic Beverage Code §6.04 and this rule, resulting in the expiration of the license or permit due to the insufficiency of the application.

§33.91. Administrative Inactivation, Reinstatement and Renewal of a License or Permit.

(a) This section implements Alcoholic Beverage Code §11.44 and §102.32(d-1) and clarifies procedures related to administrative inactivation involving either voluntary or involuntary suspensions.

(b) Administrative inactivation refers to the placing of a license or permit in administrative suspense under this section and without a due process hearing. During administrative inactivation (whether voluntary or involuntary), the license or permit holder may not engage in any authorized activities allowed under that license or permit. The term of the license or permit will not be tolled during administrative

inactivation but will expire on the date indicated on the face of the license or permit.

(c) Unless otherwise disqualified or provided for by this section, the commission may, without a hearing, administratively inactivate and place in administrative suspense a license or permit upon receipt of an affidavit by the landlord, on a form prescribed by the executive director, that the premises has been abandoned by the licensee or permittee and that the licensee or permittee no longer has any interest in the premises.

(d) The commission may without a hearing administratively inactivate and place in administrative suspense a license or permit if the commission receives a final, non-appealable court judgment of eviction concerning against a permitted or licensed premises that is subject to a pending or unexpired suspension order or for which a cancellation or suspension action has been initiated.

(e) The commission may, without a hearing, administratively inactivate and place in administrative suspense a license or permit if the license or permit holder is delinquent in the payment of an account for liquor under Code §102.32 and either subsection (c) or (d) of this section applies. The Commission may not accept the voluntary cancellation or suspension of a license or permit or allow a license or permit to be renewed or transferred if the license or permit holder is delinquent in the payment of an account for liquor under §102.32 of the Texas Alcoholic Beverage Code.

(f) The commission may, but is not required to, administratively inactivate and place in voluntary suspense a license or permit if no administrative action is pending against the license or permit and either:

(1) the actual license or permit is submitted by the license or permit holder; or

(2) a sworn statement is submitted by the license or permit holder stating that the actual license or permit is unavailable for surrender and why.

(g) If a license or permit has been placed in voluntary administrative inactivation and the license or permit has not expired then the license or permit may be reinstated to active status, but only if the same requirements and qualifications as an applicant for an original license or permit are met. If a license or permit is reinstated under this subsection, the license or permit fee for the remainder of the license or permit term during which it was placed in administrative inactive status is not required.

(h) A license or permit may be renewed while on administrative inactivation only if, prior to the expiration date of the license or permit, a completed renewal with required supporting documents and all necessary state fees and surcharges is filed in accordance with all applicable sections of the code and rules. Otherwise the license or permit will expire at the end of its existing term.

(i) The effective date of the administrative inactivation of a license or permit or its voluntary cancellation will be the date the statement or other document required by this section is received in the licensing division or any other date mutually agreed to by the parties.

§33.92. Notification of Expired or Suspended Licenses and Permits.

(a) This rule refers to §§11.091(b) and 61.031(b) of the Alcoholic Beverage Code.

(b) Notification to wholesalers of expired or suspended licenses or permits shall be by electronic publication of such information on the commission's Internet web page.

(c) For purposes of the above referenced sections, an expired license or permit shall be one which has ceased to be active because of the operation of time and for which no timely and sufficient application for renewal has been filed with the commission.

(d) For purposes of the above referenced sections, a suspended license or permit shall be one that has ceased to be active by operation of the procedures described in §33.91 of this title (relating to Administrative Inactivation, Reinstatement and Renewal of a License or Permit).

§33.93. Notification Requirements.

(a) A person who holds a license, permit or certificate issued by the Alcoholic Beverage Commission shall maintain a current mailing address, telephone number and email address on file with the division that has issued the license, permit or certificate.

(b) A person who holds a license, permit, or certificate issued by the Alcoholic Beverage Commission shall file a written notice of change of mailing address with the Commission within seven (7) business days of the change. A person who holds a certificate issued by the Commission shall file the change of address with the Seller/Server Training Division at TABC, P.O. Box 13127, Austin, Texas 78711.

(c) A notice sent to a person by the Alcoholic Beverage Commission shall be sent by first class mail to the last known mailing address of a person that is on file with the commission.

(1) A person notified by mail under this subsection is presumed notified on the third day after the date on which the notice is mailed.

(2) This subsection does not apply to a notice required by Government Code §2001.054.

§33.94. Reporting Permit or License Changes.

(a) In order to process renewal applications efficiently and to assure that permittees and licensees are qualified throughout the term of their permits or licenses, the commission prescribes the following reporting timelines for changes to information that was provided in connection with an original application or for changes to the most recent information that has been reported to the commission. For the reasons recited above, the commission finds that the timelines are necessary to accomplish the purposes of the Alcoholic Beverage Code pursuant to Alcoholic Beverage Code §5.32.

(b) Any of the information described in this subsection that changes from the information provided in the original application, or that was provided in the most recent reported change to the commission, must be reported to the commission within 30 days following the date the change occurred:

(1) the addition or removal of a person whose name was included on the original application or whose name would be required if a new original application was being submitted, regardless of the title, position or ownership held;

(2) a change to the type of business;

(3) a change to a phone number or email address;

(4) a change to a person's criminal history that affects their qualifications to hold a permit or license;

(5) a change of the owner of the premises, a sublessor, a management company, or a concession company, or to the terms of any agreements with any such persons; or

(6) a change of organization as that term is defined in Business Organizations Code §1.002(62), other than a change of business

entity described in Alcoholic Beverage Code §§11.12 or 61.14 which is subject to the requirements of subsection (d) of this section.

(c) Any of the information described in this subsection that changes from the information provided in the original application, or that was provided in the most recent reported change to the commission, must be reported to the commission prior to the date the change will occur:

(1) a change in corporate control pursuant to Alcoholic Beverage Code §28.04; or

(2) a change of tradename.

(d) A change of business entity described in Alcoholic Beverage Code §§11.12 or 61.14 must be reported not later than the 11th day preceding the date the change will occur.

(e) This section does not apply to:

(1) a change of mailing address, which is subject to the requirements of §33.93 of this title (relating to Notification Requirements); or

(2) a change in the licensed or permitted location pursuant to Alcoholic Beverage Code §§11.08 or 61.09, which is subject to the requirements of §33.3 of this title (relating to Process to Apply for License or Permit)..

(f) All changes subject to this section must be reported on forms prescribed by the commission.

(g) Nothing in this section limits the commission's authority to request information from a permittee or licensee at any time to determine if a change has occurred.

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

Filed with the Office of the Secretary of State on September 25, 2020.

TRD-202004003

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: November 8, 2020

For further information, please call: (512) 487-9905



SUBCHAPTER C. BONDS

16 TAC §§33.40 - 33.45

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes new Chapter 33, Licensing, Subchapter C, Bonds, §§33.40 - 33.45, as part of a reorganization of Chapter 33 of the commission's rules. Related rule repeals are proposed concurrently with this rulemaking package.

Background and Summary of Basis for the Proposed Rules

In 2019, the Texas Legislature adopted House Bill 1545, which made significant amendments throughout the Alcoholic Beverage Code (Code). HB 1545 further required the commission to adopt a variety of new rules and amend others to implement its provisions. To adopt the necessary new and amended rules, the commission either has or will make changes to every subchapter in existing Chapter 33, Licensing. With these proposed rules

and other related rulemaking packages, the commission is taking the opportunity presented by the extensive necessary changes to Chapter 33 to reorganize Chapter 33 to be more streamlined, intuitive, and user-friendly.

The proposed amendments move bond-related rule provisions to their own dedicated subchapter, codify certain existing agency policies relating to how regulatory violations impact bond requirements, and make other editorial changes for accuracy and consistency.

The rules are proposed pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code, including Chapter 204, Bonds.

Section by Section Discussion

The title of Subchapter C is amended to reflect that it now contains rules for Bonds. Rules related to License and Permit Action, currently in Subchapter C, are concurrently proposed to be repealed from Subchapter C and readopted into a new Subchapter F with the same name, License and Permit Action.

§33.40. General Provisions.

The commission proposes new §33.40(a) - (m) to consolidate provisions currently located in §§33.22, 33.24, and 33.27 that apply to all types of bonds. This would eliminate duplicative verbiage currently existing in three separate rules.

The commission proposes new §33.40(n) - (p) to codify the agency's existing policies regarding how regulatory violations are ascribed to bond holders and related persons and entities for purposes of exemption from the requirement to post a bond or other surety and for purposes of bond cancellation or forfeiture. The provisions ensure that creation of a new corporate entity or involving a new partner will not insulate a bad actor from bond-related consequences of its prior regulatory violations.

The commission proposes new §33.40(q) to lay out in rule its authority under §§11.61(b)(2), 61.71, and 61.74 to suspend or cancel a license or permit for violation of any of the provisions of the Code or the commission's rules, including those related to cash and credit law.

§33.41. Conduct Surety Bonds.

The commission proposes new §33.41(a)-(c) and (e)(1)-(5) to contain existing provisions specific to conduct surety bonds. The provisions are currently contained in §33.24.

The commission proposes new §33.41(d) to lay out in rule the provisions of Code §11.11(e) and clarify that the agency performs the evaluation under that statute upon application for renewal of a license or permit.

The commission proposes new §33.41(e)(6) and (7) to codify in rule its current policies for counting regulatory violations toward conduct surety bond forfeiture, including specifically violations of cash and credit laws. These sections are intended to provide transparency and would not change the agency's current practice.

§33.42. Performance Bonds.

The commission proposes new §33.42 (a)-(c) to contain provisions specifically applicable to performance bonds, which are currently contained in §33.24.

The commission proposes new §33.42(d) to codify in rule its current policies for counting regulatory violations toward perfor-

mance bond forfeiture, including specifically violations of cash and credit laws. These sections are intended to provide transparency and would not change the agency's current practice.

§33.43. *When Excise Tax Bonds are Necessary.*

The commission proposes new §33.43 to contain rules related to the necessity of excise tax bonds that are currently contained in §33.21. The rule language has not been altered.

§33.44. *Excise Tax Bonds.*

The commission proposes new §33.44 to contain rules related to the necessity of excise tax bonds that are currently contained in §33.22. Non-substantive changes from the existing rule language are proposed to update cross-references and for readability and several sections currently contained in §33.22 are concurrently proposed to be adopted in new §33.40, regarding general provisions for bonds.

§33.45. *Bonds for Alternating Brewery Proprietorships and Contract Brewing Arrangements.*

The commission proposes new §33.45 to contain bond provisions specific to alternating brewery proprietorships and contract brewing arrangements. Proposed §33.45(a)-(h) are currently contained in §33.27. Non-substantive changes are proposed for readability and several provisions currently contained in §33.27 are concurrently proposed to be adopted in new §33.40, regarding general provisions for bonds.

The commission proposes new §33.45(b)(2) and (c)(2), the language of which differs from the existing rule text by clarifying that a brewing or manufacturing facility, for purposes of these sections, may be either domestic or foreign.

The commission proposes new §33.45(g) to be added for transparency, as it reflects the agency's current practice under its existing authority to seek forfeiture of a bond for any violation of one or more terms of the bond.

Fiscal Note: Costs to State and Local Government

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed rules will be in effect, they are not expected to have a significant fiscal impact upon the agency. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed rules.

Rural Communities Impact Assessment

The proposed rules will not have any material adverse fiscal or regulatory impacts on rural communities. The rules will apply statewide and have the same effect in rural communities as in urban communities. Likewise, the proposed rules will not adversely affect a local economy in a material way.

Small Business and Micro-Business Assessment/Flexibility Analysis

No material fiscal implications are anticipated for small or micro-businesses due to the proposed rules. Therefore, no Small Business and Micro-Business Assessment/Flexibility Analysis is required.

Takings Impact Assessment

The proposed rules do not affect a taking of private real property, as described by the Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it

neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

Public Benefits and Costs

Ms. Horton has determined that for each year of the first five years that the proposed rules would be in effect, the public would benefit from the more streamlined, user-friendly and intuitively organized rules. There is no increase in costs to the public.

Government Growth Impact Statement

This paragraph constitutes the commission's government growth impact statement for the proposed rules. The analysis addresses the first five years the proposed new rules and amendments would be in effect. The proposed rules neither create nor eliminate a government program. The proposed rules do not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed rules requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed rules are not expected to result in a significant change in fees paid to the agency. The proposed rules do not create new regulations. The proposed rules do not expand the applicability of any rules or increase the number of individuals subject to existing rules' applicability beyond current rule requirements.

The proposed rules are not anticipated to have any material impact on the state's overall economy.

Comments on the proposed rules may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, Attention: Shana Horton, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3498, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed rules on October 19, 2020, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 487-9905.

STATUTORY AUTHORITY

The rules are proposed pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code, including Chapter 204, Bonds.

The proposed rules impact current rules §§33.21, 33.22, 33.24, and 33.27, which are proposed to be repealed concurrently.

§33.40. *General Provisions.*

(a) This rule applies to conduct surety bonds, performance bonds, excise tax bonds, and bonds for alternating brewery proprietorships and contract brewing arrangements ("bonds").

(b) Submission of Bond with Application.

(1) When required by the Alcoholic Beverage Code to submit a bond, an applicant for an original or renewal license or permit shall submit with its license or permit application the required bond or alternative form of surety, as authorized under this section.

(2) Failure to submit the necessary bond or alternative form of surety in proper form will result in denial of the application.

(c) A bond required under the Alcoholic Beverage Code must be executed only on forms prescribed by the TABC with the licensee or permittee as principal, a qualified surety company doing business in this state as surety, and the state as payee.

(d) All bonds shall be payable in Travis County.

(e) A license or permit holder shall obtain, submit, and maintain a separate bond for each license or permit it holds.

(f) A licensee or permittee required to furnish a bond under this section may furnish, in lieu of all or part of the amount of the bond required, one or more certificates of deposit or savings accounts assigned to the state or one or more letters of credit. If an assignment of a certificate of deposit, savings account, or letter of credit is furnished in lieu of a bond, the executive director or their designee shall keep it in the agency's possession. Interest earned on a certificate of deposit or savings account is not subject to the assignment and remains the property of the owner of the certificate of deposit or savings account.

(g) A certificate of deposit or savings account furnished in lieu of a bond by a licensee or permittee must be assigned to the state, in a manner approved by the executive director or their designee, to secure payment to the state.

(h) A letter of credit furnished in lieu of a bond by a licensee or permittee must be on a form approved by the executive director or their designee and contain any conditions required by the executive director to secure payment to the state.

(i) Qualifications of Surety Company.

(1) A surety company, to qualify to provide bonds under this subchapter, must be licensed by this state and in "good standing" with the State Board of Insurance, Comptroller of Public Accounts, Secretary of State, and any other regulatory agencies with jurisdiction over its affairs.

(2) In addition to the requirements of Alcoholic Beverage Code §§11.11 and 61.13, a bank or credit union must have a physical facility in this state to accept cash deposits, make cash advances to customers and carry out day-to-day operations within this state.

(j) Each bond required by this subchapter must cover the permit or license period and must be maintained until it is released or forfeited or, if it is a bond required by §33.45(b), until it is terminated by the surety pursuant to Alcoholic Beverage Code §11.71.

(k) Release of Surety.

(1) Upon expiration of the license or permit, its voluntary cancellation, or upon the applicant's subsequent approval for exemption from the surety requirement, the licensee or permittee may request the release and return of the security supporting their license or permit.

(2) The release of the surety will not be unreasonably withheld; however, the surety company, bank, or credit union is not released from its obligation until it receives written notice of the release from the commission.

(3) The executive director may not release a surety bond until the surety company has paid and discharged in full all of its liabilities on the bond to the state as of the date of cancellation.

(l) General Provisions regarding Bond Forfeiture.

(1) When a permit or license is revoked, the commission shall notify the permittee or licensee in writing of its intent to seek forfeiture of the bond.

(2) Upon entry of a final order against the permittee or licensee or upon waiver of hearing by the permittee or licensee, the commission shall notify the surety company to remit to the state the full amount of the surety required within ten days after notification.

(m) For purposes of this subchapter, an order issued pursuant to an agreement of the parties in which the permittee or licensee waives its right to a hearing is a final adjudication of the violation that is the subject of the agreement and order.

(n) Violations of the Code or commission rules by the legal entity in the name of which a bond or other surety is held or by any of its officers, directors, or partners are counted toward and may result in cancellation, forfeiture, or exemption from the requirement to post a bond or other surety.

(o) In a joint venture, regardless of the type of legal entity formed, prior violations by any participant in the joint venture will disqualify the joint venture from exemption from the requirement to post a bond or other surety.

(p) Neither the bondholder nor any officer, director, or partner of a bondholding entity may be granted a new license or permit until a forfeited bond or other surety is paid.

(q) The commission may seek forfeiture of a bond due to cancellation of the license or permit for any reason, including cancellation for multiple violations of Alcoholic Beverage Code §§102.31 and 102.32.

§33.41. Conduct Surety Bonds.

(a) This section applies only to conduct surety bonds required by Alcoholic Beverage Code §§11.11 and 61.13.

(b) A conduct surety bond, assignment of certificate of deposit, savings account, or letter of credit must cover the minimum time required for the applicant to qualify for exemption from the surety requirement imposed by Alcoholic Beverage Code §§11.11 and 61.13.

(c) A permittee or licensee who is required to file a conduct surety bond may furnish instead of all or part of the required bond amount:

(1) one or more certificates of deposit assigned to the state issued by a federally insured bank or by a credit union authorized to do business in this state; or

(2) one or more letters of credit issued by a federally insured bank or credit union authorized to do business in this state.

(d) Pursuant to Alcoholic Beverage Code §11.11(e), a license or permit holder is exempt from the requirement to post a conduct surety bond if, at the time the commission receives the second renewal application for the license or permit, the holder of the license or permit:

(1) has not had any license or permit revoked within the preceding five years;

(2) is not the subject of a pending revocation or cancellation proceeding; and

(3) has continuously operated on the licensed or permitted premises for at least three years before the date the holder applied for renewal of the license or permit.

(e) Forfeiture of a Conduct Surety Bond.

(1) When a license or permit is cancelled, or upon a final adjudication that the licensee or permittee has committed three violations of the Alcoholic Beverage Code prior to the exemption date, the commission shall notify the licensee or permittee, in writing, of its intent to seek forfeiture of the bond or alternative form of surety.

(2) The licensee or permittee may, within 30 days of the notice specified in paragraph (1) of this subsection, request a hearing on the question of whether the criteria established by Alcoholic Beverage Code §§11.11 and 61.13 and by this section for forfeiture of the bond or alternative form of surety have been satisfied. The hearing shall be conducted in accordance with Chapter 2001 of the Government Code.

(3) Evidence that an agent or servant of the licensee or permittee has been adjudicated guilty of, or granted deferred adjudication for, an offense under the Alcoholic Beverage Code, because of conduct occurring during the performance of their duties for the licensee or permittee, shall constitute evidence of an adjudication that the licensee or permittee has violated a provision of the Alcoholic Beverage Code. This paragraph only applies to violations which were not attributable to the licensee or permittee because of the operations of Alcoholic Beverage Code §106.14.

(4) Upon entry of final order against the licensee or permittee in the hearing described in paragraph (2) of this subsection, or upon waiver of said hearing by the licensee or permittee, the commission shall notify the surety company, bank, or credit union to remit to the state the amount of surety required within ten days after notification.

(5) The commission may institute action to recover the amount of the surety in its own name, for the benefit of the state, as set forth in Alcoholic Beverage Code §11.70.

(6) Counting Violations for Conduct Surety Bond Forfeiture Purposes.

(A) Except as provided by subsection (b) of this section, the commission may seek forfeiture of a conduct surety bond upon the third violation during the effective period of the bond, including warnings, of any statute or rule under the commission's jurisdiction.

(B) For violations of Alcoholic Beverage Code §§102.31 and 102.32, the first six incidents may not be counted as violations supporting bond forfeiture. The seventh and subsequent violations will be counted as violations supporting bond forfeiture.

(C) Violations in which the license or permit holder has qualified for the legal protections of Alcoholic Beverage Code §106.14 (related to Actions of Employee) will be considered for forfeiture purposes according to §§11.11(b)(2) and 61.13(b)(2) of the Code.

(7) The commission will not seek forfeiture of a surety bond due solely to violations of Alcoholic Beverage Code §§102.31 and 102.32, but may seek forfeiture based upon violations of §§102.31 and/or 102.32 in combination with at least one other violation of the Code or commission rules.

§33.42. Performance Bonds.

(a) This section applies to performance bonds, which are the bonds required by Alcoholic Beverage Code §11.61(b-1) and §61.71(l).

(b) The first performance bond filed by a licensee or permittee with the commission as prescribed under §11.61(b-1) and §61.71(l) of the Alcoholic Beverage Code shall be in the amount of \$2,000. In the event the first bond is forfeited to the commission, a licensee or permittee must file a second bond with the commission as prescribed under those provisions in the amount of \$4,000 before a license or permit may be reinstated. In the event the second bond is forfeited to the commission, a licensee or permittee must file a third bond issued under those provisions in the amount of \$6,000 before a license or permit may be reinstated. If a permit or license that is secured by a performance bond is cancelled, the performance bond in place at the time of cancellation is forfeited to the commission.

(c) A permittee or licensee who is required to file a performance bond may furnish instead of all or part of the required bond amount:

(1) one or more certificates of deposit assigned to the state issued by a federally insured bank or by a credit union authorized to do business in this state; or

(2) one or more letters of credit issued by a federally insured bank or credit union authorized to do business in this state.

(d) Forfeiture of Performance Bonds.

(1) Except as provided by paragraph (2) of this subsection, the commission may seek forfeiture of a performance bond upon violation of any statute or rule under the commission's jurisdiction.

(2) For violations of Alcoholic Beverage Code §§102.31 and 102.32, the first six incidents may not be counted as violations supporting bond forfeiture. The seventh and subsequent violations will be counted as violations supporting bond forfeiture.

§33.43. When Excise Tax Bonds Are Necessary.

(a) This section is promulgated pursuant to Alcoholic Beverage Code §5.31, relating to General Powers and Duties, §204.01(g), relating to Bond Required, and §204.07, relating to Waiver of Bond Requirement.

(b) This section applies only to bonds required by §63.03 and Chapter 204 of the Alcoholic Beverage Code.

(c) The commission determines that it is no longer necessary or appropriate to require that every applicant who is subject to Chapter 204 of the Alcoholic Beverage Code furnish with its application the bond that is otherwise required by that chapter.

(d) The commission determines that it is necessary and appropriate to require that a bond under Chapter 204 of the Alcoholic Beverage Code be furnished upon renewal of its permit or license by a permittee or licensee who:

(1) is subject to Chapter 204 of the Alcoholic Beverage Code; and

(2) has not made, on or before the due date, a required payment of \$500 or more for a tax or fee imposed by the Alcoholic Beverage Code.

(e) It is the commission's judgment, under Alcoholic Beverage Code §63.03, that the appropriate amount of bond that is required from the holder of a nonresident manufacturer's license to protect the revenue of the state from the tax due on beer over any six-week period is zero. Therefore no bond is required of a nonresident manufacturer, because the revenue of the state is protected for these reasons:

(1) a holder of a nonresident manufacturer's license is not liable for payment of the beer tax pursuant to Alcoholic Beverage Code §203.02; and

(2) even when the nonresident manufacturer transports beer into the state in a motor vehicle owned or leased by him, the beer must be delivered to the holder of a distributor's license, who:

(A) also holds an importer's license;

(B) is liable for payment of the beer tax pursuant to Alcoholic Beverage Code §203.02; and

(C) is subject to the requirement of a bond to protect the revenue of the state when necessary and appropriate as determined in §33.44 of this title.

§33.44. Excise Tax Bonds.

(a) Excise Tax Bond Required.

(1) Each holder of a general distributor's license, local distributor's license, or branch distributor's license, and each holder of a manufacturer's license acting under the authority of Texas Alcoholic Beverage Code §62.12, who has not made, on or before the due date, a required payment of \$500 or more for a tax or fee imposed by the Alcoholic Beverage Code shall furnish a bond to ensure the payment of the tax on beer imposed by the Texas Alcoholic Beverage Code, §203.01.

(2) Each holder of a wholesaler's or Class B wholesaler's license who has not made, on or before the due date, a required payment of \$500 or more for a tax or fee imposed by the Alcoholic Beverage Code shall furnish a bond to ensure the payment of the tax on ale and malt liquor imposed by Texas Alcoholic Beverage Code §201.42 and the payment of the taxes on liquor other than ale or malt liquor imposed by Texas Alcoholic Beverage Code §201.03 and §201.04.

(3) Each holder of a brewer's permit acting under the authority of Texas Alcoholic Beverage Code §12.05 who has not made, on or before the due date, a required payment of \$500 or more for a tax or fee imposed by the Alcoholic Beverage Code shall furnish a bond to ensure the payment of the tax on ale and malt liquor imposed by Texas Alcoholic Beverage Code §201.42.

(4) Each holder of a winery or wine bottler's permit who has not made, on or before the due date, a required payment of \$500 or more for a tax or fee imposed by the Alcoholic Beverage Code shall furnish a bond to ensure the payment of the tax on vinous liquor imposed by Texas Alcoholic Beverage Code §201.04.

(b) Each bond required under this section shall be set by the executive director at an amount determined pursuant to §41.42 of this title that will protect the state against the anticipated tax liability of the principal for any six-week period based on previous average alcoholic beverage sales or estimates of the future average volume of sales.

(c) The requirement under this section to furnish a bond shall be imposed at the next renewal of the permit or license after the failure to make a timely payment of the amount specified in subsection (a) of this section.

(d) A finding of deficiency as a result of an audit does not constitute a failure to pay a tax when due, if the deficiency and any applicable penalty are paid within 10 days of the date of demand for payment by the commission.

(e) A licensee or permittee required to furnish a bond under subsection (a) of this section, is again entitled to exemption from the surety requirement if the licensee or permittee:

(1) pays all delinquent taxes and fees and any applicable penalties; and

(2) pays all taxes and fees required by the Texas Alcoholic Beverage Code on or before the due date for 18 consecutive months after the month in which the delinquent taxes and fees and penalties are paid.

(f) If a licensee or permittee fails to pay a tax or fee imposed by the Texas Alcoholic Beverage Code on or before the due date and the licensee or permittee holds multiple licenses or permits, the requirements for a bond shall be imposed under subsection (a) of this section only on the license or permit covering the licensed or permitted premises for which the tax or fee and any applicable penalty were not timely paid.

(g) If another license or permit is required, incidental to the operation of a business for which a basic license or permit is procured, the executive director may accept one bond to support all of the licenses

and permits. The executive director shall determine the amount of the bond.

(h) All bonds or other forms of security under this section that are in place on the effective date of this section, as amended, shall remain in place for the length of time specified on the bond or other form of security when it was furnished to the commission.

§33.45. Bonds for Alternating Brewery Proprietorships and Contract Brewing Arrangements.

(a) This section relates to Alcoholic Beverage Code §§11.71, 12.01(a)(6), 13.04(c), 61.41(d) and 62.01(a)(5).

(b) A bond in the amount of \$30,000 must be posted with the commission by each applicant for or holder of a brewer's permit or nonresident brewer's permit that:

(1) is a party to an alternating brewery proprietorship or a contract brewing arrangement; and

(2) does not own a fee interest in a brewing facility, whether domestic or foreign.

(c) A bond in the amount of \$30,000 must be posted with the commission by each applicant for or holder of a manufacturer's license or nonresident manufacturer's license that:

(1) is a party to an alternating brewery proprietorship or a contract brewing arrangement; and

(2) does not own a fee interest in a manufacturing facility, whether domestic or foreign.

(d) A permittee or licensee who was not subject to the bond requirements of subsection (b) or (c) of this section at the time of application must post the required bond at the time it becomes subject to those requirements.

(e) The permittee or licensee may, within 30 days of the notice specified in §33.40(1)(1) of this title, request a hearing on the question of whether the criteria established by this section for forfeiture of a bond have been satisfied. The hearing shall be conducted in accordance with Chapter 2001 of the Government Code.

(f) Release of Surety. A permit or license holder may request release and return of the surety required by subsection (b) or (c) of this section upon:

(1) expiration of the permit or license;

(2) voluntary cancellation of the permit or license;

(3) verification that the applicant or permit or license holder has acquired fee interest in a brewing or manufacturing facility (as appropriate in reference to subsections (b) and (c) of this section); or

(4) verification that the permit or license holder no longer is a party to an alternating brewery proprietorship or contract brewing arrangement.

(g) The commission may seek forfeiture of a bond under this section for a violation of any one or more of the terms of the bond.

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

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TRD-202004004

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SUBCHAPTER E. EVENTS AT A TEMPORARY LOCATION

16 TAC §§33.70 - 33.79

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes new Chapter 33, Subchapter E, §§33.70 - 33.79, relating to events at temporary locations.

Background and Summary of Basis for the Proposed Rules

In 2019, the Texas Legislature adopted amendments to the Alcoholic Beverage Code (Code) consolidating permitting for events at temporary locations into three authorizations (House Bill 1545, 86th Tex. Leg. R.S. (2019)). The commission is proposing a new rule subchapter primarily to implement the legislature's changes. Because the necessary amendments are extensive, the agency is also taking the opportunity to improve the rules for temporary events through reorganization and adoption of certain current agency policies into rule.

More specifically, like other new and revised rule packages, general provisions are consolidated at the beginning of the subchapter, then followed by separate rules for each type of authorization containing provisions that vary between them. Some of the proposed new rules would codify through the rulemaking process agency policies related to the use of alcohol at charity events and qualification for file and use notification.

The proposed rules would go into effect on September 1, 2021, contemporaneously with the related statutory changes.

Section by Section Discussion

Rule 33.70. Scope and Applicability.

The commission proposes new §33.70 to provide statutory references related to the rules in the subchapter and set out which types of authorizations are governed by the rules. Subsection (a) is current §33.11(a).

Rule 33.71. Classification of Event Authorizations.

The commission proposes new §33.71 to define the circumstances under which each of the three types of event authorizations may be used.

Subsection (a) is current §33.12(c) - (e); subsection (b) is currently in an agency policy bulletin, LIC004; subsection (c) contains a description of nonprofit temporary events that is drawn from current §33.15(c) and Code §30.03; subsection (d) is new, as required by changes to the Code pursuant to HB 1545.

Rule 33.72. Term of Authorization; Annual Limitation on Authorizations.

The commission proposes new §33.72 to provide rules for the numbers of days and number of events in a year that an applicant can be covered by an authorization under this subchapter. This is necessary to draw a line between the temporary nature of these authorizations and circumstances that are better suited to a 2-year license or permit.

Subsection (a) is based upon current §33.11(e), which requires that a temporary permit be effective the entire time alcohol is at the location. Because it is logistically very difficult to have alcoholic beverages delivered, used, and removed from a site in a single day, the commission proposes a minimum permit duration of two days to ensure adequate permit coverage.

Subsection (b) is new. The Code limits a temporary event to four days for holders of certain permits (Wine and Malt Beverage Retailer's Permit (BG), Malt Beverage Retail Dealer's On-Premise License (BE), and Winery Permit (G)), but not holders of permits for Mixed Beverages or a Private Club. The legislature, in HB 1545, required the commission to set the limit for holders of Mixed Beverage permits and Private Clubs. The commission proposes four days to be consistent with the Code's limits for other licenses and permits.

Subsection (c) is new and is proposed to curb repeated use of temporary authorizations at the same location by the same person in lieu of obtaining a two-year license or permit. For example, a location that is used by the same person every weekend throughout the year is not, in fact, a temporary location as contemplated by the rules.

Code §30.08 requires the commission to establish in rule the maximum duration for Nonprofit Entity Temporary Event permits, which may vary in length. The commission proposes a ten-day limit for a nonprofit temporary event in subsection (d); this number of days accommodates events spanning two weekends.

In recognition of the possibility that a few events, such as the State Fair, might require flexibility, subsection (e) authorizes the executive director to make written exceptions to rule limitations on the term and number of events.

Subsection (f) is in current §33.12(h)(4); subsection (g) is in current §33.11(e); and subsection (h) is current §33.25(c). These sections are moved here to consolidate provisions regarding the term of an authorization for an event at a temporary location.

Rule 33.73. General Provisions.

The commission proposes new §33.73 to consolidate general provisions that apply to all three types of authorizations for events at temporary locations.

Subsection (a) is current §33.15(j); subsection (b) is current §33.11(i); subsection (c) and (d) are currently in §33.15(h); subsection (d) is new and reflects current agency practice; subsection (e) is new and expresses existing agency authority; subsection (f) is located in current §33.12(i); subsection (g) is derived from current §§33.11(f) and 33.12(h); subsection (h) is current §33.11(g); subsection (i) is current §33.11(h); subsections (j) and (k) are current §33.11(j) and (k); subsection (l) is current §33.23(h).

Rule 33.74. Late Filing Fees.

The commission proposes new §33.74 to contain the late filing fees associated with a request for Temporary Event Approval or an application for a Nonprofit Temporary Event Permit. These fees, called "expedited processing fees" in current rules, are incurred when the request or application is filed less than 10 days prior to the event. These provisions are in current §§33.11(c) and 33.23(i). There is no change to the amount of the fees from current rules.

Rule 33.75. Penalties and Suspension.

As directed by Code §30.08(3), the commission proposes new §33.75 to establish in rule the commission's authority to impose penalties and suspend authorizations for violations of rules related to authorizations for events at temporary locations.

Rule 33.76. File and Use Notifications.

The commission proposes new §33.76 to lay out provisions specific to File and Use Notifications.

Subsection (a) contains provisions currently in §33.12(d); subsection (b) is current §33.12(e); subsection (c) is current §33.12(c); subsection (d) is current §33.11(d); and subsection (e) is currently part of agency policy in Bulletin LIC004.

Rule 33.77. Request for Temporary Event Approval.

The commission proposes new §33.77 to lay out provisions specific to Temporary Event Approvals.

Subsection (a) is current §33.11(b).

Subsection (b) is like current §33.11(b), but updated to reflect changes in the methods of filing applications and other TABC forms, including new technology currently under development that will allow license and permit holders to submit documents through an electronic portal.

Subsections (c) and (d) are current §33.11(c) and (d).

It is a requirement under Code §30.04 that a Nonprofit Entity Temporary Event Permit show the effective dates on the face of the permit; with subsection (e), the commission proposes to extend that requirement to Temporary Event Approvals as a matter of best practices.

Rule 33.78. Nonprofit Entity Temporary Events.

The commission proposes new §33.78 to lay out provisions specific to Nonprofit Entity Temporary Events.

Subsection (a) is new and restates the statutory requirement that a Nonprofit Temporary Event Permit be issued only to a nonprofit entity as defined by the Code.

Subsection (b) is part of current §33.11(b); subsection (c) is like current §33.11(b), but updated to reflect changes in the methods of filing applications and other TABC forms, including new technology currently under development that will allow license and permit holders to submit documents through an electronic portal.

Subsection (d) provides a fee of \$50 per day for a Nonprofit Temporary Event Permit. This fee was determined by using data from the most recent biennium to calculate the fee that would result in revenue neutrality.

Subsection (e) is current §33.11(d).

Subsection (f) and (h) are new and are required for this type of permit under Code §§30.04 and 30.05, respectively.

Subsections (i) and (j) authorize an unlimited number of events under this subchapter for nonprofit entities while ensuring compliance with Code §30.09 regarding limitations on events in dry counties.

Rule 33.79. Serving Alcoholic Beverages at Fundraising Events.

The commission proposes new §33.79 to formally adopt into rule the content of current agency advisory MPB026, Charitable, Religious or Civic Organizations Serving Alcoholic Beverages at Fundraising Events. The advisory document is currently located at https://www.tabc.state.tx.us/marketing_practices/ad-

[visories/MPB026a.pdf](#). The rule lays out what is authorized and unauthorized under three different scenarios such entities may choose for their events.

Fiscal Note: Costs to State and Local Government

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed rules will be in effect, there are no foreseeable economic implications anticipated for the agency or other units of state or local government due to the administration or enforcement of the proposed rules.

Rural Communities Impact Assessment

The proposed rules will not have any material adverse fiscal or regulatory impacts on rural communities. The rules will apply statewide and have the same effect in rural communities as in urban communities. Likewise, the proposed rules will not adversely affect a local economy in a material way.

Small Business and Micro-Business Assessment/Flexibility Analysis

No fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the new rules; therefore, no Small Business and Micro-Business Assessment/Flexibility Analysis is required.

Takings Impact Assessment

The proposed rules do not affect a taking of private real property, as described by Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

Public Benefits and Costs

Ms. Horton has determined that for each year of the first five years that the proposed rules would be in effect, the public would benefit from the simplified system of authorizations for events at temporary locations and the user-friendly consolidation and reorganization of the rules. There are no costs to the public associated with the proposed rules.

Government Growth Impact Statement

This paragraph constitutes the commission's government growth impact statement for the proposed rules. The analysis addresses the first five years the proposed amendments would be in effect. The proposed rules neither create nor eliminate a government program. The proposed rules do not require the creation of new employee positions or the elimination of existing employee positions. The agency anticipates that enforcement under these rules will be absorbed using existing agency resources. Implementation of the proposed rules requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed rules are not expected to result in an increase in fees paid to the agency. The proposed rules create new regulations because they constitute new state agency statements of general applicability that implement, interpret, or prescribe law or policy and describe procedures and practice requirements of a state agency. The proposed rules do not expand the applicability of any rules or increase the number of individuals subject to the existing rules' applicability beyond the current rule requirements.

The proposed rules are not anticipated to have any material impact on the state's overall economy.

Comments on the proposed rules may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, Attention: Shana Horton, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3498, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed new rules on October 19, 2020, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 487-9905.

The proposed new rules are authorized by Alcoholic Beverage Code §§5.31, 16.12(c), 25.15(c), 28.19(c), 30.08, 32.25(d), and 69.18(c), as amended effective September 1, 2021.

These rules relate to Chapter 30 of the Alcoholic Beverage Code, as amended effective September 1, 2021.

§33.70. Scope and Applicability.

(a) This rule relates to Chapters 16, 25, 28, 30, 32, and 69 of the Alcoholic Beverage Code.

(b) Except where otherwise specified, rules in this subchapter apply to all temporary events, including those requiring Temporary Event Approvals, Nonprofit Entity Temporary Event Permits, and File and Use Notifications ("event authorizations").

§33.71. Classification of Event Authorizations.

(a) A File and Use Notification does not require prior approval of the commission and may be used only if:

- (1) the estimated total wholesale value of the alcohol to be provided or sold at the event is less than \$10,000;
- (2) the estimated attendance at the event is not more than 500 persons;
- (3) the event is private and not open to the general public;
- (4) the event is not sponsored by a member of the wholesale tier or the manufacturing tier; and
- (5) the owner of the premises where the event will be held has authorized the sale of alcohol at the event.

(b) In determining whether an event meets the requirement of subsection (a)(3) of this section, the commission may consider whether tickets are sold and whether the event spans more than one day.

(c) A Nonprofit Entity Temporary Event is a picnic, celebration, or similar event, such as a cultural, charitable, religious, or civic event of a limited and specified duration that is organized for, and open to the public and is put on by a nonprofit entity as defined by Alcoholic Beverage Code §30.01.

(d) For all other events that will be held at a temporary location, a Temporary Event Approval is required.

§33.72. Term of Authorization; Annual Limitation on Authorizations.

(a) All event authorizations shall be effective for a minimum of two consecutive days.

(b) Temporary Event Approvals and File and Use Notifications shall be effective for no more than four consecutive days.

(c) A person or entity may use a Temporary Event Approval or File and Use Notification at the same location for no more than ten events in a calendar year.

(d) A Nonprofit Entity Temporary Event Permit shall be effective for no more than ten consecutive days unless the executive director or the executive director's designated representative, on the basis of a case-by-case review of the specific situation, grants additional time.

(e) Upon written request, the executive director or the executive director's designated representative may make an exception to the limitations of subsections (a) through (d) of this section on a case-by-case basis. An exception request will be granted or denied in writing.

(f) Authorization for an event under this subchapter automatically terminates upon issuance of a two-year license or permit for the event location, regardless of the term of the temporary event authorization.

(g) The effective dates of an event authorization under this subchapter must cover the period in which alcoholic beverages will be delivered or stored in addition to the event itself.

(h) A temporary permit or license expires on the date indicated on the license or permit or on the same date as the primary permit, whichever occurs earlier.

§33.73. General Provisions.

(a) All wine sold or possessed with the intention to sell at an event held in an area where the sale of that type of alcohol has not been authorized by a local option election must comply with the terms of §16.011 of the Alcoholic Beverage Code.

(b) A copy of the File and Use Notification form that was filed with the commission, Nonprofit Entity Temporary Event Permit, or Temporary Event Approval and diagram must be displayed in a conspicuous place at the location of the event at all times during the event.

(c) The commission may deny authorization under this subchapter if:

- (1) the information required to be submitted is incomplete or inaccurate;
- (2) the person requesting the authorization does not qualify for the authorization;
- (3) the event does not qualify for the authorization; or
- (4) there is reason to believe that granting the authorization

will:

(A) result in a violation of the Alcoholic Beverage Code or the rules of the commission; or

(B) be otherwise detrimental to the public.

(d) The grounds for denying a Nonprofit Entity Temporary Event Permit or Temporary Event Approval shall be communicated in writing to the applicant as soon as is reasonably practical.

(e) If an authorization under this subchapter is granted in error, the commission may rescind the authorization at any time.

(f) No person authorized under this subchapter shall use that authority to provide alcoholic beverages at any licensed premises during any time that a permit or license for that location is suspended.

(g) A Temporary Event Approval or Nonprofit Entity Temporary Event Permit may be used to provide alcoholic beverages for on-premises consumption at a location that has been designated as the licensed premises in a pending application only if:

(1) the commission has received an application for the proposed location and payment of all state fees and securities, if applicable, have been submitted;

(2) there is no pending protest of the application;

(3) the commission has performed an initial review for qualification; and

(4) there is no notice sign (60-day sign) pursuant to Alcoholic Beverage Code §§11.391 or 61.381 posted at the event location.

(h) The completion of a responsibilities course provided by the commission may be required before a Temporary Event Approval request is granted.

(i) The signage requirements for a Temporary Event Approval are the same as those for a primary license or permit and may include signs required by §§5.53, 11.041, 11.042, 61.11, and 61.111 of the Alcoholic Beverage Code and §31.4 of this title.

(j) All alcoholic beverages being transported shall be accompanied by invoices.

(k) The holder of a primary license or permit may return remaining alcoholic beverage products to the primary licensed location. The holder of an event authorized under this subchapter may distribute remaining product as authorized under Alcoholic Beverage Code §109.54.

(l) An applicant is not entitled to a refund or proration of fees paid for authorization under this subchapter, including any late filing fees.

§33.74. Late Filing Fees.

(a) A request for Temporary Event Approval or application for a Nonprofit Entity Temporary Event Permit filed under this subchapter must be filed at least ten business days prior to the event date to avoid a late filing fee. If the request or application is filed less than ten business days prior to the event date, it must be accompanied by the appropriate late filing fee set forth below, in addition to any other applicable fees.

(b) A late filing fee is required for a request for Temporary Event Approval or application for a Nonprofit Entity Temporary Event Permit as follows:

(1) a late filing fee of \$300 is required for applications submitted seven to nine business days before the event for which the approval or permit is requested.

(2) a late filing fee of \$500 is required for applications submitted four to six business days before the event for which the approval or permit is requested.

(3) a late filing fee of \$900 is required for applications submitted one to three business day(s) before the event for which the approval or permit is requested.

§33.75. Penalties and Suspension.

(a) Persons or entities issued a temporary permit or authorization under this chapter must comply with all requirements of the Alcoholic Beverage Code and commission rules applicable to holders of primary retail-tier permits and licenses including, but not limited to, statutes related to the sale, service, possession, distribution, transportation, and advertising of alcoholic beverages in Chapters 104-108 of the Code.

(b) The executive director may cancel an authorization under this subchapter for violation of the Alcoholic Beverage Code or commission rules occurring during the temporary event covered by the authorization, regardless of the expiration of the temporary authorization.

(c) The executive director may temporarily suspend an applicant's right to apply for a temporary authorization for violations of offenses against the general welfare under §35.31 of this title that occur in connection with the use of a temporary authorization.

(d) The executive director may assess an administrative penalty for violations of the of the Alcoholic Beverage Code or commission rules for events authorized under this subchapter in the same manner as for two-year permits and licenses under chapter 34 of this title.

§33.76. File and Use Notifications.

(a) To qualify to use a File and Use Notification, the notification must include:

(1) all information requested by the commission; and

(2) a sworn statement that:

(A) the estimated total wholesale value of the alcohol to be provided or sold at the event is less than \$10,000;

(B) the estimated attendance at the event is not more than 500 persons;

(C) the event is private, and not open to the general public;

(D) the event is not sponsored by a member of the wholesale tier or the manufacturing tier; and

(E) the owner of the premises where the event will be held has authorized the sale of alcohol at the event.

(b) An event that does not meet the criteria in subsection (a)(2) of this section requires approval by the commission.

(c) A File and Use Notification does not require approval by the commission and may be submitted less than ten days before the event without incurring a late filing fee.

(d) In connection with a notification filed under subsection (a) of this section, the commission may require a letter from the owner of the property where the event will be held, sponsorship and/or promoter agreements, a diagram or site maps, local governmental authorization, and any other documents or agreements needed to determine qualifications under the Code.

(e) Persons using a File and Use Notification must keep the following records for four years and provide them to the commission upon request:

(1) records of the dollar amount of alcohol purchased and sold/served at the event;

(2) the number of event attendees; and

(3) an agreement or contract between the permit holder and the venue authorizing the event, including the event date, hire date, type of event, and a copy of any invitation to the event or obituary for a funeral-related event.

§33.77. Request for Temporary Event Approval.

(a) A request for Temporary Event Approval shall be made on forms provided by the commission and shall be signed and sworn to by the requestor.

(b) The requestor shall e-mail the completed Temporary Event Approval request form to the Events email address for the TABC Region in which the event will be held or, if the requestor holds another TABC permit or license, shall submit the request form through the TABC online portal.

(c) The requestor shall remit payment of any late filing fees required by §33.74 of this title at the time the request is filed.

(d) In addition to the request form, other documents related to the event that may be required include a letter from the property owner, sponsorship agreements, promoter agreements, concession agreements, management agreements, diagrams, site maps, local governmental authorization, and any other documents needed to determine qualification under the Alcoholic Beverage Code.

(e) If the event is approved, the commission shall issue a Temporary Event Approval showing on its face the effective dates approved for the event.

§33.78. Nonprofit Entity Temporary Events.

(a) A Nonprofit Entity Temporary Event Permit shall only be issued to a nonprofit entity as defined by Alcoholic Beverage Code §30.01.

(b) An application for a Nonprofit Entity Temporary Event Permit shall be made on forms provided by the commission and shall be signed and sworn to by the applicant.

(c) The requestor shall e-mail the completed Nonprofit Entity Temporary Event Permit application forms to the Events email address for the TABC Region in which the event will be held.

(d) The applicant shall remit payment of fees at the time the application is filed. The fee for a Nonprofit Entity Temporary Event Permit is \$50 per day.

(e) In addition to the application forms, other documents related to the event that may be required include a letter from the property owner, sponsorship agreements, promoter agreements, concession agreements, management agreements, diagrams, site maps, local governmental authorization, and any other documents needed to determine qualification under the Alcoholic Beverage Code.

(f) If the event is approved, the commission shall issue to the applicant a Nonprofit Entity Temporary Event Permit showing on its face the effective dates of the permit.

(g) Permit holders may sell any alcoholic beverage allowed to be sold where the event is to be held.

(h) Permit holders must purchase distilled spirits for Nonprofit Entity Temporary Events from a local distributor permit holder.

(i) A nonprofit entity is not limited in the number of events it may hold under this section in a calendar year, except for certain events in dry areas as provided by Alcoholic Beverage Code §30.09.

(j) Events in dry counties must comply with Alcoholic Beverage Code §30.09.

§33.79. Serving Alcoholic Beverages at Fundraising Events.

(a) This section applies to the use of alcoholic beverages at fundraising events held by or benefitting charitable, religious, political, and civic organizations.

(b) An organization may provide free alcoholic beverages at an event under this section without first obtaining a temporary authorization only if the alcoholic beverages are offered free of charge upon the request of any non-intoxicated person at least 21 years of age, regardless of whether the person has paid a membership fee, entrance fee, door charge, meal charge, ticket price, or any other fee for the event. The organization shall not request donations or tips or otherwise receive money in exchange for alcoholic beverages served.

(c) An organization providing free alcoholic beverages under subsection (b) of this section may:

- (1) serve donated alcoholic beverages;
- (2) receive donations in cash or of alcoholic beverage products;
- (3) enter into sponsorship or underwriting agreements with members of the alcoholic beverage industry, including agreements for advertising, signage, and product exclusivity; and

(4) offer free alcoholic beverages to the general public outside of the event, but condition entry into the event on payment of a donation or fee.

(d) An organization that obtains a temporary authorization for an event may sell alcoholic beverages at the event subject to the following conditions:

(1) the organization must sell only alcoholic beverages purchased from a licensed distributor, wholesaler, winery, brewery, or brewpub, or a holder of a local distributor's permit;

(2) the organization may not sell any donated alcoholic beverages; and

(3) the organization may not accept a cash donation from a member of the alcoholic beverage industry that is conditioned upon a written or unwritten agreement between the organization and alcoholic beverage industry member with respect to how the organization will spend the cash donation, any benefit that the industry member will receive as a result of the cash donation, which products the organization will sell at the event, or sponsorship rights, including signage and advertising.

(e) An organization selling alcoholic beverages pursuant to a temporary authorization obtained by the organization may accept cash donations from alcoholic beverage industry members and use the cash for any purpose, including purchasing alcoholic beverages for use at the event, subject to subsection (d)(3) of this section.

(f) An organization may partner with an independent third-party retail permit holder to sell alcoholic beverages at an event under this section, subject to the following conditions:

(1) the permit to sell alcoholic beverages at the event must be held by a retailer that is independent of the sponsors of the event;

(2) the retail permit holder may not receive any direct benefit or service due to sponsorship by a wholesaler or manufacturer of alcoholic beverages;

(3) the organization may not exchange gifts or donations for exclusive rights to sell a certain product or brand; and

(4) the retail permit holder must retain the right to control the quantity and selection of brands of alcoholic beverages purchased or sold for the event and at the event.

(g) An organization partnering with an independent third-party retail permit holder under subsection (f) of this section may:

(1) receive cash or in-kind donations from manufacturers, wholesalers, and retailers;

(2) enter into an agreement with the retail permit holder whereby the retail permit holder donates a portion of the proceeds from the event to the organization; and

(3) enter into sponsorship agreements with manufacturers, wholesalers, and retailers.

(h) Signs or other advertising materials placed by members of the alcoholic beverage industry indicating their participation in, or

sponsorship of an event under this section must comply with §45.1111 of this title, relating to Advertising Signs at Charitable or Civic Events.

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

Filed with the Office of the Secretary of State on September 25, 2020.

TRD-202004005

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: November 8, 2020

For further information, please call: (512) 487-9905



SUBCHAPTER G. EMERGENCY ORDERS

16 TAC §§33.100 - 33.105

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes new Chapter 33, Subchapter G, §§33.100 - 33.105, relating to emergency orders.

Background and Summary of Basis for the Proposed Rules

In 2019, the Texas Legislature adopted House Bill 1545, which added new Alcoholic Beverage Code (Code) §11.614. Under this provision, the commission or executive director may issue an emergency order, without a hearing, suspending a business's permit or license upon determining that the continued operation of that business constitutes a continuing threat to the public welfare. The statute authorizes adoption by rule of procedures for the determination and appeal of an emergency order.

Section by Section Discussion

Rule 33.100. General Provisions.

The commission proposes new §33.100 to state the statutory authority for the rules in the subchapter; state the authority of the commission, its executive director, or the executive director's designee to issue an emergency order if it makes the required statutory determination of a continuing threat to public welfare; and specify that hearings may be held by teleconference or videoconference as allowed by the Government Code, which is necessary during the COVID-19 pandemic and may be necessary in order to act quickly in all circumstances.

Rule 33.101. Authority of the Executive Director.

The commission proposes new §33.101 to clearly state the authority of the executive director or a person to whom they delegate authority to issue an emergency order. This is necessary for the agency to use this emergency power because the executive director runs the day-to-day operation of the agency.

Rule 33.102. Term of Suspension.

The commission proposes new §33.102 to restate in rule the 90-day statutory limit on the term of an emergency license or permit suspension, and to clarify that the license or permit stays suspended during any legal proceedings regarding the emergency suspension order until the term of the order ends. This is necessary to prevent violators from initiating legal action as a means to reopen their establishments, despite the continuing threat to the public welfare.

Rule 33.103. Notice and Opportunity for Hearing.

The commission proposes new §33.103 to lay out in rule the statutory requirement for an administrative hearing on the emergency order.

Rule 33.104. Contents of Emergency Order.

The commission proposes new §33.104 to provide for the minimum contents of an emergency order, including the term of the order, as required by statute.

Rule 33.105. Appeals of Emergency Orders.

Code §11.614 authorizes the commission to prescribe procedures related to appeal of an emergency order. The commission proposes new §33.105 to provide that neither the regulated entity nor the executive director has a right to appeal to the commission from a decision made by the State Office of Administrative Hearings. This is due to the transitory nature of the suspension.

Fiscal Note: Costs to State and Local Government

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed rules will be in effect, there are no foreseeable economic implications anticipated for the agency or other units of state or local government due to the administration or enforcement of the proposed rules.

Rural Communities Impact Assessment

The proposed rules will not have any material adverse fiscal or regulatory impacts on rural communities. The rules will apply statewide and have the same effect in rural communities as in urban communities. Likewise, the proposed rules will not adversely affect a local economy in a material way.

Small Business and Micro-Business Assessment/Flexibility Analysis

No fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the new rules; therefore, no Small Business and Micro-Business Assessment/Flexibility Analysis is required.

Takings Impact Assessment

The proposed rules do not affect a taking of private real property, as described by the Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines (accessed on the Attorney General's website on August 25, 2020). The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply to these proposed amendments. Enforcement of these proposed rules would be neither a statutory nor constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property because this rulemaking action does not burden, restrict, or limit the owner's rights to property or reduce its value by 25% or more beyond which would otherwise exist in the absence of the proposed regulations.

Public Benefits and Costs

Ms. Horton has determined that for each year of the first five years that the proposed rules would be in effect, the public would benefit from the commission's ability to act quickly to protect public welfare by suspending the licenses or permits of establishments that pose a continuing threat to public welfare. Specifically, during the COVID-19 pandemic, the agency will protect public health and safety by quickly shutting down establishments that operate in a manner that poses great risk of spreading the

virus in their communities. There are no costs to the public associated with the proposed rules.

Government Growth Impact Statement

This paragraph constitutes the commission's government growth impact statement for the proposed rules. The analysis addresses the first five years the proposed amendments would be in effect. The proposed rules neither create nor eliminate a government program. The proposed rules do not require the creation of new employee positions or the elimination of existing employee positions. The agency anticipates that enforcement under these rules will be absorbed using existing agency resources. Implementation of the proposed rules requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed rules are not expected to result in an increase in fees paid to the agency. The proposed rules create new regulations because they constitute new state agency statements of general applicability that implement, interpret, or prescribe law or policy and describe procedures and practice requirements of a state agency. The proposed rules do not expand the applicability of any rules or increase the number of individuals subject to the existing rules' applicability beyond the current rule requirements.

The proposed rules are not anticipated to have any material impact on the state's overall economy.

Comments on the proposed rules may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3498, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed new rules on October 19, 2020, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 487-9905.

The proposed new rules are authorized by Alcoholic Beverage Code §11.614.

These rules do not impact any other statute or rule.

§33.100. General Provisions.

(a) The purpose of this subchapter is to implement the commission's authority under Texas Alcoholic Beverage Code Section 11.614 to issue an emergency order temporarily suspending a permit or license.

(b) The commission, executive director, or executive director's designee may issue an emergency order suspending the permit or license of a business without a hearing if the commission, executive director, or executive director's designee determines that the operation of the business constitutes a continuing threat to the public welfare.

(c) All hearings under this subchapter, including appeals, may be held by teleconference or videoconference in compliance with applicable provisions of the Texas Open Meetings Act (Tex. Gov't Code Ch. 551) and the Administrative Procedure Act (Tex. Gov't Code Ch. 2001).

§33.101. Authority of the Executive Director.

(a) The executive director is authorized to issue emergency orders under this subchapter.

(b) The executive director may delegate a representative or representatives to act on the executive director's behalf under this subchapter.

§33.102. Term of Suspension.

(a) The term of an emergency order issued under this subchapter shall not exceed 90 days.

(b) The term of an emergency order is not tolled and the order suspending the permit or license remains in effect during any contested case proceeding against the permit or license holder.

§33.103. Notice and Opportunity for Hearing.

If an emergency order is issued without a hearing, the executive director or his designee shall set the time and place for a hearing on the emergency order to be conducted by the State Office of Administrative Hearings.

§33.104. Contents of Emergency Order.

An emergency order issued under this subchapter shall contain at least the following:

(1) the name and address of the license or permit holder and information sufficient to identify the premises affected by the order;

(2) a brief statement of fact supporting the issuance of the order;

(3) a determination that the continued operation of a permitted or licensed business would constitute a continuing threat to the public welfare; and

(4) a statement of the term of the order, including the date on which it begins and ends.

§33.105. Appeals of Emergency Orders.

There is no right to appeal to the commission an administrative law judge's determination affirming, modifying, or setting aside an emergency order issued under this subchapter.

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

Filed with the Office of the Secretary of State on September 25, 2020.

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Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: November 8, 2020

For further information, please call: (512) 487-9905



CHAPTER 34. SCHEDULE OF SANCTIONS AND PENALTIES

16 TAC §34.3

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes the repeal of Title 16, Texas Administrative Code §34.3, effective March 1, 2021. A replacement rule §34.3 and related Penalty Policy are proposed concurrently with this repeal.

Background and Summary of Basis for the Proposed Repeal

The proposed repeal is intended to make way for a new §34.3, Sanctions for Regulatory Violations, which is proposed to become effective on same day as this repeal, March 1, 2021.

The repeal is proposed pursuant to the commission's general powers and duties under §5.31 of the Alcoholic Beverage Code.

Fiscal Note: Costs to State and Local Government

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed repeal will be in effect, it is not expected to have a significant fiscal impact upon the agency. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed repeal.

Rural Communities Impact Assessment

The proposed repeal will not have any material adverse fiscal or regulatory impacts on rural communities. The repeal will apply statewide and have the same effect in rural communities as in urban communities. Likewise, the proposed repeal will not adversely affect a local economy in a material way.

Small Business and Micro-Business Assessment/Flexibility Analysis

No material fiscal implications are anticipated for small or micro-businesses due to the proposed repeal.

Takings Impact Assessment

The proposed repeal does not affect a taking of private real property, as described by Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

Public Benefits and Costs

Ms. Horton has determined that for each year of the first five years that the proposed repeal would be in effect, the public would benefit from more transparent and consistent determination of recommended sanctions for regulatory violations. There is no increase in costs to the public.

Government Growth Impact Statement

This paragraph constitutes the commission's government growth impact statement for the proposed repeal. The analysis addresses the first five years the proposed repeal would be in effect. The proposed repeal neither creates nor eliminates a government program. The proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed repeal requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed repeal is not expected to result in a significant change in fees paid to the agency. The proposed repeal does not create new regulations. The proposed repeal does not expand the applicability of any rules or increase the number of individuals subject to existing rules' applicability beyond current rule requirements.

The proposed repeal is not anticipated to have any material impact on the state's overall economy.

Comments on the proposed repeal may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Com-

mission, Attention: Shana Horton, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3498, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed repeal on October 19, 2020, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 487-9905.

The proposed repeal is authorized by Alcoholic Beverage Code §5.31, which authorizes the TABC to prescribe and publish rules necessary to carry out the provisions of the code.

The proposed repeal does not impact any other statutes or rules.

§34.3. *Schedule of Sanctions and Penalties for Major Regulatory Violations.*

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

Filed with the Office of the Secretary of State on September 25, 2020.

TRD-202003995

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: November 8, 2020

For further information, please call: (512) 487-9905



16 TAC §34.3

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes new §34.3, Sanctions for Regulatory Violations. Current §34.3 is proposed for repeal concurrent with the adoption of the new rule. The Penalty Policy referenced in the draft rule is also published in the *Texas Register* concurrently with the proposed rule and repeal.

Background and Summary of Basis for the Proposed Rule

In its 2019 report to the Texas Legislature, the Texas Sunset Commission directed the TABC to complete its schedule of sanctions to account for all regulatory violations (Sunset Commission Recommendation 5.8). Also in 2019, the Texas Legislature adopted House Bill 1545, which amended Alcoholic Beverage Code §11.641(a) to require that the agency consider the amount of profit realized by the violator when determining the appropriate penalty for repeat violations.

To implement the Sunset Commission recommendation and new §11.641(a) of the Code, the commission proposes to repeal current §34.3 and replace it with a new rule and related Penalty Policy. The proposed rule provides a chart with base penalty amounts for various regulatory violations to be used in conjunction with a published Penalty Policy to determine the appropriate recommended penalty amount for a particular violation.

Proposed §34.3 would only apply to violations that are regulatory in nature, such as violations of marketing practices rules. Public safety, health, and welfare related violations would continue to be assessed penalties based upon §34.2 of the commission's rules.

The penalty amount and corresponding number of days of suspension of a license or permit in lieu of penalty payment that are indicated by the rule and Penalty Policy methodology represent the executive director's recommended penalty; however, the commission is not bound to the recommended penalty and all parties are free to agree to a settlement on different terms.

The commission proposes that the rule become effective on March 1, 2021.

Fiscal Note: Costs to State and Local Government

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed rule will be in effect, no foreseeable economic implications are anticipated for the agency or for other units of state or local government as a result of the administration or enforcement of the proposed rule.

Rural Communities Impact Assessment

The proposed rule will not have any material adverse fiscal or regulatory impacts on rural communities. The rule will apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment/Flexibility Analysis

The proposed rule will not adversely affect a local economy in a material way. No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the new rules. A small or micro-business that violates the Code or commission rules and benefits from the violation economically may have those benefits recouped by the agency through a higher penalty pursuant to statute, but recouping the economic benefits of the violation will merely bring the business back to its economic situation prior to the violation. Penalties beyond the economic benefits and in cases not impacted by economic benefits will remain similar to penalties assessed under current rules. Thus, a small business regulatory flexibility analysis is not required because the proposed rule will not adversely affect a small or micro-business in a material way.

Takings Impact Assessment

The proposed rule does not affect a taking of private real property, as described by Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The rulemaking would impose no burdens on private real property because it neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of this rulemaking.

Public Benefits and Costs

Ms. Horton has determined that for each year of the first five years that the proposed rule will be in effect, the public will benefit from a transparent methodology for determination of recommended penalties and consistent application of the methodology. The public will also benefit from increased compliance with laws and rules under the commission's jurisdiction due to the removal of economic incentives for violating them. There are no costs to the public associated with this rule.

Government Growth Impact Statement

This paragraph constitutes the commission's government growth impact statement for the proposed rule. The analysis addresses the first five years the proposed rule would be in effect. The proposed rule neither creates nor eliminates a government program. The proposed rule does not require the creation of new employee positions or the elimination of existing employee positions. The agency anticipates that the provisions of this rule will be absorbed using existing agency resources. Implementation of the proposed rule requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed rule does not increase or decrease fees paid to the agency. The proposed rule creates new regulations because it constitutes a new state agency statement of general applicability that implements, interprets, or prescribes law or policy and describes procedures and practice requirements of a state agency. The proposed rule does not expand or limit an existing regulation but does require the repeal of current §34.3. The proposed rule neither increases nor decreases the number of individuals subject to any existing rule's applicability. The proposed rule is not anticipated to have any impact on the state's economy.

Comments on the proposed rule may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, Attention: Shana Horton, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3498, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed new rule on October 19, 2020, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 487-9905.

The proposed new rule is authorized by Alcoholic Beverage Code §5.31 and §11.641(a).

The proposed rule does not impact any other statutes or rules.

§34.3. Sanctions for Regulatory Violations.

(a) Regulatory violations of the following statutory and rule provisions will be assessed a base penalty of \$250, \$500, or \$1,000 as shown in this chart:

Figure: 16 TAC §34.3(a)

(b) The penalty chart in subsection (a) of this section is non-exclusive; the absence of a statute or rule from the chart does not limit the commission's statutory authority to enforce compliance with the Code and its rules by assessing administrative penalties.

(c) Penalties assessed pursuant to subsection (a) of this section may be augmented or discounted based upon the number of violations and other circumstances surrounding the violation, according to the commission Penalty Policy in effect on the date of the issuance of the Notice of Violation.

(d) The number of days of license or permit suspension offered to the respondent in lieu of the penalty shall be commensurate with the penalty assessed under this section and calculated according to the commission Penalty Policy in effect on the date of the issuance of the Notice of Violation.

(e) The Penalty Policy shall be publicly available and published on the commission's web site.

(f) The commission shall review the Penalty Policy and update or revise it as necessary at least once every seven (7) years.

(g) Nothing in this rule shall be construed to limit the commission's authority to suspend or cancel a license or permit under §§11.38, 11.61, 32.17, 61.71, 201.075, or any other provision of the Code authorizing suspension or cancellation of a license or permit.

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

Filed with the Office of the Secretary of State on September 25, 2020.

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Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 487-9905



16 TAC §34.6

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) proposes new rule §34.6, relating to Liability for Actions of Alcohol Delivery Drivers.

Background and Summary of Basis for the Proposed Rule

Senate Bill 1450, 86th Texas Legislature (R.S., 2019) added Alcoholic Beverage Code Chapter 57, Consumer Delivery Permit, effective September 1, 2019. Code §57.08 provides an affirmative defense related to the responsibility of the consumer delivery permit holder for the actions of an alcohol delivery driver making deliveries under its permit. The commission proposes §34.6 to implement in rule the affirmative defense enacted in statute by the legislature.

The rule is proposed pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code, including Code Chapter 57, Consumer Delivery Permit.

The commission proposes §34.6(a) to contain definitions of terms applicable to this rule.

The commission proposes §34.6(b) to establish a violation within commission rules for delivering an alcoholic beverage in violation of Chapter 57 of the Alcoholic Beverage Code.

The commission proposes §34.6(c) to provide in rule circumstances under which the actions of a delivery driver are not attributable to the consumer delivery permit holder, as stated in Code §57.08(a).

The commission proposes §34.6(d) to provide the requirements for a permit holder to establish a rebuttable presumption that it has not directly or indirectly encouraged violation of the Code, such as delivery driver training verification and the adoption and use of policies and procedures.

The commission proposes §34.6(e) to provide circumstances under which a permit holder is ineligible for the rebuttable presumption due to repeated violations by delivery drivers making deliveries of alcohol under its consumer delivery permit within the past one or two years.

The commission proposes §34.6(f) to provide rules related to Code §57.08(b) and (c), including penalties for deliveries made with criminal negligence and requirements for the rebuttable presumption that a delivery was not made with criminal negligence.

Fiscal Note: Costs to State and Local Government

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed rule will be in effect, it is not expected to have a significant fiscal impact upon the agency. There are no foreseeable economic implications anticipated for other units of state or local government due to the proposed rule.

Rural Communities Impact Assessment

The proposed rule will not have any material adverse fiscal or regulatory impacts on rural communities. The rule will apply statewide and have the same effect in rural communities as in urban communities. Likewise, the proposed rule will not adversely affect a local economy in a material way.

Small Business and Micro-Business Assessment/Flexibility Analysis

No material fiscal implications are anticipated for small or micro-businesses due to the proposed rule, therefore, a Small Business and Micro-Business Assessment/Flexibility Analysis is not required.

Takings Impact Assessment

The proposed rule does not affect a taking of private real property, as described by the Attorney General Paxton's Private Real Property Rights Preservation Act Guidelines. The proposed rule would impose no burdens on private real property because it neither relates to, nor has any impact on, the use or enjoyment of private real property and there is no reduction in value of property as a result of the proposed rule.

Public Benefits and Costs

Ms. Horton has determined that for each year of the first five years that the proposed rule would be in effect, the public would benefit from transparent and consistent standards for use of the limitations on liability provided by the rule and underlying statute. There is no increase in costs to the public.

Government Growth Impact Statement

This paragraph constitutes the commission's government growth impact statement for the proposed rule. The analysis addresses the first five years the proposed new rule would be in effect. The proposed rule neither creates nor eliminates a government program. The proposed rule does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed rule requires neither an increase nor a decrease in future legislative appropriations to the commission. The proposed rule is not expected to result in a change in fees paid to the agency. The proposed rule does create new regulations. The proposed rule does not expand the applicability of any rules or increase the number of individuals subject to existing rules' applicability beyond current rule requirements.

The proposed rule is not anticipated to have any material impact on the state's overall economy.

Comments on the proposed rule may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, Attention: Shana Horton, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3498,

or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed rules on October 19, 2020, at 10:00 a.m. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. **DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING WILL BE HELD BY VIDEOCONFERENCE ONLY.** Interested persons should visit the TABC's public website prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 487-9905.

The rule is proposed pursuant to the commission's authority under §5.31 of the Code to prescribe and publish rules necessary to carry out the provisions of the Code, which includes Chapter 57, Consumer Delivery Permit.

The proposed rule does not impact any other current rule or statute.

§34.6. Liability for Actions of Alcohol Delivery Drivers.

(a) These terms, when used in this rule, have the following meanings:

(1) Delivery driver - any person engaged by a consumer delivery permit holder as an alcohol delivery driver including, but not limited to those hired directly, hired indirectly, paid, unpaid, or contracted, whether or not in a supervisory role.

(2) Delivery driver training program - a commission-approved alcohol delivery driver certification program under chapter 50 of this title, established pursuant to Alcoholic Beverage Code §57.09.

(b) A delivery driver shall not deliver an alcoholic beverage in violation of Chapter 57 of the Alcoholic Beverage Code.

(c) The actions of a delivery driver acting on behalf of a holder of a consumer delivery permit are not attributable to the holder of a consumer delivery permit if the permit holder has not directly or indirectly encouraged the delivery driver to violate the law and the delivery driver:

(1) at the time the delivery occurred, held a valid certification from a delivery driver training program; or

(2) completed the delivery using an alcohol delivery compliance software application that meets the requirements established under Alcoholic Beverage Code §57.09.

(d) The holder of a consumer delivery permit may establish a rebuttable presumption that it has not directly or indirectly encouraged the delivery driver to violate Chapter 57 of the Alcoholic Beverage Code by providing proof that:

(1) each of the permit holder's delivery drivers engaged by the permit holder during the twenty-four months prior to the violation have actually attended a delivery driver training program and maintained alcohol delivery driver training certification for the entire duration of their engagement by the permit holder as a delivery driver;

(2) prior to the violation, the permit holder adopted written policies and procedures designed to prevent, and that affirm a strong commitment by the permit holder to prohibit violations of Chapter 57 of the Alcoholic Beverage Code; and

(3) all delivery drivers have read and understood such policies and procedures.

(e) The consumer delivery permit holder is not entitled to the rebuttable presumption in subsection (d) of this section if the commis-

sion provides proof of violations of Chapter 57 of the Alcoholic Beverage Code on two or more prior occasions by any delivery driver making a delivery of alcohol on the permit holder's behalf in the twelve months preceding the current violation, or on three or more prior occasions by any delivery driver making a delivery of alcohol on the permit holder's behalf in the twenty-four months preceding the current violation.

(f) Criminal Negligence.

(1) Regardless of whether the permit holder has directly or indirectly encouraged the delivery driver to violate Alcoholic Beverage Code Chapter 57, the commission or executive director may suspend a consumer delivery permit as prescribed by Alcoholic Beverage Code §57.08 if, after notice and hearing, a court or administrative hearing officer finds that a delivery driver made a delivery on the permit holder's behalf with criminal negligence.

(2) It is a rebuttable presumption that delivery of an alcoholic beverage to a minor or an intoxicated person was not made with criminal negligence if the delivery driver:

(A) at the time of the delivery held a valid certification from a delivery driver training program; and

(B) completed the delivery as a result of a technical malfunction of an alcohol delivery compliance software application that otherwise meets the requirements of §35.7 of this title (relating to Alcohol Delivery Compliance Software Applications).

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

Filed with the Office of the Secretary of State on September 25, 2020.

TRD-202004007

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 487-9905



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §66.15

The State Board of Education (SBOE) proposes an amendment to §66.15, concerning state adoption and distribution of instructional materials. The proposed amendment would address penalties for failure to comply with state law and rule governing review and adoption of instructional materials.

BACKGROUND INFORMATION AND JUSTIFICATION: Rules in 19 TAC Chapter 66, Subchapter A, address the requirement for registers, procedures governing violations of statutes, and administrative penalties.

At the April 2020 SBOE meeting, SBOE members expressed concern about publishers making changes to adopted products without obtaining SBOE approval and asked staff to provide options to address this concern. At the June-July 2020 SBOE meeting, the Committee on Instruction discussed possible amendments to rules in Chapter 66 related to administrative penalties to address this issue.

The proposed amendment would add new §66.15(f)(3) to impose stricter penalties for instructional materials containing factual errors if the errors occur due to updates to instructional materials if the publisher did not submit the proposed updates for review in accordance with requirements imposed by the SBOE.

The SBOE approved the proposed amendment for first reading and filing authorization at its September 2, 2020 meeting.

FISCAL IMPACT: Kristen Hole, associate commissioner for instructional strategy, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government required to comply with the proposal

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation related to administrative penalties for failure to comply with state law and rule governing review and adoption of instructional materials.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Hole has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring adopted instructional materials continue to be appropriately aligned to the Texas Essential Knowledge and Skills prior to use by Texas teachers and students. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins October 9, 2020, and ends November 13, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in November 2020 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 9, 2020.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §31.002, which defines open education resource instructional material; TEC, §31.003, which authorizes the State Board of Education (SBOE) to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.023, which requires the SBOE to adopt a list of instructional materials that meet applicable physical specifications, contain material covering at least half of the applicable Texas Essential Knowledge and Skills (TEKS) in the student version and in the teacher version, are suitable for the subject and grade level for which the instructional material was submitted, and have been reviewed by academic experts in the subject and grade level for which the instructional material was submitted; TEC, §31.035, which allows the SBOE to adopt supplemental instructional materials that are not on the adopted list if the material covers one or more primary focal points or topics of a subject in the required curriculum, is not designed to serve as the only instructional material for the course, meets applicable physical specifications, is free from factual errors, is suitable for the subject and grade level for which the instructional material was submitted, and has been reviewed by academic experts in the subject and grade level for which the instructional material was submitted. The statute requires the SBOE to identify the TEKS that are covered by the supplemental instructional material and requires the material to comply with the review and adoption cycle provisions; and TEC, §31.151(b), which authorizes the SBOE to impose a reasonable administrative penalty against a publisher who knowingly violates a requirement imposed on a publisher or manufacturer of instructional materials by TEC, §31.151(a), and ensure the penalty is of sufficient amount to deter a future violation.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§31.002, 31.003, 31.023, 31.035, and 31.151(b).

§66.15. Administrative Penalty.

(a) Under the Texas Education Code (TEC), §31.151(b), the State Board of Education (SBOE) may assess a reasonable administrative penalty against a publisher or manufacturer found in violation of a provision of the TEC, §31.151(a). The SBOE shall assess an administrative penalty under this section only for a violation based upon an instructional material adopted by the SBOE. An administrative penalty shall be assessed only after the SBOE has granted the publisher or manufacturer a hearing in accordance with the TEC, §31.151; the Administrative Procedure Act; Chapter 157, Subchapter A, of this title (relating

to General Provisions for Hearings Before the State Board of Education); and this chapter.

(b) The SBOE may assess an administrative penalty against a publisher or manufacturer who violates the TEC, §31.151(a)(1), or a rule implementing that provision, including assessing an administrative penalty against a publisher or manufacturer who offers an instructional material in this state at a higher price than that offered to any other state, public school, or school district in the United States. A publisher or manufacturer does not violate this provision if within 60 days of the sale at a higher price, the publisher or manufacturer provides a refund in the incremental amount of the lower price compared to the purchase price to all Texas public schools that previously purchased the same instructional material at a higher price and enters into a written agreement with the Texas Education Agency (TEA) to offer the instructional material at the lower price to any Texas public school. An action under this subsection may only be taken for differential pricing that occurs between the time when a public school may start entering orders for a particular school year until the time when a public school may start entering orders for the subsequent school year.

(c) The SBOE may assess an administrative penalty against a publisher or manufacturer who violates the TEC, §31.151(a)(2), or a rule implementing that provision. A publisher or manufacturer does not violate this provision if within 60 days of the sale at a lower price, the publisher or manufacturer provides a refund in the incremental amount of the lower price compared to the original purchase price to all Texas public schools that previously purchased the same instructional material. An action under this subsection may only be taken for differential pricing that occurs between the time when a public school may start entering orders for a particular school year until the time when a public school may start entering orders for the subsequent school year.

(d) The SBOE may assess an administrative penalty against a publisher or manufacturer who violates the TEC, §31.151(a)(3), or a rule implementing that provision. A publisher or manufacturer does not violate this provision if within 60 days of dissemination of instructional materials or ancillary items free of charge, the publisher or manufacturer provides a refund of the purchase to all Texas public schools that previously purchased the same instructional material and enters into a written agreement with the TEA that the ancillary items will be provided free of charge if any Texas public school buys the instructional material at issue.

(e) The SBOE may assess an administrative penalty against a publisher or manufacturer who violates the TEC, §31.151(a)(4), or a rule implementing that provision. A publisher or manufacturer does not violate this provision if within 60 days of dissemination of instructional materials of higher quality, the publisher or manufacturer provides new copies of the higher quality instructional material at no charge or, with the public school consent, a refund equivalent to the price of the lower quality material to all Texas public schools that previously purchased the same instructional material.

(f) The SBOE may assess an administrative penalty against a publisher or manufacturer who violates the TEC, §31.151(a)(4) or (9), or a rule implementing those provisions, including:

(1) an administrative penalty for selling instructional materials with factual errors. The SBOE may assess an administrative penalty against a publisher or manufacturer of instructional materials who sells instructional materials that have been adopted by the SBOE and contain factual errors unless, within 60 days of knowledge of the factual error, the publisher or manufacturer corrects the factual error, including revising web-based instructional materials, providing corrective materials to public schools that have received material containing

the factual error, and ensuring no further distribution of materials occurs without correction of the error; or

(2) an administrative penalty for failure to correct factual errors. The SBOE may assess an administrative penalty against a publisher or manufacturer who fails to correct a factual error, including:

(A) failure to correct a factual error identified in the list of corrections submitted by a publisher under §66.28(c)(11) of this title (relating to Requirements for Publisher Participation);

(B) failure to correct a factual error identified in the report of the commissioner of education under §66.63(e) of this title (relating to Report of the Commissioner of Education) and required by the SBOE; or

(C) failure to correct a factual error identified and required by the SBOE prior to the adoption of the instructional material.

(3) an administrative penalty for a factual error in an instructional material that occurs through updates to the materials by the publisher when the updates did not comply with requirements for updating materials, including the requirements under §66.75 of this title (relating to Updates to Adopted Instructional Materials) and §66.76 of this title (relating to New Editions of Adopted Instructional Materials). Penalties imposed under this paragraph shall:

(A) not be subject to penalty limitations imposed by subsection (h) of this section or any other section of this title;

(B) be of a sufficient amount to deter future violations;
and

(C) be based on a timeframe beginning at the time the factual error first appeared in instructional materials delivered to a public school, unless mitigating circumstances suggest otherwise.

(g) For purposes of this section:

(1) a factual error shall be defined as a verified error of fact or any error that would interfere with student learning. The context, including the intended student audience and grade level appropriateness, shall be considered;

(2) a factual error repeated in a single item or contained in both the student and teacher components of instructional material shall be counted once for the purpose of determining penalties. An identical error in materials with multiple components and formats shall be counted as one error; and

(3) a penalty may be assessed for failure to correct a factual error identified in the list of corrections submitted by a publisher under §66.28(c)(11) of this title or for failure to correct a factual error identified in the report of the commissioner of education under §66.63(a) of this title and required by the SBOE. The publisher shall identify errata in an appropriate manner.

(h) For purposes of subsection (f)(2) of this section, a penalty of \$5,000 shall be assessed for each failure to correct a factual error:

(1) after the deadline established in the proclamation by which publishers must have submitted corrected samples of adopted instructional materials for violations of subsection (f)(2)(A) of this section; or

(2) prior to distribution to public schools after the SBOE has identified the factual error for violations of subsection (f)(2)(B) and (C) of this section.

(i) The SBOE may assess an administrative penalty against a publisher or manufacturer who violates the TEC, §31.151(a)(5), or a rule implementing those provisions.

(j) The SBOE may assess an administrative penalty against a publisher or manufacturer who violates the TEC, §31.151(a)(6), (7), or (8), or a rule implementing those provisions, including:

(1) a penalty for failure to deliver adopted instructional materials, including teacher components, in a timely manner or in the quantities the school district or open-enrollment charter school is eligible to receive as specified in the publisher's bid; and

(2) a penalty for failure to deliver adopted instructional materials, including teacher components, in accordance with provisions in the contracts if the failure extends beyond 45 days.

(k) The SBOE may assess an administrative penalty against a publisher or manufacturer who fails to maintain a website or provide a suitable alternative for conveying the information in the website, or who otherwise fails to meet the requirements of §66.29 of this title (relating to Websites in State-Adopted Instructional Materials).

(l) The SBOE may, if circumstances warrant, waive or vary penalties contained in this section for first or subsequent violations based on the seriousness of the violation, any history of a previous violation or violations, the amount necessary to deter a future violation, any effort to correct the violation, and any other matter justice requires.

(m) Each affected publisher shall issue credit to the TEA in the amount of any penalty imposed under the provisions of this section. When circumstances warrant it, the TEA is authorized to require payment of penalties in cash within ten days. Each affected publisher who pays a fine for failure to deliver adopted instructional materials in a timely manner will not be subject to the liquidated damages provision in the publisher's contract for the same failure to deliver adopted instructional materials in a timely manner.

(n) All administrative penalties shall be credited to the public schools instructional materials allotment funds under the TEC, §31.0212.

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

Filed with the Office of the Secretary of State on September 28, 2020.

TRD-202004022

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: November 8, 2020

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



CHAPTER 112. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SCIENCE

SUBCHAPTER C. HIGH SCHOOL

19 TAC §§112.41 - 112.45

The State Board of Education (SBOE) proposes new §§112.41-112.45, concerning Texas Essential Knowledge and Skills (TEKS) for science. The proposed new sections would provide updated standards for Biology, Chemistry, Physics, and Integrated Physics and Chemistry to ensure they remain current.

BACKGROUND INFORMATION AND JUSTIFICATION: In accordance with statutory requirements that the SBOE by rule identify the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

At the September 2019 meeting, SBOE members were asked to designate content advisors for the review and revision of the science TEKS. In December 2019, applications to serve on science TEKS review work groups were posted on the Texas Education Agency (TEA) website. Additionally in December 2019, TEA distributed a survey to collect information from educators regarding the review and revision of the science TEKS. TEA staff provided applications for the science review work groups to SBOE members on a monthly basis from December 2019 to June 2020. At the January 2020 SBOE meeting, the SBOE provided specific guidance for the TEKS review work groups.

Also in January 2020, science TEKS review content advisors met in a face-to-face meeting to develop consensus recommendations regarding revisions to the science TEKS to share with future work groups. At that time, the content advisors met with representatives from Work Group A to discuss the consensus recommendations. Work Group A convened in February 2020 to review survey results, content advisor consensus recommendations, and the SBOE's guidance to work groups to develop recommendations for how science TEKS review work groups can address these areas. Work Group B was convened virtually in June and July 2020 to develop recommendations for four high school science courses: Biology, Chemistry, Physics, and Integrated Physics and Chemistry. Additionally, in July 2020, members from Work Group B met with Work Group C to discuss vertical alignment of the high school and middle school TEKS.

The proposed new sections would introduce revised standards for Biology, Chemistry, Physics, and Integrated Physics and Chemistry as well as related implementation language. The revised standards would ensure that the requirements for these courses remain current. The proposed new sections would be implemented beginning with the 2023-2024 school year.

The SBOE approved the proposed new sections for first reading and filing authorization at its September 11, 2020 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and support services, has determined that for the first five years the proposal is in effect (2021-2025), there are no fiscal implications to the state. However, in fiscal years 2019 and 2020, there was a fiscal impact to TEA to reimburse committee members for travel to review the science TEKS. For fiscal year 2020, the estimated cost to TEA was \$23,609. There will also be implications for the TEA if the state develops professional development to help teachers and administrators understand the revised TEKS. Any professional development that is created would be based on whether the TEA received an appropriation for professional development in the next biennium.

There may be fiscal implications for school districts and charter schools to implement the proposed revisions to the TEKS, which may include the need for professional development and revisions to district-developed databases, curriculum, and scope and sequence documents. Since curriculum and instruction decisions are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations by proposing revised science TEKS required to be offered by school districts and charter schools.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be better alignment of the TEKS and coordination of the standards with the adoption of instructional materials. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins October 9, 2020, and ends November 13, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in November 2020 in accordance with the SBOE board operating policies and procedures. A public hearing on the proposal will be held as part of the November 2020 SBOE meeting.

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge

and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(j), which allows the SBOE to require laboratory instruction in secondary science courses and require a specific amount or percentage of time in a secondary science course that must be laboratory instruction; TEC, §28.002(n), which allows the SBOE to by rule develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technical education curriculum required in TEC, §28.002; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (j), and (n); and 28.025(a).

§112.41. Implementation of Texas Essential Knowledge and Skills for Science, High School, Adopted 2020.

(a) The provisions of §§112.42-112.45 of this subchapter shall be implemented by school districts.

(b) No later than July 31, 2022, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills for science as adopted in §§112.42-112.45 of this subchapter.

(c) If the commissioner makes the determination that instructional materials funding has been made available under subsection (b) of this section, §§112.42-112.45 of this subchapter shall be implemented beginning with the 2023-2024 school year and apply to the 2023-2024 and subsequent school years.

(d) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (b) of this section, the commissioner shall determine no later than July 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that §§112.42-112.45 of this subchapter shall be implemented for the following school year.

(e) Sections 112.34, 112.35, 112.38, and 112.39 of this subchapter shall be superseded by the implementation of §§112.42-112.45 of this subchapter.

§112.42. Biology (One Credit), Adopted 2020.

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course is recommended for students in Grades 9-11.

(b) Introduction.

(1) Biology. Students in Biology focus on patterns, processes, and relationships of living organisms through four main concepts: biological structures, functions, and processes; mechanisms of genetics; biological evolution; and interdependence within environmental systems. By the end of Grade 12, students are expected to gain sufficient knowledge of the scientific and engineering practices across the disciplines of science to make informed decisions using critical thinking and scientific problem solving.

(2) Nature of science. Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable ex-

planations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not currently scientifically testable.

(3) Scientific hypotheses and theories. Students are expected to know that:

(A) hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power that have been tested over a wide variety of conditions are incorporated into theories; and

(B) scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well established and highly reliable explanations, but they may be subject to change as new areas of science and new technologies are developed.

(4) Scientific inquiry. Scientific inquiry is the planned and deliberate investigation of the natural world using scientific and engineering practices. Scientific methods of investigation are descriptive, comparative, or experimental. The method chosen should be appropriate to the question being asked. Student learning for different types of investigations include descriptive investigations, which involve collecting data and recording observations without making comparisons; comparative investigations, which involve collecting data with variables that are manipulated to compare results; and experimental investigations, which involve processes similar to comparative investigations but in which a control is identified.

(A) Scientific practices. Students should be able to ask questions, plan and conduct investigations to answer questions, and explain phenomena using appropriate tools and models.

(B) Engineering practices. Students should be able to identify problems and design solutions using appropriate tools and models.

(5) Science and social ethics. Scientific decision making is a way of answering questions about the natural world involving its own set of ethical standards about how the process of science should be carried out. Students should be able to distinguish between scientific decision-making methods (scientific methods) and ethical and social decisions that involve science (the application of scientific information).

(6) Science consists of recurring themes and making connections between overarching concepts. Recurring themes include systems, models, and patterns. All systems have basic properties that can be described in space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested, while models allow for boundary specification and provide a tool for understanding the ideas presented. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(7) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Scientific and engineering practices. The student, for at least 40% of instructional time, asks questions, identifies problems, and plans and safely conducts classroom, laboratory, and field inves-

tigations to answer questions, explain phenomena, or design solutions using appropriate tools and models. The student is expected to:

(A) ask questions and define problems based on observations or information from text, phenomena, models, or investigations;

(B) apply scientific practices to plan and conduct descriptive, comparative, and experimental investigations and use engineering practices to design solutions to problems;

(C) use appropriate safety equipment and practices during laboratory, classroom, and field investigations as outlined in Texas Education Agency-approved safety standards;

(D) use appropriate tools such as microscopes, slides, Petri dishes, laboratory glassware, metric rulers, digital balances, pipets, filter paper, micropipettes, gel electrophoresis and polymerase chain reaction (PCR) apparatuses, microcentrifuges, water baths, incubators, thermometers, hot plates, data collection probes, test tube holders, lab notebooks or journals, hand lenses, and models, diagrams, or samples of biological specimens or structures;

(E) collect quantitative data using the International System of Units (SI) and qualitative data as evidence;

(F) organize quantitative and qualitative data using scatter plots, line graphs, bar graphs, charts, data tables, digital tools, diagrams, scientific drawings, and student-prepared models;

(G) develop and use models to represent phenomena, systems, processes, or solutions to engineering problems; and

(H) distinguish among scientific hypotheses, theories, and laws.

(2) Scientific and engineering practices. The student analyzes and interprets data to derive meaning, identify features and patterns, and discover relationships or correlations to develop evidence-based arguments or evaluate designs. The student is expected to:

(A) identify advantages and limitations of models such as their size, scale, properties, and materials;

(B) analyze data by identifying significant statistical features, patterns, sources of error, and limitations;

(C) use mathematical calculations to assess quantitative relationships in data; and

(D) evaluate experimental and engineering designs.

(3) Scientific and engineering practices. The student develops evidence-based explanations and communicates findings, conclusions, and proposed solutions. The student is expected to:

(A) develop explanations and propose solutions supported by data and models and consistent with scientific ideas, principles, and theories;

(B) communicate explanations and solutions individually and collaboratively in a variety of settings and formats; and

(C) engage respectfully in scientific argumentation using applied scientific explanations and empirical evidence.

(4) Scientific and engineering practices. The student knows the contributions of scientists and recognizes the importance of scientific research and innovation on society. The student is expected to:

(A) analyze, evaluate, and critique scientific explanations and solutions by using empirical evidence, logical reasoning,

and experimental and observational testing, so as to encourage critical thinking by the student;

(B) relate the impact of past and current research on scientific thought and society, including research methodology, cost-benefit analysis, and contributions of diverse scientists as related to the content; and

(C) research and explore connections between grade-level appropriate science concepts and science, technology, engineering, and mathematics (STEM) careers.

(5) Science concepts--biological structures, functions, and processes. The student knows that biological structures at multiple levels of organization perform specific functions and processes that affect life. The student is expected to:

(A) relate the functions of different types of biomolecules, including carbohydrates, lipids, proteins, and nucleic acids, to the structure and function of a cell;

(B) compare and contrast prokaryotic and eukaryotic cells, including their complexity, and compare and contrast scientific explanations for cellular complexity;

(C) investigate homeostasis through the cellular transport of molecules; and

(D) compare the structures of viruses to cells and explain how viruses spread and cause disease.

(6) Science concepts--biological structures, functions, and processes. The student knows how an organism grows and the importance of cell differentiation. The student is expected to:

(A) explain the importance of the cell cycle to the growth of organisms, including stages of the cell cycle and deoxyribonucleic acid (DNA) replication models;

(B) explain the process of cell specialization through cell differentiation, including the role of environmental factors; and

(C) relate disruptions of the cell cycle to how they lead to the development of diseases such as cancer.

(7) Science concepts--mechanisms of genetics. The student knows the role of nucleic acids in gene expression. The student is expected to:

(A) identify components of DNA, explain how the nucleotide sequence specifies some traits of an organism, and examine scientific explanations for the origin of DNA;

(B) describe the significance of gene expression and explain the process of protein synthesis using models of DNA and ribonucleic acid (RNA);

(C) identify and illustrate changes in DNA and evaluate the significance of these changes; and

(D) describe the function of molecular technologies such as polymerase chain reaction (PCR), gel electrophoresis, and genetic engineering that are applicable in current research and engineering practices.

(8) Science concepts--mechanisms of genetics. The student knows the role of nucleic acids and the principles of inheritance and variation of traits in Mendelian and non-Mendelian genetics. The student is expected to:

(A) analyze the significance of chromosome reduction, independent assortment, and crossing-over during meiosis in increasing diversity in populations of organisms that reproduce sexually; and

(B) predict possible outcomes of various genetic combinations using monohybrid and dihybrid crosses, including non-Mendelian traits of incomplete dominance, codominance, sex-linked traits, and multiple alleles.

(9) Science concepts--biological evolution. The student knows evolutionary theory is a scientific explanation for the unity and diversity of life that has multiple lines of evidence. The student is expected to:

(A) analyze and evaluate how evidence of common ancestry among groups is provided by the fossil record, biogeography, and homologies, including anatomical, molecular, and developmental; and

(B) examine scientific explanations for varying rates of change such as gradualism, abrupt appearance, and stasis in the fossil record.

(10) Science concepts--biological evolution. The student knows evolutionary theory is a scientific explanation for the unity and diversity of life that has multiple mechanisms. The student is expected to:

(A) analyze and evaluate how natural selection produces change in populations and not in individuals;

(B) analyze and evaluate how the elements of natural selection, including inherited variation, the potential of a population to produce more offspring than can survive, and a finite supply of environmental resources, result in differential reproductive success;

(C) analyze and evaluate how natural selection may lead to speciation; and

(D) analyze evolutionary mechanisms other than natural selection, including genetic drift, gene flow, mutation, and genetic recombination, on the gene pool of a population.

(11) Science concepts--biological structures, functions, and processes. The student knows the significance of matter cycling, energy flow, and enzymes in living organisms. The student is expected to:

(A) explain how matter is conserved and energy is transferred during photosynthesis and cellular respiration using models, including chemical equations; and

(B) identify and investigate the role of enzymes in facilitating cellular processes.

(12) Science concepts--biological structures, functions, and processes. The student knows that multicellular organisms are composed of multiple systems that interact to perform complex functions. The student is expected to:

(A) analyze the interactions that occur among systems that perform the functions of regulation, nutrient absorption, reproduction, and defense from injury or illness in animals; and

(B) explain how the functions of transport, reproduction, and response in plants are facilitated by their structures.

(13) Science concepts--interdependence within environmental systems. The student knows that interactions at various levels of organization occur within an ecosystem to maintain stability. The student is expected to:

(A) investigate and evaluate how ecological relationships, including predation, parasitism, commensalism, mutualism, and competition, influence ecosystem stability;

(B) analyze how ecosystem stability is affected by disruptions to the cycling of matter and flow of energy through trophic levels using models;

(C) explain the significance of the carbon and nitrogen cycles to ecosystem stability and analyze the consequences of disrupting these cycles; and

(D) explain how environmental change, including change due to human activity, affects biodiversity and analyze how changes in biodiversity impact ecosystem stability.

§112.43. Chemistry (One Credit), Adopted 2020.

(a) General requirements. Students shall be awarded one credit for successful completion of this course. Prerequisites: one credit of high school science and Algebra I. Recommended prerequisite: completion of or concurrent enrollment in a second year of mathematics. This course is recommended for students in Grades 10-12.

(b) Introduction.

(1) Chemistry. In Chemistry, students conduct laboratory and field investigations, use scientific practices during investigations, and make informed decisions using critical thinking and scientific problem solving. Students study a variety of topics that include characteristics of matter, use of the Periodic Table, development of atomic theory, chemical bonding, chemical stoichiometry, gas laws, solution chemistry, acid-base chemistry, thermochemistry, and nuclear chemistry. Students investigate how chemistry is an integral part of our daily lives. By the end of Grade 12, students are expected to gain sufficient knowledge of the scientific and engineering practices across the disciplines of science to make informed decisions using critical thinking and scientific problem solving.

(2) Nature of science. Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not currently scientifically testable.

(3) Scientific hypotheses and theories. Students are expected to know that:

(A) hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power that have been tested over a wide variety of conditions are incorporated into theories; and

(B) scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well established and highly reliable explanations, but they may be subject to change as new areas of science and new technologies are developed.

(4) Scientific inquiry. Scientific inquiry is the planned and deliberate investigation of the natural world using scientific and engineering practices. Scientific methods of investigation are descriptive, comparative, or experimental. The method chosen should be appropriate to the question being asked. Student learning for different types of investigations includes descriptive investigations, which involve collecting data and recording observations without making comparisons; comparative investigations, which involve collecting data with variables that are manipulated to compare results; and experimental inves-

tigations, which involve processes similar to comparative investigations but in which a control is identified.

(A) Scientific practices. Students should be able to ask questions, plan and conduct investigations to answer questions, and explain phenomena using appropriate tools and models.

(B) Engineering practices. Students should be able to identify problems and design solutions using appropriate tools and models.

(5) Science and social ethics. Scientific decision making is a way of answering questions about the natural world involving its own set of ethical standards about how the process of science should be carried out. Students should be able to distinguish between scientific decision-making methods (scientific methods) and ethical and social decisions that involve science (the application of scientific information).

(6) Science consists of recurring themes and making connections between overarching concepts. Recurring themes include systems, models, and patterns. All systems have basic properties that can be described in space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested, while models allow for boundary specification and provide a tool for understanding the ideas presented. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(7) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Scientific and engineering practices. The student, for at least 40% of instructional time, asks questions, identifies problems, and plans and safely conducts classroom, laboratory, and field investigations to answer questions, explain phenomena, or design solutions using appropriate tools and models. The student is expected to:

(A) ask questions and define problems based on observations or information from text, phenomena, models, or investigations;

(B) apply scientific practices to plan and conduct descriptive, comparative, and experimental investigations and use engineering practices to design solutions to problems;

(C) use appropriate safety equipment and practices during laboratory, classroom, and field investigations as outlined in Texas Education Agency-approved safety standards;

(D) use appropriate tools such as Safety Data Sheets (SDS), scientific or graphing calculators, computers and probes, electronic balances, an adequate supply of consumable chemicals, and sufficient scientific glassware such as beakers, Erlenmeyer flasks, pipettes, graduated cylinders, volumetric flasks, and burettes;

(E) collect quantitative data using the International System of Units (SI) and qualitative data as evidence;

(F) organize quantitative and qualitative data using oral or written lab reports, labeled drawings, particle diagrams, charts, tables, graphs, journals, summaries, or technology-based reports;

(G) develop and use models to represent phenomena, systems, processes, or solutions to engineering problems; and

(H) distinguish between scientific hypotheses, theories, and laws.

(2) Scientific and engineering practices. The student analyzes and interprets data to derive meaning, identify features and patterns, and discover relationships or correlations to develop evidence-based arguments or evaluate designs. The student is expected to:

(A) identify advantages and limitations of models such as their size, scale, properties, and materials;

(B) analyze data by identifying significant statistical features, patterns, sources of error, and limitations;

(C) use mathematical calculations to assess quantitative relationships in data; and

(D) evaluate experimental and engineering designs.

(3) Scientific and engineering practices. The student develops evidence-based explanations and communicates findings, conclusions, and proposed solutions. The student is expected to:

(A) develop explanations and propose solutions supported by data and models and consistent with scientific ideas, principles, and theories;

(B) communicate explanations and solutions individually and collaboratively in a variety of settings and formats; and

(C) engage respectfully in scientific argumentation using applied scientific explanations and empirical evidence.

(4) Scientific and engineering practices. The student knows the contributions of scientists and recognizes the importance of scientific research and innovation on society. The student is expected to:

(A) analyze, evaluate, and critique scientific explanations and solutions by using empirical evidence, logical reasoning, and experimental and observational testing, so as to encourage critical thinking by the student;

(B) relate the impact of past and current research on scientific thought and society, including research methodology, cost-benefit analysis, and contributions of diverse scientists as related to the content; and

(C) research and explore connections between grade-level appropriate science concepts and science, technology, engineering, and mathematics (STEM) careers.

(5) Science concepts. The student understands the development of the Periodic Table and applies its predictive power. The student is expected to:

(A) explain the development of the Periodic Table over time using evidence such as chemical and physical properties;

(B) predict the properties of elements in chemical families, including alkali metals, alkaline earth metals, halogens, noble gases, and transition metals, based on valence electrons patterns using the Periodic Table; and

(C) analyze and interpret elemental data, including atomic radius, atomic mass, electronegativity, ionization energy, and reactivity to identify periodic trends.

(6) Science concepts. The student understands the development of atomic theory and applies it to real-world phenomena. The student is expected to:

(A) construct models using Dalton's Postulates, Thomson's discovery of electron properties, Rutherford's nuclear atom, Bohr's nuclear atom, and Heisenberg's Uncertainty Principle to show the development of modern atomic theory over time;

(B) describe the structure of atoms and ions, including the masses, electrical charges, and locations of protons and neutrons in the nucleus and electrons in the electron cloud;

(C) investigate the mathematical relationship between energy, frequency, and wavelength of light using the electromagnetic spectrum and relate it to the quantization of energy in the emission spectrum;

(D) calculate average atomic mass of an element using isotopic composition; and

(E) construct models to express the arrangement of electrons in atoms of representative elements using electron configurations and Lewis dot structures.

(7) Science concepts. The student knows how atoms form ionic, covalent, and metallic bonds. The student is expected to:

(A) construct an argument to support how periodic trends such as electronegativity can predict bonding between elements;

(B) name and write the chemical formulas for ionic and covalent compounds using International Union of Pure and Applied Chemistry (IUPAC) nomenclature rules;

(C) classify and draw electron dot structures for molecules with linear, bent, trigonal planar, trigonal pyramidal, and tetrahedral molecular geometries as explained by Valence Shell Electron Pair Repulsion (VSEPR) theory; and

(D) analyze the properties of ionic, covalent, and metallic substances in terms of intramolecular and intermolecular forces.

(8) Science concepts. The student understands how matter is accounted for in chemical substances. The student is expected to:

(A) define mole and apply the concept of molar mass to convert between moles and grams;

(B) calculate the number of atoms or molecules in a sample of material using Avogadro's number;

(C) calculate percent composition of compounds; and

(D) differentiate between empirical and molecular formulas.

(9) Science concepts. The student understands how matter is accounted for in chemical reactions. The student is expected to:

(A) interpret, write, and balance chemical equations, including synthesis, decomposition, single replacement, double replacement, and combustion reactions using the law of conservation of mass;

(B) differentiate among acid-base reactions, precipitation reactions, and oxidation-reduction reactions;

(C) perform stoichiometric calculations, including determination of mass relationships, gas volume relationships, and percent yield; and

(D) describe the concept of limiting reactants in a balanced chemical equation.

(10) Science concepts. The student understands the principles of the kinetic molecular theory and ideal gas behavior. The student is expected to:

(A) describe the postulates of the kinetic molecular theory;

(B) describe and calculate the relationships among volume, pressure, number of moles, and temperature for an ideal gas; and

(C) define and apply Dalton's law of partial pressure.

(11) Science concepts. The student understands and can apply the factors that influence the behavior of solutions. The student is expected to:

(A) describe the unique role of water in solutions in terms of polarity;

(B) distinguish among types of solutions, including electrolytes and nonelectrolytes and unsaturated, saturated, and super-saturated solutions;

(C) investigate factors that influence solid and gas solubilities such as temperature using solubility curves and rates of dissolution such as temperature, agitation, and surface area;

(D) investigate the general rules regarding solubility and predict the products of a double replacement reaction;

(E) calculate the concentration of solutions in units of molarity; and

(F) calculate the dilutions of solutions using molarity.

(12) Science concepts. The student understands and applies various rules regarding acids and bases. The student is expected to:

(A) name and write the chemical formulas for acids and bases using IUPAC nomenclature rules;

(B) define acids and bases and distinguish between Arrhenius and Bronsted-Lowry definitions;

(C) differentiate between strong and weak acids and bases;

(D) predict products in acid-base reactions that form water; and

(E) define pH and calculate the pH of a solution using the hydrogen ion concentration.

(13) Science concepts. The student understands the energy changes that occur in chemical reactions. The student is expected to:

(A) explain everyday examples that illustrate the four laws of thermodynamics;

(B) investigate the process of heat transfer using calorimetry;

(C) classify processes as exothermic or endothermic and represent energy changes that occur in chemical reactions using thermochemical equations or graphical analysis; and

(D) perform calculations involving heat, mass, temperature change, and specific heat.

(14) Science concepts. The student understands the basic processes of nuclear chemistry. The student is expected to:

(A) describe the characteristics of alpha, beta, and gamma radioactive decay processes in terms of balanced nuclear equations;

(B) compare fission and fusion reactions; and

(C) give examples of applications of nuclear phenomena such as nuclear stability, radiation therapy, diagnostic imaging, solar cells, and nuclear power.

§112.44. Integrated Physics and Chemistry (One Credit), Adopted 2020.

(a) General requirements. Students shall be awarded one credit for successful completion of this course. This course is recommended for students in Grades 9 and 10.

(b) Introduction.

(1) Integrated Physics and Chemistry. In Integrated Physics and Chemistry, students conduct laboratory and field investigations, use engineering practices, use scientific practices during investigation, and make informed decisions using critical thinking and scientific problem solving. This course integrates the disciplines of physics and chemistry in the following topics: force, motion, energy, and matter. By the end of Grade 12, students are expected to gain sufficient knowledge of the scientific and engineering practices across the disciplines of science to make informed decisions using critical thinking and scientific problem solving.

(2) Nature of science. Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not currently scientifically testable.

(3) Scientific hypotheses and theories. Students are expected to know that:

(A) hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power that have been tested over a wide variety of conditions are incorporated into theories; and

(B) scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well established and highly reliable explanations, but they may be subject to change as new areas of science and new technologies are developed.

(4) Scientific inquiry. Scientific inquiry is the planned and deliberate investigation of the natural world using scientific and engineering practices. Scientific methods of investigation are descriptive, comparative, or experimental. The method chosen should be appropriate to the question being asked. Student learning for different types of investigations include descriptive investigations, which involve collecting data and recording observations without making comparisons; comparative investigations, which involve collecting data with variables that are manipulated to compare results; and experimental investigations, which involve processes similar to comparative investigations but in which a control is identified.

(A) Scientific practices. Students should be able to ask questions, plan and conduct investigations to answer questions, and explain phenomena using appropriate tools and models.

(B) Engineering practices. Students should be able to identify problems and design solutions using appropriate tools and models.

(5) Science and social ethics. Scientific decision making is a way of answering questions about the natural world involving its own set of ethical standards about how the process of science should be carried out. Students should be able to distinguish between scientific decision-making methods (scientific methods) and ethical and social decisions that involve science (the application of scientific information).

(6) Science consists of recurring themes and making connections between overarching concepts. Recurring themes include systems, models, and patterns. All systems have basic properties that can be described in space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically tested, while models allow for boundary specification and provide a tool for understanding the ideas presented. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(7) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Scientific and engineering practices. The student, for at least 40% of instructional time, asks questions, identifies problems, and plans and safely conducts classroom, laboratory, and field investigations to answer questions, explain phenomena, or design solutions using appropriate tools and models. The student is expected to:

(A) ask questions and define problems based on observations or information from text, phenomena, models, or investigations;

(B) apply scientific practices to plan and conduct descriptive, comparative, and experimental investigations and use engineering practices to design solutions to problems;

(C) use appropriate safety equipment and practices during laboratory, classroom, and field investigations as outlined in Texas Education Agency-approved safety standards;

(D) use appropriate tools such as data-collecting probes, software applications, the internet, standard laboratory glassware, metric rulers, meter sticks, spring scales, multimeters, Gauss meters, wires, batteries, light bulbs, switches, magnets, electronic balances, mass sets, Celsius thermometers, hot plates, an adequate supply of consumable chemicals, lab notebooks or journals, timing devices, models, and diagrams;

(E) collect quantitative data using the International System of Units (SI) and qualitative data as evidence;

(F) organize quantitative and qualitative data using labeled drawings and diagrams, graphic organizers, charts, tables, and graphs;

(G) develop and use models to represent phenomena, systems, processes, or solutions to engineering problems; and

(H) distinguish between scientific hypotheses, theories, and laws.

(2) Scientific and engineering practices. The student analyzes and interprets data to derive meaning, identify features and patterns, and discover relationships or correlations to develop evidence-based arguments or evaluate designs. The student is expected to:

(A) identify advantages and limitations of models such as their size, scale, properties, and materials;

(B) analyze data by identifying significant statistical features, patterns, sources of error, and limitations;

(C) use mathematical calculations to assess quantitative relationships in data; and

(D) evaluate experimental and engineering designs.

(3) Scientific and engineering practices. The student develops evidence-based explanations and communicates findings, conclusions, and proposed solutions. The student is expected to:

(A) develop explanations and propose solutions supported by data and models and consistent with scientific ideas, principles, and theories;

(B) communicate explanations and solutions individually and collaboratively in a variety of settings and formats; and

(C) engage respectfully in scientific argumentation using applied scientific explanations and empirical evidence.

(4) Scientific and engineering practices. The student knows the contributions of scientists and recognizes the importance of scientific research and innovation on society. The student is expected to:

(A) analyze, evaluate, and critique scientific explanations and solutions by using empirical evidence, logical reasoning, and experimental and observational testing, so as to encourage critical thinking by the student;

(B) relate the impact of past and current research on scientific thought and society, including research methodology, cost-benefit analysis, and contributions of diverse scientists as related to the content; and

(C) research and explore connections between grade-level appropriate science concepts and science, technology, engineering, and mathematics (STEM) careers.

(5) Science concepts. The student knows the relationship between force and motion in everyday life. The student is expected to:

(A) investigate, analyze, and model motion in terms of position, velocity, acceleration, and time using tables, graphs, and mathematical relationships;

(B) analyze data to explain the relationship between mass and acceleration in terms of the net force on an object in one dimension using force diagrams, tables, and graphs;

(C) apply the concepts of momentum and impulse to design, evaluate, and refine a device to minimize the net force on objects during collisions such as those that occur during vehicular accidents, sports activities, or the dropping of personal electronic devices;

(D) describe the nature of the four fundamental forces: gravitation; electromagnetic; the strong and weak nuclear forces, including fission and fusion; and mass-energy equivalency; and

(E) construct and communicate an explanation based on evidence for how changes in mass, charge, and distance affect the strength of gravitational and electrical forces between two objects.

(6) Science concepts. The student knows the impact of energy transfer and energy conservation in everyday life. The student is expected to:

(A) design and construct series and parallel circuits that model real-world circuits such as in-home wiring, automobile wiring, and simple electrical devices to evaluate the transfer of electrical energy;

(B) design, evaluate, and refine a device that generates electrical energy through the interaction of electric charges and magnetic fields;

(C) plan and conduct an investigation to provide evidence that energy is conserved within a closed system;

(D) investigate and demonstrate the movement of thermal energy through solids, liquids, and gases by convection, conduction, and radiation such as weather, living, and mechanical systems;

(E) plan and conduct an investigation to evaluate the transfer of energy or information through different materials by different types of waves such as wireless signals, ultraviolet radiation, and microwaves;

(F) construct and communicate an evidence-based explanation for how wave interference, reflection, and refraction are used in technology such as medicine, communication, and scientific research; and

(G) evaluate evidence from multiple sources to critique the advantages and disadvantages of various renewable and nonrenewable energy sources and their impact on society and the environment.

(7) Science concepts. The student knows that relationships exist between the structure and properties of matter. The student is expected to:

(A) model basic atomic structure and relate an element's atomic structure to its bonding, reactivity, and placement on the Periodic Table;

(B) use patterns within the Periodic Table to predict the relative physical and chemical properties of elements;

(C) explain how physical and chemical properties of substances are related to their usage in everyday life such as in sunscreen, cookware, industrial applications, and fuels;

(D) explain how electrons can transition from a high energy level to a low energy state, emitting photons at different frequencies for different energy transitions;

(E) explain how atomic energy levels and emission spectra present evidence for the wave particle duality; and

(F) plan and conduct an investigation to provide evidence that the rate of reaction or dissolving is affected by multiple factors such as particle size, stirring, temperature, and concentration.

(8) Science concepts. The student knows that changes in matter affect everyday life. The student is expected to:

(A) investigate how changes in properties are indicative of chemical reactions such as hydrochloric acid with a metal, oxidation of metal, combustion, and neutralizing an acid with a base;

(B) develop and use models to balance chemical equations and support the claim that atoms, and therefore mass, are conserved during a chemical reaction;

(C) research and communicate the uses, advantages, and disadvantages of nuclear reactions in current technologies; and

(D) construct and communicate an evidence-based explanation of the environmental impact of the end-products of chemical reactions such as those that may result in degradation of water, soil, air quality, and global climate change.

§112.45. Physics (One Credit), Adopted 2020.

(a) General requirements. Students shall be awarded one credit for successful completion of this course. Recommended prerequisite or corequisite: Algebra I. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) Physics. In Physics, students conduct laboratory and field investigations, use scientific practices during investigations, and

make informed decisions using critical thinking and scientific problem solving. Students study a variety of topics that include: laws of motion, changes within physical systems and conservation of energy and momentum, forces, characteristics and behavior of waves, and electricity and magnetism. Students will apply conceptual knowledge and collaborative skills to experimental design, implementation, and interpretation. By the end of Grade 12, students are expected to gain sufficient knowledge of the scientific and engineering practices across the disciplines of science to make informed decisions using critical thinking and scientific problem solving.

(2) Nature of science. Science, as defined by the National Academy of Sciences, is the "use of evidence to construct testable explanations and predictions of natural phenomena, as well as the knowledge generated through this process." This vast body of changing and increasing knowledge is described by physical, mathematical, and conceptual models. Students should know that some questions are outside the realm of science because they deal with phenomena that are not currently scientifically testable.

(3) Scientific hypotheses and theories. Students are expected to know that:

(A) hypotheses are tentative and testable statements that must be capable of being supported or not supported by observational evidence. Hypotheses of durable explanatory power that have been tested over a wide variety of conditions are incorporated into theories; and

(B) scientific theories are based on natural and physical phenomena and are capable of being tested by multiple independent researchers. Unlike hypotheses, scientific theories are well established and highly reliable explanations, but they may be subject to change as new areas of science and new technologies are developed.

(4) Scientific inquiry. Scientific inquiry is the planned and deliberate investigation of the natural world using scientific and engineering practices. Scientific methods of investigation are descriptive, comparative, or experimental. The method chosen should be appropriate to the question being asked. Student learning for different types of investigations include descriptive investigations, which involve collecting data and recording observations without making comparisons; comparative investigations, which involve collecting data with variables that are manipulated to compare results; and experimental investigations, which involve processes similar to comparative investigations but in which a control is identified.

(A) Scientific practices. Students should be able to ask questions, plan and conduct investigations to answer questions, and explain phenomena using appropriate tools and models.

(B) Engineering practices. Students should be able to identify problems and design solutions using appropriate tools and models.

(5) Science and social ethics. Scientific decision making is a way of answering questions about the natural world involving its own set of ethical standards about how the process of science should be carried out. Students should be able to distinguish between scientific decision-making methods (scientific methods) and ethical and social decisions that involve science (the application of scientific information).

(6) Science consists of recurring themes and making connections between overarching concepts. Recurring themes include systems, models, and patterns. All systems have basic properties that can be described in space, time, energy, and matter. Change and constancy occur in systems as patterns and can be observed, measured, and modeled. These patterns help to make predictions that can be scientifically

tested, while models allow for boundary specification and provide a tool for understanding the ideas presented. Students should analyze a system in terms of its components and how these components relate to each other, to the whole, and to the external environment.

(7) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Scientific and engineering practices. The student, for at least 40% of instructional time, asks questions, identifies problems, and plans and safely conducts classroom, laboratory, and field investigations to answer questions, explain phenomena, or design solutions using appropriate tools and models. The student is expected to:

(A) ask questions and define problems based on observations or information from text, phenomena, models, or investigations;

(B) apply scientific practices to plan and conduct descriptive, comparative, and experimental investigations, and use engineering practices to design solutions to problems;

(C) use appropriate safety equipment and practices during laboratory, classroom, and field investigations as outlined in Texas Education Agency-approved safety standards;

(D) use appropriate tools such as balances, ballistic carts or equivalent, batteries, computers, constant velocity cars, convex lenses, copper wire, discharge tubes with power supply (H, He, Ne, Ar), data acquisition probes and software, dynamics and force demonstration equipment, electrostatic generators, electrostatic kits, friction blocks, graph paper, graphing technology, hand-held visual spectrometers, inclined planes, iron filings, lab masses, laser pointers, magnets, magnetic compasses, metric rulers, motion detectors, multimeters (current, voltage, resistance), optics bench, optics kit, photogates, plane mirrors, prisms, protractors, pulleys, resistors, rope or string, scientific calculators, stopwatches, springs, spring scales, switches, tuning forks, wave generators, or other equipment and materials that will produce the same results;

(E) collect quantitative data using the International System of Units (SI) and qualitative data as evidence;

(F) organize quantitative and qualitative data using bar charts, line graphs, scatter plots, data tables, labeled diagrams, and conceptual mathematical relationships;

(G) develop and use models to represent phenomena, systems, processes, or solutions to engineering problems; and

(H) distinguish among scientific hypotheses, theories, and laws.

(2) Scientific and engineering practices. The student analyzes and interprets data to derive meaning, identify features and patterns, and discover relationships or correlations to develop evidence-based arguments or evaluate designs. The student is expected to:

(A) identify advantages and limitations of models such as their size, scale, properties, and materials;

(B) analyze data by identifying significant statistical features, patterns, sources of error, and limitations;

(C) use mathematical calculations to assess quantitative relationships in data; and

(D) evaluate experimental and engineering designs.

(3) Scientific and engineering practices. The student develops evidence-based explanations and communicates findings, conclusions, and proposed solutions. The student is expected to:

(A) develop explanations and propose solutions supported by data and models and consistent with scientific ideas, principles, and theories;

(B) communicate explanations and solutions individually and collaboratively in a variety of settings and formats; and

(C) engage respectfully in scientific argumentation using applied scientific explanations and empirical evidence.

(4) Scientific and engineering practices. The student knows the contributions of scientists and recognizes the importance of scientific research and innovation on society. The student is expected to:

(A) analyze, evaluate, and critique scientific explanations and solutions by using empirical evidence, logical reasoning, and experimental and observational testing, so as to encourage critical thinking by the student;

(B) relate the impact of past and current research on scientific thought and society, including research methodology, cost-benefit analysis, and contributions of diverse scientists as related to the content; and

(C) research and explore connections between grade-level appropriate science concepts and science, technology, engineering, and mathematics (STEM) careers.

(5) Science concepts. The student knows and applies the laws governing motion in a variety of situations. The student is expected to:

(A) analyze different types of motion by generating and interpreting position versus time, velocity versus time, and acceleration versus time using hand graphing and real-time technology such as motion detectors, photogates, or digital applications;

(B) define scalar and vector quantities related to one- and two-dimensional motion and combine vectors using both graphical vector addition and the Pythagorean theorem;

(C) describe and analyze motion in one dimension using equations with the concepts of distance, displacement, speed velocity, frames of reference, and acceleration;

(D) describe and analyze acceleration in uniform circular and horizontal projectile motion in two dimensions using equations;

(E) explain and apply the concepts of equilibrium and inertia as represented by Newton's first law of motion using relevant real-world examples such as rockets, satellites, and automobile safety devices;

(F) calculate the effect of forces on objects, including tension, friction, normal, gravity, centripetal, and applied forces, using free body diagrams and the relationship between force and acceleration as represented by Newton's second law of motion;

(G) illustrate and analyze the simultaneous forces between two objects as represented in Newton's third law of motion using free body diagrams and in an experimental design scenario; and

(H) describe and calculate, using scientific notation, how the magnitude of force between two objects depends on their masses and the distance between their centers, and predict the effects on objects in linear and orbiting systems using Newton's law of universal gravitation.

(6) Science concepts. The student knows the nature of forces in the physical world. The student is expected to:

(A) use scientific notation and predict how the magnitude of the electric force between two objects depends on their charges and the distance between their centers using Coulomb's law;

(B) identify and describe examples of electric and magnetic forces and fields in everyday life such as generators, motors, and transformers;

(C) investigate and describe conservation of charge during the processes of induction, conduction, and polarization using different materials such as electroscopes, balloons, rods, fur, silk, and Van der Graaf generators;

(D) analyze, design, and construct series and parallel circuits using schematics and materials such as switches, wires, resistors, lightbulbs, batteries, voltmeters, and ammeters; and

(E) calculate current through, potential difference across, resistance of, and power used by electric circuit elements connected in both series and parallel circuits using Ohm's law.

(7) Science concepts. The student knows that changes occur within a physical system and applies the laws of conservation of energy and momentum. The student is expected to:

(A) calculate and explain work and power in one dimension and identify when work is and is not being done by or on a system;

(B) investigate and calculate mechanical, kinetic, and potential energy of a system;

(C) apply the concept of conservation of energy using the work-energy theorem, energy diagrams, and energy transformation equations, including transformations between kinetic, potential, and thermal energy;

(D) calculate and describe the impulse and momentum of objects in physical systems such as automobile safety features, athletics, and rockets; and

(E) analyze the conservation of momentum qualitatively in inelastic and elastic collisions in one dimension using models, diagrams, and simulations.

(8) Science concepts. The student knows the characteristics and behavior of waves. The student is expected to:

(A) examine and describe simple harmonic motion such as springs and pendulums and wave energy propagation in various types of media such as surface waves on a body of water and ropes;

(B) compare the characteristics of transverse and longitudinal waves, including electromagnetic and sound waves;

(C) investigate and analyze characteristics of waves, including velocity, frequency, amplitude, and wavelength, and calculate using the relationships between wave speed, frequency, and wavelength;

(D) investigate behaviors of waves, including reflection, refraction, diffraction, interference, standing wave, the Doppler effect and polarization and superposition; and

(E) compare the different applications of the electromagnetic spectrum, including radio telescopes, microwaves, and x-rays;

(F) investigate the emission spectra produced by various atoms and explain the relationship to the electromagnetic spectrum; and

(G) describe and predict image formation as a consequence of reflection from a plane mirror and refraction through a thin convex lens.

(9) Science concepts. The student knows examples of quantum phenomena and their applications. The student is expected to:

(A) describe the photoelectric effect and emission spectra produced by various atoms and how both are explained by the photon model for light;

(B) investigate Malus's Law and describe examples of applications of wave polarization, including 3-D movie glasses and LCD computer screens;

(C) compare and explain how superposition of quantum states is related to the wave-particle duality nature of light; and

(D) give examples of applications of quantum phenomena, including the Heisenberg uncertainty principle, quantum computing, and cybersecurity.

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

Filed with the Office of the Secretary of State on September 28, 2020.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: November 8, 2020

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



CHAPTER 115. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR HEALTH EDUCATION

The State Board of Education (SBOE) proposes new §§115.11-115.17, 115.25-115.27, and 115.37-115.40, concerning Texas Essential Knowledge and Skills (TEKS) for health education. The proposed new sections would update the standards to reflect current health education research and best practices and align with changes to requirements in statute.

BACKGROUND INFORMATION AND JUSTIFICATION: In accordance with statutory requirements that the SBOE by rule identify the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

In preparation for the review and revision of the TEKS for health education, the SBOE in September 2017 requested that the commissioner of education convene a group of experts to develop a study to provide guidance for the development of revised health education TEKS. At that time, the SBOE also approved parameters for the recommendations of the commissioner's committee to include a framework for what the strands should

be for Kindergarten-Grade 12, distinctions regarding grade levels and/or grade bands at which health concepts are most appropriately taught, and a summary of all statutory requirements related to health education and suggestions regarding the most appropriate way to integrate those requirements into the framework. In 2018, Texas Education Agency (TEA) convened a group of experts to develop recommendations to address the SBOE's charge related to the health education TEKS. This health education advisory committee drafted a response to the SBOE's charge, and the response was submitted to the commissioner. Based on the response, the commissioner provided recommendations to the SBOE at the June 2019 meeting.

The review of the health education TEKS is taking place concurrently with the review of the physical education TEKS. In March 2019, applications to serve on the health education TEKS review work groups were posted on the TEA website. At the April 2019 meeting, SBOE members were asked to designate content advisors for the health education TEKS review. In May 2019, TEA distributed a survey to collect information from educators regarding the review and revision of the health education TEKS. TEA staff provided applications for the health education review work groups to SBOE members on a monthly basis from June 2019 to March 2020.

In August 2019, content advisors met in a face-to-face meeting to develop consensus recommendations regarding revisions to the health education TEKS to share with future work groups. At that time, the content advisors met with representatives from Work Group A to discuss the consensus recommendations. Work Group A convened in September 2019 to review survey results and recommend specific topics that should be included in the proposed framework. The work group was also charged with identifying where student expectations from the current TEKS would fit into the proposed framework. The work group completed recommendations for Kindergarten only. Work Group B was convened in October 2019 and was charged with identifying where student expectations would fit into the proposed framework for all other grade levels and identifying the grade levels where topics developed by Work Group A should be taught. Work Group C was convened in December 2019 and again in early February 2020 to draft recommendations for student expectations in three of the six strands in the proposed framework. Work Group D was convened at the end of February 2020 to draft recommendations for the remaining strands in the proposed framework. Work Group E was convened in March 2020 to review the vertical alignment of the strands across all grade levels and to ensure horizontal alignment with the physical education TEKS. In May 2020, content advisors were sent the draft recommendations for review and met virtually to develop consensus recommendations to be provided to the SBOE. At the June-July 2020 SBOE meeting, the board asked TEA to convene another work group to address specific guidance provided by board members. TEA convened Work Group F virtually in July 2020 to develop final recommendations for revisions to the health education TEKS.

The proposed new sections would supersede the existing health education TEKS for elementary, middle school, and high school in §§115.1-115.7, 115.21-115.23, and 115.31-115.33. The proposed new sections would be implemented beginning with the 2022-2023 school year.

The SBOE approved the proposed new sections for first reading and filing authorization at its September 11, 2020 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and support services, has determined that for the first five years the proposal is in effect (2021-2025), there are no fiscal implications to the state. However, in fiscal years 2019 and 2020, there was a fiscal impact to TEA to reimburse committee members for travel to review the health education TEKS. For fiscal years 2019 and 2020, the combined estimated cost to TEA was \$69,428. There will also be implications for the TEA if the state develops professional development to help teachers and administrators understand the revised TEKS. Any professional development that is created would be based on whether the TEA received an appropriation for professional development in the next biennium.

There may be fiscal implications for school districts and charter schools to implement the proposed revisions to the TEKS, which may include the need for professional development and revisions to district-developed databases, curriculum, and scope and sequence documents. Since curriculum and instruction decisions are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations by revising the health education TEKS required to be offered by school districts and charter schools.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be better alignment of the TEKS and coordination of the standards with the adoption of instructional materials. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins October 9, 2020, and ends November 13, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in November 2020 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 9, 2020.

SUBCHAPTER A. ELEMENTARY

19 TAC §§115.11 - 115.17

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(r), which requires the SBOE to by rule adopt essential knowledge and skills for the health curriculum that address substance abuse; and TEC, §28.002(s), which requires the SBOE to by rule adopt essential knowledge and skills for the health curriculum that address bullying.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §7.102(c)(4) and §28.002(a), (c), (r), and (s).

§115.11. Implementation of Texas Essential Knowledge and Skills for Health Education, Adopted 2020.

(a) The provisions of §§115.12-115.17 of this subchapter shall be implemented by school districts.

(b) No later than July 31, 2021, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills for health education as adopted in §§115.12-115.17 of this subchapter.

(c) If the commissioner makes the determination that instructional materials funding has been made available under subsection (b) of this section, §§115.12-115.17 of this subchapter shall be implemented beginning with the 2022-2023 school year and apply to the 2022-2023 and subsequent school years.

(d) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (b) of this section, the commissioner shall determine no later than July 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that §§115.12-115.17 of this subchapter shall be implemented for the following school year.

(e) Sections 115.1-115.7 of this subchapter shall be superseded by the implementation of §§115.11-115.17 of this subchapter.

§115.12. Health Education, Kindergarten, Adopted 2020.

(a) Introduction.

(1) The goal of health education is to provide instruction that allows youth to develop and sustain health-promoting behaviors throughout their lives. The understanding and application of these standards will allow students the ability to gather, interpret, and understand health information; achieve health literacy; and adapt to the ever-evolving science of health. The health education knowledge and skills should be presented to students in a positive manner to support the development of a healthy self-concept and responsible decision making. The standards will help students reinforce, foster, and apply positive character traits.

(2) There are essential skills that repeat throughout the five strands and embody the interconnection of health literacy. These skills include decision making, problem solving, goal setting, maintaining healthy relationships with self and others, seeking help and support, and recognizing various influences on health such as social, environmental, media, and genetic. These skills, developed early on and reinforced throughout a student's education, will foster mastery of health concepts. Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies.

(3) In Kindergarten-Grade 3, students gain an understanding of health information and skills through five strands: physical health and hygiene; mental health and wellness; healthy eating and physical activity; injury and violence prevention and safety; and alcohol, tobacco, and other drugs.

(A) Physical health and hygiene education helps to prepare students for improved lifelong health outcomes. Learning about body systems lays the foundation for personal health and hygiene. Health literacy and preventative behaviors empower students to make informed choices to support self, family, and community.

(B) The mental health and wellness strand recognizes that the knowledge and skills necessary to manage emotions, reactions, and relationships are essential to reaching one's full potential. Students gain knowledge about social and emotional health, including developing a healthy self-concept, understanding risk and protective factors, and identifying and managing mental health and wellness concerns. In the early grades, students develop fluency around emotions and self-regulation and understand the relationship between feelings, thoughts, and behavior. In subsequent grades, students learn and practice appropriate ways to solve interpersonal conflicts, work to develop a positive self-image, and develop healthy self-management skills.

(C) The healthy eating and physical activity strand addresses the importance of nutrition and physical activity to support a healthy lifestyle. Students apply critical-thinking and decision-making skills to make positive health choices. Students learn about essential nutrients, food groups, portion control, government nutritional recommendations, and the health benefits of being physically active. Students evaluate the connection between physical activity and nutrition and the prevention of chronic diseases.

(D) By focusing on injury and violence prevention and safety, the standards promote student well-being and awareness of dangerous situations. Supporting student well-being and providing instruction in digital citizenship, bullying, first aid, and identification of safe and unsafe situations creates empowered and educated students who are able to make decisions that keep themselves and others safe. Beginning in Kindergarten and continuing through high school,

students gain knowledge and skills to support safety and wellness at school, at home, online, and in the community.

(E) The standards under the alcohol, tobacco, and other drugs strand focus on a number of protective factors that develop empowered students who are able to make better-informed decisions, including understanding the impact of substance use on physical, mental, and social health. Through this strand, students learn key concepts about alcohol, tobacco, and other drugs, including the use, misuse, and physiological effects; short- and long-term impacts on health; treatment; risk and protective factors; and prevention. These concepts introduce healthy alternatives and ways for students to ask for and seek out help from parents and trusted adults.

(4) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(5) Students should first seek guidance in the area of health from a parent or legal guardian.

(b) Knowledge and skills.

(1) Physical health and hygiene--body systems. The student examines the structure, function, and relationships of body systems and their relevance to personal health. The student is expected to name the five senses.

(2) Physical health and hygiene--personal health and hygiene. The student understands health literacy, preventative health behaviors, and how to access and evaluate health care information to make informed decisions. The student is expected to:

(A) name people who can provide health care guidance such as parents, family members, trusted adults, teachers, and health care professionals;

(B) identify personal hygiene and health habits that help individuals stay healthy such as hand washing and brushing teeth;

(C) discuss ways in which germs are transmitted, methods of preventing the spread of germs, and the importance of immunization; and

(D) identify head lice and biting insects that may cause illness and their proper removal and care.

(3) Mental health and wellness--social and emotional health. The student identifies and applies strategies to develop socio-emotional health, self-regulation, and healthy relationships. The student is expected to:

(A) identify their own feelings and emotions;

(B) describe and practice calming and self-management strategies;

(C) discuss how friends can influence a person's behavior;

(D) demonstrate skills for making new acquaintances;

(E) demonstrate respect and communicate appropriately with individuals; and

(F) identify and practice ways to solve conflicts with a friend.

(4) Mental health and wellness--developing a healthy self-concept. The student develops the capacity for self-assessment and evaluation, goal setting, and decision making in order to develop a healthy self-concept. The student is expected to:

(A) describe positive social skills and personal qualities such as truth, kindness, reliability, and respectfulness; and

(B) discuss the meaning of goals and identify at least one health-related goal.

(5) Mental health and wellness--identifying and managing mental health and wellness concerns. The student develops and uses appropriate skills to identify and manage conditions related to mental health and wellness. The student is expected to discuss how to treat peers with different learning needs with dignity.

(6) Healthy eating and physical activity--food and beverage daily recommendations. The student identifies and explains healthy eating strategies for enhancing and maintaining personal health throughout the lifespan. The student is expected to:

(A) demonstrate an understanding that the human body is composed mostly of water and explain the importance of drinking water daily;

(B) identify healthy portion sizes for common food items;

(C) identify types of foods that help the body grow, including fruits and vegetables, dairy, and protein; and

(D) identify healthy and unhealthy snack choices.

(7) Healthy eating and physical activity--risk and protective factors. The student identifies and explains risk and protective factors related to healthy eating and physical activity. The student is expected to:

(A) describe basic facts of food allergy safety such as not sharing food and explain the importance of respecting others who have allergies; and

(B) identify habits that help individuals stay healthy such as getting the proper amount of sleep and daily physical activity.

(8) Injury and violence prevention and safety--safety skills and unintentional injury. The student identifies and demonstrates safety and first aid knowledge to prevent and treat injuries. The student is expected to:

(A) discuss and demonstrate procedures for responding to emergencies, including reporting to a parent or trusted adult or contacting 911; and

(B) identify the purpose and demonstrate the proper use of protective equipment such as seat belts, booster seats, and bicycle helmets.

(9) Injury and violence prevention and safety--healthy relationships and conflict-resolution skills. The student differentiates between healthy and unhealthy relationships and demonstrates effective strategies to address conflict. The student is expected to:

(A) identify roles and characteristics of a trusted adult;

(B) identify and role play refusal skills such as saying "no" to protect personal space and to avoid unsafe situations and practice telling a parent or trusted adult if threatened; and

(C) identify personal space and appropriate boundaries.

(10) Injury and violence prevention and safety--healthy home, school, and community climate. The student understands that individual actions and awareness can impact safety, community, and environment. The student is expected to:

(A) name safe play environments; and

(B) name objects that may be dangerous such as knives, scissors, and screwdrivers and explain how they can be harmful.

(11) Injury and violence prevention and safety--digital citizenship and media. The student understands how to be a safe and responsible citizen in digital and online environments. The student is expected to identify situations when one should get help from a teacher, parent, or trusted adult when made to feel bullied, uncomfortable, or unsafe in a digital or online environment.

(12) Injury and violence prevention and safety--interpersonal violence. The student understands the impact of interpersonal violence and the importance of seeking guidance and help to maintain personal safety. The student is expected to:

(A) identify bullying behaviors and the role of the bystander;

(B) identify ways to discourage bullying;

(C) describe appropriate actions to take in response to bullying such as telling a parent or a trusted adult; and

(D) explain how to get help from a parent or trusted adult when made to feel uncomfortable or unsafe by another person.

(13) Alcohol, tobacco, and other drugs--use, misuse, and physiological effects. The student understands the difference between the use and misuse of different substances and how the use and misuse of substances impacts health. The student is expected to:

(A) discuss the proper usage of medications; and

(B) discuss the harmful effects of alcohol, tobacco, and drugs on physical health.

(14) Alcohol, tobacco, and other drugs--risk and protective factors. The student understands how various factors can influence decisions regarding substance use and the resources available for help. The student is expected to role play refusal skills and how to get help from a parent or trusted adult in unsafe situations involving the use or misuse of alcohol, tobacco, and other drugs.

§115.13. Health Education, Grade 1, Adopted 2020.

(a) Introduction.

(1) The goal of health education is to provide instruction that allows youth to develop and sustain health-promoting behaviors throughout their lives. The understanding and application of these standards will allow students the ability to gather, interpret, and understand health information; achieve health literacy; and adapt to the ever-evolving science of health. The health education knowledge and skills should be presented to students in a positive manner to support the development of a healthy self-concept and responsible decision making. The standards will help students reinforce, foster, and apply positive character traits.

(2) There are essential skills that repeat throughout the five strands and embody the interconnection of health literacy. These skills include decision making, problem solving, goal setting, maintaining healthy relationships with self and others, seeking help and support, and recognizing various influences on health such as social, environmental, media, and genetic. These skills, developed early on and reinforced throughout a student's education, will foster mastery of health concepts. Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies.

(3) In Kindergarten-Grade 3, students gain an understanding of health information and skills through five strands: physical health and hygiene; mental health and wellness; healthy eating and

physical activity; injury and violence prevention and safety; and alcohol, tobacco, and other drugs.

(A) Physical health and hygiene education helps to prepare students for improved lifelong health outcomes. Learning about body systems lays the foundation for personal health and hygiene. Health literacy and preventative behaviors empower students to make informed choices to support self, family, and community.

(B) The mental health and wellness strand recognizes that the knowledge and skills necessary to manage emotions, reactions, and relationships are essential to reaching one's full potential. Students gain knowledge about social and emotional health, including developing a healthy self-concept, understanding risk and protective factors, and identifying and managing mental health and wellness concerns. In the early grades, students develop fluency around emotions and self-regulation and understand the relationship between feelings, thoughts, and behavior. In subsequent grades, students learn and practice appropriate ways to solve interpersonal conflicts, work to develop a positive self-image, and develop healthy self-management skills.

(C) The healthy eating and physical activity strand addresses the importance of nutrition and physical activity to support a healthy lifestyle. Students apply critical-thinking and decision-making skills to make positive health choices. Students learn about essential nutrients, food groups, portion control, government nutritional recommendations, and the health benefits of being physically active. Students evaluate the connection between physical activity and nutrition and the prevention of chronic diseases.

(D) By focusing on injury and violence prevention and safety, the standards promote student well-being and awareness of dangerous situations. Supporting student well-being and providing instruction in digital citizenship, bullying, first aid, and identification of safe and unsafe situations creates empowered and educated students who are able to make decisions that keep themselves and others safe. Beginning in Kindergarten and continuing through high school, students gain knowledge and skills to support safety and wellness at school, at home, online, and in the community.

(E) The standards under the alcohol, tobacco, and other drugs strand focus on a number of protective factors that develop empowered students who are able to make better-informed decisions, including understanding the impact of substance use on physical, mental, and social health. Through this strand, students learn key concepts about alcohol, tobacco, and other drugs, including the use, misuse, and physiological effects; short- and long-term impacts on health; treatment; risk and protective factors; and prevention. These concepts introduce healthy alternatives and ways for students to ask for and seek out help from parents and trusted adults.

(4) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(5) Students should first seek guidance in the area of health from a parent or legal guardian.

(b) Knowledge and skills.

(1) Physical health and hygiene--body systems. The student examines the structure, function, and relationships of body systems and their relevance to personal health. The student is expected to demonstrate use of the five senses.

(2) Physical health and hygiene--personal health and hygiene. The student understands health literacy, preventative health behaviors, and how to access and evaluate health care information to make informed decisions. The student is expected to:

(A) identify types of health care professionals and describe the services they provide such as medical checkups, dental exams, and vision and hearing screenings;

(B) describe personal hygiene and health habits that enhance individual health such as personal hygiene, oral hygiene, and getting enough sleep;

(C) describe ways in which germs are transmitted, methods of preventing the spread of germs, and the importance of immunization; and

(D) describe where head lice and biting insects that may cause illness, including ticks and mosquitos, are commonly encountered and how to avoid them.

(3) Mental health and wellness--social and emotional health. The student identifies and applies strategies to develop socio-emotional health, self-regulation, and healthy relationships. The student is expected to:

(A) identify their own feelings and emotions;

(B) discuss and explain how emotions can interrupt thinking and the self-management process;

(C) describe and practice calming and self-management strategies;

(D) describe ways in which peers and families can work together to build healthy relationships;

(E) describe ways to build and maintain friendships;

(F) identify ways to respectfully communicate verbally and nonverbally;

(G) identify feelings and emotions expressed by others; and

(H) identify and practice ways to solve conflicts with friends and peers.

(4) Mental health and wellness--developing a healthy self-concept. The student develops the capacity for self-assessment and evaluation, goal setting, and decision making in order to develop a healthy self-concept. The student is expected to:

(A) discuss ways to be kind to self and how to identify areas for growth; and

(B) explain the importance of goal setting and task completion.

(5) Mental health and wellness--identifying and managing mental health and wellness concerns. The student develops and uses appropriate skills to identify and manage conditions related to mental health and wellness. The student is expected to:

(A) discuss and demonstrate how to treat peers with different learning needs with dignity and respect;

(B) identify situations that can create positive stress and positive emotions; and

(C) discuss the signs and symptoms associated with negative stress such as loss or grief.

(6) Healthy eating and physical activity--food and beverage daily recommendations. The student identifies and explains healthy eating strategies for enhancing and maintaining personal health throughout the lifespan. The student is expected to:

(A) explain that fruits, proteins, vegetables, and dairy provide essential vitamins and minerals;

(B) identify recommended portion sizes by comparing portions to familiar objects such as a golf ball for a cookie or a frisbee for a dinner plate;

(C) identify the food groups and classify examples of foods into each group; and

(D) identify ingredients that make foods and drinks unhealthy such as added sugar and other sweeteners.

(7) Healthy eating and physical activity--nutrition and physical activity literacy. The student obtains, processes, and understands basic physical activity and nutrition information needed to make health-promoting decisions. The student is expected to identify examples of health information provided by various media and how the examples affect nutritional habits and physical activity.

(8) Healthy eating and physical activity--risk and protective factors. The student identifies and explains risk and protective factors related to healthy eating and physical activity. The student is expected to:

(A) identify common food allergies and explain the importance of respecting others who have allergies; and

(B) describe habits that improve individual health such as getting enough sleep, eating nutritious foods, and exercising.

(9) Injury and violence prevention and safety--safety skills and unintentional injury. The student identifies and demonstrates safety and first aid knowledge to prevent and treat injuries. The student is expected to:

(A) discuss and demonstrate strategies to keep self and others safe by staying away from dangerous situations and reporting to a parent or trusted adult or contacting 911; and

(B) identify the purpose and demonstrate proper use of protective equipment such as seat belts, booster seats, and bicycle helmets.

(10) Injury and violence prevention and safety--healthy relationships and conflict-resolution skills. The student differentiates between healthy and unhealthy relationships and demonstrates effective strategies to address conflict. The student is expected to:

(A) practice refusal skills to protect personal space and avoid unsafe situations; and

(B) identify appropriate personal boundaries, privacy, and space.

(11) Injury and violence prevention and safety--healthy home, school, and community climate. The student understands that individual actions and awareness can impact safety, community, and environment. The student is expected to:

(A) describe the difference between safe and unsafe environments; and

(B) identify ways to avoid weapons, drugs, and harming oneself or others by staying away from dangerous situations and reporting to a parent or trusted adult.

(12) Injury and violence prevention and safety--digital citizenship and media. The student understands how to be a safe and responsible citizen in digital and online environments. The student is expected to demonstrate how to get help from a teacher, parent, or trusted adult when made to feel bullied, uncomfortable, or unsafe in a digital or online environment.

(13) Injury and violence prevention and safety--interpersonal violence. The student understands the impact of interpersonal

violence and the importance of seeking guidance and help to maintain personal safety. The student is expected to:

(A) describe consequences for both the victim and the bully and the impact of bullying on the victim;

(B) discuss ways of discouraging bullying;

(C) explain the differences between teasing, joking, and playing around and bullying; and

(D) identify how to get help from a parent or trusted adult when made to feel uncomfortable or unsafe by another person.

(14) Alcohol, tobacco, and other drugs--use, misuse, and physiological effects. The student understands the difference between the use and misuse of different substances and how the use and misuse of substances impacts health. The student is expected to:

(A) identify the difference between over-the-counter and prescription drugs; and

(B) identify and describe the harmful effects of alcohol, tobacco, other drugs, and dangerous substances such as inhalants, vaping products, and household products on physical health.

(15) Alcohol, tobacco, and other drugs--treatment. The student understands how to seek emergency help for self and others in poisoning and overdose situations. The student is expected to describe what poisoning or overdose could look like and identify how to respond, including who to contact for help.

(16) Alcohol, tobacco, and other drugs--risk and protective factors. The student understands how various factors can influence decisions regarding substance use and the resources available for help. The student is expected to identify how to get help from a parent or trusted adult related to alcohol, tobacco, and drug abuse.

(17) Alcohol, tobacco, and other drugs--prevention. The student demonstrates refusal skills to avoid substance use and misuse. The student is expected to identify unsafe situations and practice strategies to avoid risky behaviors related to alcohol, tobacco, and other drugs.

§115.14. Health Education, Grade 2, Adopted 2020.

(a) Introduction.

(1) The goal of health education is to provide instruction that allows youth to develop and sustain health-promoting behaviors throughout their lives. The understanding and application of these standards will allow students the ability to gather, interpret, and understand health information; achieve health literacy; and adapt to the ever-evolving science of health. The health education knowledge and skills should be presented to students in a positive manner to support the development of a healthy self-concept and responsible decision making. The standards will help students reinforce, foster, and apply positive character traits.

(2) There are essential skills that repeat throughout the five strands and embody the interconnection of health literacy. These skills include decision making, problem solving, goal setting, maintaining healthy relationships with self and others, seeking help and support, and recognizing various influences on health such as social, environmental, media, and genetic. These skills, developed early on and reinforced throughout a student's education, will foster mastery of health concepts. Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies.

(3) In Kindergarten-Grade 3, students gain an understanding of health information and skills through five strands: physical

health and hygiene; mental health and wellness; healthy eating and physical activity; injury and violence prevention and safety; and alcohol, tobacco, and other drugs.

(A) Physical health and hygiene education helps to prepare students for improved lifelong health outcomes. Learning about body systems lays the foundation for personal health and hygiene. Health literacy and preventative behaviors empower students to make informed choices to support self, family, and community.

(B) The mental health and wellness strand recognizes that the knowledge and skills necessary to manage emotions, reactions, and relationships are essential to reaching one's full potential. Students gain knowledge about social and emotional health, including developing a healthy self-concept, understanding risk and protective factors, and identifying and managing mental health and wellness concerns. In the early grades, students develop fluency around emotions and self-regulation and understanding the relationship between feelings, thoughts, and behavior. In subsequent grades, students learn and practice appropriate ways to solve interpersonal conflicts, work to develop a positive self-image, and develop healthy self-management skills.

(C) The healthy eating and physical activity strand addresses the importance of nutrition and physical activity to support a healthy lifestyle. Students apply critical-thinking and decision-making skills to make positive health choices. Students learn about essential nutrients, food groups, portion control, government nutritional recommendations, and the health benefits of being physically active. Students evaluate the connection between physical activity and nutrition and the prevention of chronic diseases.

(D) By focusing on injury and violence prevention and safety, the standards promote student well-being and awareness of dangerous situations. Supporting student well-being and providing instruction in digital citizenship, bullying, first aid, and identification of safe and unsafe situations creates empowered and educated students who are able to make decisions that keep themselves and others safe. Beginning in Kindergarten and continuing through high school, students gain knowledge and skills to support safety and wellness at school, at home, online, and in the community.

(E) The standards under the alcohol, tobacco, and other drugs strand focus on a number of protective factors that develop empowered students who are able to make better-informed decisions, including understanding the impact of substance use on physical, mental, and social health. Through this strand, students learn key concepts about alcohol, tobacco, and other drugs, including the use, misuse, and physiological effects; short- and long-term impacts on health; treatment; risk and protective factors; and prevention. These concepts introduce healthy alternatives and ways for students to ask for and seek out help from parents and trusted adults.

(4) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(5) Students should first seek guidance in the area of health from a parent or legal guardian.

(b) Knowledge and skills.

(1) Physical health and hygiene--body systems. The student examines the structure, function, and relationships of body systems and their relevance to personal health. The student is expected to describe ways to protect the five senses such as wearing sunglasses or using a safe volume setting on audio devices.

(2) Physical health and hygiene--personal health and hygiene. The student understands health literacy, preventative health behaviors, and how to access and evaluate health care information to make informed decisions. The student is expected to:

(A) describe the importance of individual health maintenance activities such as regular medical checkups, dental exams, and vision and hearing screenings;

(B) explain actions an individual should take when not feeling well;

(C) discuss the importance of practicing personal hygiene and health habits;

(D) explain ways in which germs are transmitted, methods of preventing the spread of germs, and the importance of immunization;

(E) identify common illnesses and diseases, including asthma, diabetes, and epilepsy, and their symptoms; and

(F) discuss the signs and symptoms of illness that may occur after contact with biting insects, including ticks and mosquitos.

(3) Mental health and wellness--social and emotional health. The student identifies and applies strategies to develop socio-emotional health, self-regulation, and healthy relationships. The student is expected to:

(A) communicate needs, wants, and emotions in healthy ways;

(B) describe and practice calming and self-management strategies;

(C) discuss and explain how thoughts and emotions are related;

(D) explain the effect of peer influence on an individual's social and emotional health;

(E) describe the qualities of a good friend;

(F) describe and demonstrate respectful ways to communicate with family members, peers, teachers, and others;

(G) identify the feelings and perspectives of others by interpreting their verbal and nonverbal cues; and

(H) identify ways to prevent and repair broken friendships.

(4) Mental health and wellness--developing a healthy self-concept. The student develops the capacity for self-assessment and evaluation, goal setting, and decision making in order to develop a healthy self-concept. The student is expected to:

(A) discuss ways to be kind to self and others;

(B) define personal growth and identify areas for one's personal growth; and

(C) list the steps and describe the importance of goal setting and task completion.

(5) Mental health and wellness--identifying and managing mental health and wellness concerns. The student develops and uses appropriate skills to identify and manage conditions related to mental health and wellness. The student is expected to:

(A) identify strategies for managing different learning needs of self and others; and

(B) identify positive and negative stressors and how they impact emotions and learning.

(6) Healthy eating and physical activity--food and beverage daily recommendations. The student identifies and explains healthy eating strategies for enhancing and maintaining personal health throughout the lifespan. The student is expected to:

(A) identify types of nutrients;

(B) use familiar objects to identify healthy food portions from different food groups;

(C) identify healthy and unhealthy choices within the food groups; and

(D) identify the benefits of making healthy beverage choices, including water and milk, and limiting sweetened beverages such as soda and sports drinks.

(7) Healthy eating and physical activity--nutrition and physical activity literacy. The student obtains, processes, and understands basic physical activity and nutrition information needed to make health-promoting decisions. The student is expected to identify various media that provide health information and how media can influence an individual's health choices such as television advertisements for fast foods and breakfast cereals.

(8) Healthy eating and physical activity--risk and protective factors. The student identifies and explains risk and protective factors related to healthy eating and physical activity. The student is expected to:

(A) identify signs and symptoms of common food allergies; and

(B) identify the benefits of establishing healthy eating and physical activity habits that will last a lifetime.

(9) Injury and violence prevention and safety--safety skills and unintentional injury. The student identifies and demonstrates safety and first aid knowledge to prevent and treat injuries. The student is expected to describe steps one can take to reduce hazards, avoid accidents, and prevent accidental injuries for self and others.

(10) Injury and violence prevention and safety--healthy relationships and conflict-resolution skills. The student differentiates between healthy and unhealthy relationships and demonstrates effective strategies to address conflict. The student is expected to:

(A) demonstrate refusal skills to protect personal space and avoid unsafe situations; and

(B) discuss the importance of telling a parent or trusted adult when privacy or personal boundaries are not respected or when the student is made to feel unsafe.

(11) Injury and violence prevention and safety--healthy home, school, and community climate. The student understands that individual actions and awareness can impact safety, community, and environment. The student is expected to:

(A) describe unsafe situations, including interacting with strangers;

(B) explain ways to avoid weapons and report the presence of unsupervised weapons to a parent or trusted adult; and

(C) identify the hazards of unsupervised and improper handling of guns and other weapons.

(12) Injury and violence prevention and safety--digital citizenship and media. The student understands how to be a safe and

responsible citizen in digital and online environments. The student is expected to:

(A) identify unsafe requests made in a digital or online environment and how to take appropriate action;

(B) explain why obtaining help, especially from parents or trusted adults, is critical when making decisions regarding digital and online use; and

(C) identify consequences that result from cyberbullying and inappropriate digital and online usage.

(13) Injury and violence prevention and safety--interpersonal violence. The student understands the impact of interpersonal violence and the importance of seeking guidance and help to maintain personal safety. The student is expected to:

(A) describe consequences for the bully and the impact of bullying on the victim;

(B) describe the difference between reporting and tattling; and

(C) explain why obtaining assistance, especially from parents or trusted adults, can be helpful when making decisions about personal safety.

(14) Alcohol, tobacco, and other drugs--use, misuse, and physiological effects. The student understands the difference between the use and misuse of different substances and how the use and misuse of substances impacts health. The student is expected to:

(A) describe the purposes of prescription and over-the-counter drugs and their intended benefits; and

(B) explain the harmful effects on physical health and how to avoid alcohol, tobacco, other drugs, and dangerous substances such as inhalants, vaping products, and household products.

(15) Alcohol, tobacco, and other drugs--treatment. The student understands how to seek emergency help for self and others in poisoning and overdose situations. The student is expected to describe what poisoning or overdose could look like and identify how to respond, including who to contact for help.

(16) Alcohol, tobacco, and other drugs--risk and protective factors. The student understands how various factors can influence decisions regarding substance use and the resources available for help. The student is expected to:

(A) identify unsafe requests related to alcohol, tobacco, and other drugs made by friends; and

(B) identify a trusted adult such as a parent, teacher, or law enforcement officer.

(17) Alcohol, tobacco, and other drugs--prevention. The student demonstrates refusal skills to avoid substance use and misuse. The student is expected to identify ways to avoid unsafe situations related to alcohol, tobacco, and other drugs and demonstrate refusal skills.

§115.15. Health Education, Grade 3, Adopted 2020.

(a) Introduction.

(1) The goal of health education is to provide instruction that allows youth to develop and sustain health-promoting behaviors throughout their lives. The understanding and application of these standards will allow students the ability to gather, interpret, and understand health information; achieve health literacy; and adapt to the ever-evolving science of health. The health education knowledge and skills should be presented to students in a positive manner to support the

development of a healthy self-concept and responsible decision making. The standards will help students reinforce, foster, and apply positive character traits.

(2) There are essential skills that repeat throughout the five strands and embody the interconnection of health literacy. These skills include decision making, problem solving, goal setting, maintaining healthy relationships with self and others, seeking help and support, and recognizing various influences on health such as social, environmental, media, and genetic. These skills, developed early on and reinforced throughout a student's education, will foster mastery of health concepts. Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies.

(3) In Kindergarten-Grade 3, students gain an understanding of health information and skills through five strands: physical health and hygiene; mental health and wellness; healthy eating and physical activity; injury and violence prevention and safety; and alcohol, tobacco, and other drugs.

(A) Physical health and hygiene education helps to prepare students for improved lifelong health outcomes. Learning about body systems lays the foundation for personal health and hygiene. Health literacy and preventative behaviors empower students to make informed choices to support self, family, and community.

(B) The mental health and wellness strand recognizes that the knowledge and skills necessary to manage emotions, reactions, and relationships are essential to reaching one's full potential. Students gain knowledge about social and emotional health, including developing a healthy self-concept, understanding risk and protective factors, and identifying and managing mental health and wellness concerns. In the early grades, students develop fluency around emotions and self-regulation and understand the relationship between feelings, thoughts, and behavior. In subsequent grades, students learn and practice appropriate ways to solve interpersonal conflicts, work to develop a positive self-image, and develop healthy self-management skills.

(C) The healthy eating and physical activity strand addresses the importance of nutrition and physical activity to support a healthy lifestyle. Students apply critical-thinking and decision-making skills to make positive health choices. Students learn about essential nutrients, food groups, portion control, government nutritional recommendations, and the health benefits of being physically active. Students evaluate the connection between physical activity and nutrition and the prevention of chronic diseases.

(D) By focusing on injury and violence prevention and safety, the standards promote student well-being and awareness of dangerous situations. Supporting student well-being and providing instruction in digital citizenship, bullying, first aid, and the identification of safe and unsafe situations creates empowered and educated students who are able to make decisions that keep themselves and others safe. Beginning in Kindergarten and continuing through high school, students gain knowledge and skills to support safety and wellness at school, at home, online, and in the community.

(E) The standards under the alcohol, tobacco, and other drugs strand focus on a number of protective factors that develop empowered students who are able to make better-informed decisions, including understanding the impact of substance use on physical, mental, and social health. Through this strand, students learn key concepts about alcohol, tobacco, and other drugs, including the use, misuse, and physiological effects; short- and long-term impacts on health; treatment; risk and protective factors; and prevention. These concepts introduce healthy alternatives and ways for students to ask for and seek out help from parents and trusted adults.

(4) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(5) Students should first seek guidance in the area of health from a parent or legal guardian.

(b) Knowledge and skills.

(1) Physical health and hygiene--body systems. The student examines the structure, function, and relationships of body systems and their relevance to personal health. The student is expected to name, locate, and describe the primary functions and major components of body systems, including the skeletal, muscular, circulatory, and respiratory systems.

(2) Physical health and hygiene--personal health and hygiene. The student understands health literacy, preventative health behaviors, and how to access and evaluate health care information to make informed decisions. The student is expected to:

(A) explain the importance of seeking assistance in making decisions about health;

(B) describe methods of accessing information about health;

(C) identify the benefits of decision making about personal health;

(D) identify the importance of taking personal responsibility for developing and maintaining personal hygiene and health habits;

(E) explain ways in which germs are transmitted, methods of preventing the spread of germs, and the importance of immunization;

(F) identify that there are diseases such as allergies, asthma, diabetes, and epilepsy that are not caused by germs; and

(G) identify common vectors, including ticks and mosquitos, and explain how and when to perform a self-check for vectors.

(3) Mental health and wellness--social and emotional health. The student identifies and applies strategies to develop socio-emotional health, self-regulation, and healthy relationships. The student is expected to:

(A) communicate needs, wants, and emotions in healthy ways;

(B) describe strategies for assessing thoughts and applying calming and self-management practices;

(C) discuss and explain how the brain develops through maturation;

(D) distinguish between healthy and harmful influences of friends and others;

(E) describe the characteristics of healthy and unhealthy friendships;

(F) describe the value of respectful communication;

(G) discuss how others may experience situations differently than oneself; and

(H) demonstrate strategies for resolving conflicts.

(4) Mental health and wellness--developing a healthy self-concept. The student develops the capacity for self-assessment and

evaluation, goal setting, and decision making in order to develop a healthy self-concept. The student is expected to:

(A) define self-esteem and ways it is formed; and

(B) describe the importance of seeking guidance from a parent or trusted adult in setting goals.

(5) Mental health and wellness--identifying and managing mental health and wellness concerns. The student will develop and use appropriate skills to identify and manage conditions related to mental health and wellness. The student is expected to:

(A) describe methods for managing challenges related to long-term health conditions;

(B) describe strategies to support others in managing different learning needs;

(C) describe positive outcomes of stress, including creativity, focus, energy, drive, and purpose;

(D) describe and practice healthy behaviors that reduce stress; and

(E) describe the importance of acceptance of oneself and others.

(6) Healthy eating and physical activity--food and beverage daily recommendations. The student identifies and explains healthy eating strategies for enhancing and maintaining personal health throughout the lifespan. The student is expected to:

(A) classify foods by the nutrients they provide;

(B) plan a balanced meal that follows government nutrition guidelines;

(C) examine nutrition labels to identify the difference between foods containing natural sugars and foods with added sugars or sweeteners; and

(D) identify and categorize foods based on saturated and unsaturated fat content.

(7) Healthy eating and physical activity--nutrition and physical activity literacy. The student obtains, processes, and understands basic physical activity and nutrition information needed to make health-promoting decisions. The student is expected to describe the importance of accessing health information through a variety of credible health resources.

(8) Healthy eating and physical activity--risk and protective factors. The student identifies and explains risk and protective factors related to healthy eating and physical activity. The student is expected to:

(A) identify the common food allergens listed on food packaging; and

(B) describe how healthy and unhealthy behaviors affect body systems and demonstrate refusal skills in dealing with unhealthy eating situations.

(9) Injury and violence prevention and safety--safety skills and unintentional injury. The student identifies and demonstrates safety and first aid knowledge to prevent and treat injuries. The student is expected to develop a home-safety and emergency response plan such as a fire safety plan.

(10) Injury and violence prevention and safety--healthy relationships and conflict-resolution skills. The student differentiates between healthy and unhealthy relationships and demonstrates effective strategies to address conflict. The student is expected to identify re-

fusal skills such as saying "no" when privacy, personal boundaries, or personal space are not respected.

(11) Injury and violence prevention and safety--healthy home, school, and community climate. The student understands that individual actions and awareness can impact safety, community, and environment. The student is expected to:

(A) identify reasons for avoiding violence, gangs, weapons, and drugs;

(B) identify characteristics of safe home, school, and community environments; and

(C) discuss the hazards of unsupervised and improper handling of guns and other weapons.

(12) Injury and violence prevention and safety--digital citizenship and media. The student understands how to be a safe and responsible citizen in digital and online environments. The student is expected to:

(A) identify and discuss the need for safety awareness in a digital or online environment;

(B) identify appropriate ways to communicate in digital and online environments;

(C) discuss who is appropriate to communicate with and what is appropriate information to share in digital and online environments;

(D) describe the importance of taking personal responsibility in digital and online environments; and

(E) explain consequences that result from cyberbullying and inappropriate digital and online usage.

(13) Injury and violence prevention and safety--interpersonal violence. The student understands the impact of interpersonal violence and the importance of seeking guidance and help to maintain personal safety. The student is expected to:

(A) describe how to effectively respond to bullying and cyberbullying of oneself or others;

(B) explain the importance of seeking assistance in making decisions about personal safety; and

(C) identify examples of abuse and neglect and describe how to respond.

(14) Alcohol, tobacco, and other drugs--use, misuse, and physiological effects. The student understands the difference between the use and misuse of different substances and how the use and misuse of substances impacts health. The student is expected to:

(A) identify misuse and proper use of over-the-counter and prescription drugs; and

(B) describe the harmful effects of alcohol, tobacco, other drugs, and dangerous substances, including inhalants, vaping products, and household products, on physical health.

(15) Alcohol, tobacco, and other drugs--short- and long-term impacts. The student identifies and analyzes the short- and long-term impacts of the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to describe the harmful effects of alcohol, tobacco, other drugs, and dangerous substances such as inhalants and household products on mental and social health.

(16) Alcohol, tobacco, and other drugs--treatment. The student understands how to seek emergency help for self and others

in poisoning and overdose situations. The student is expected to describe the signs of poisoning or overdose and identify how to respond, including who to contact for help.

(17) Alcohol, tobacco, and other drugs--risk and protective factors. The student understands how various factors can influence decisions regarding substance use and the resources available for help. The student is expected to:

(A) describe how friends can influence a person's decision to use or not use alcohol or drugs; and

(B) describe the difference between reporting and tattling and why it is important to report the use of alcohol, tobacco, and other drugs by friends or peers.

(18) Alcohol, tobacco, and other drugs--prevention. The student demonstrates refusal skills to avoid substance use and misuse. The student is expected to demonstrate refusal skills related to alcohol, tobacco, and other drugs using assertive communication.

§115.16. Health Education, Grade 4, Adopted 2020.

(a) Introduction.

(1) The goal of health education is to provide instruction that allows youth to develop and sustain health-promoting behaviors throughout their lives. The understanding and application of these standards will allow students the ability to gather, interpret, and understand health information; achieve health literacy; and adapt to the ever-evolving science of health. The health education knowledge and skills should be presented to students in a positive manner to support the development of a healthy self-concept and responsible decision making. The standards will help students reinforce, foster, and apply positive character traits.

(2) There are essential skills that repeat throughout the six strands and embody the interconnection of health literacy. These skills include decision making, problem solving, goal setting, maintaining healthy relationships with self and others, seeking help and support, and recognizing various influences on health such as social, environmental, media, and genetic. These skills, developed early on and reinforced throughout a student's education, will foster mastery of health concepts. Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies.

(3) In Grade 4 and higher, students gain an understanding of health information and skills through six strands: physical health and hygiene; mental health and wellness; healthy eating and physical activity; injury and violence prevention and safety; alcohol, tobacco, and other drugs; and reproductive and sexual health.

(A) Physical health and hygiene education helps to prepare students for improved lifelong health outcomes. Learning about body systems will lay the foundation for personal health and hygiene. Health literacy and preventative behaviors empower students to make informed choices to support self, family, and community.

(B) The mental health and wellness strand recognizes that the knowledge and skills necessary to manage emotions, reactions, and relationships are essential to reaching one's full potential. Students gain knowledge about social and emotional health, developing a healthy self-concept, understanding risk and protective factors, and identifying and managing mental health and wellness concerns. In the early grades, students develop fluency around emotions and self-regulation and understand the relationship between feelings, thoughts, and behavior. In subsequent grades, students learn and practice appropriate ways to solve interpersonal conflicts, work to develop a positive self-image, and develop healthy self-management skills.

(C) The healthy eating and physical activity strand addresses the importance of nutrition and physical activity to support a healthy lifestyle. Students apply critical-thinking and decision-making skills to make positive health choices. Students learn about essential nutrients, food groups, portion control, government nutritional recommendations, and the health benefits of being physically active. Students evaluate the connection between physical activity and nutrition and the prevention of chronic diseases.

(D) By focusing on injury and violence prevention and safety, the standards promote student well-being and awareness of dangerous situations. Supporting student well-being and providing instruction in digital citizenship, bullying, first aid, and the identification of safe and unsafe situations creates empowered and educated students able to make decisions that keep themselves and others safe. Beginning in Kindergarten and continuing through high school, students gain knowledge and skills to support safety and wellness at school, at home, online, and in the community.

(E) The standards under the alcohol, tobacco, and other drugs strand focus on a number of protective factors that develop empowered students who are able to make better-informed decisions, including understanding the impact of substance use on physical, mental, and social health. Through this strand, students learn key concepts about alcohol, tobacco, and other drugs, including the use, misuse, and physiological effects; short- and long-term impacts on health; treatment; risk and protective factors; and prevention. These concepts introduce healthy alternatives and ways for students to ask for and seek out help from parents and trusted adults.

(F) Beginning in Grade 4, students learn about changes associated with adolescent development in the reproductive and sexual health strand. In subsequent grade levels, students identify the purpose of these changes and their role in fertilization and reproduction. Students learn the characteristics of healthy and unhealthy relationships and how to use communication and refusal skills to set personal boundaries in dating/romantic relationships. Students also identify how to respond to sexual harassment and abuse.

(4) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(5) Students should first seek guidance in the area of health from a parent or legal guardian.

(b) Knowledge and skills.

(1) Physical health and hygiene--body systems. The student examines the structure, function, and relationships of body systems and their relevance to personal health. The student is expected to name, locate, and describe the primary function and major components of the body systems, including the nervous, immune, digestive, and integumentary systems.

(2) Physical health and hygiene--personal health and hygiene. The student understands health literacy, preventative health behaviors, and how to access and evaluate health care information to make informed decisions. The student is expected to:

(A) explain the importance of health information and how it can be used;

(B) describe how health care decision making is influenced by external factors such as cost and access;

(C) explain strategies for maintaining personal hygiene and health habits;

(D) distinguish between communicable and noncommunicable illnesses;

(E) explain actions to take when illness occurs, including asthma, diabetes, and epilepsy; and

(F) define vector-borne illnesses and describe how to reduce their risk.

(3) Mental health and wellness--social and emotional health. The student identifies and applies strategies to develop socio-emotional health, self-regulation, and healthy relationships. The student is expected to:

(A) analyze how thoughts and emotions influence behaviors;

(B) describe the importance of identifying and reframing thoughts and applying calming and self-management strategies when dealing with strong emotions, including anger;

(C) discuss and explain how the brain develops during childhood and the role the brain plays in behavior;

(D) identify positive and negative characteristics of social groups;

(E) explain the importance of being a positive role model;

(F) explain the importance of demonstrating consideration when communicating with individuals who use diverse methods to communicate such as different languages or adaptive methods;

(G) identify verbal, physical, and situational cues that indicate how others may feel; and

(H) explain the difference between assertive behavior and aggressive behavior.

(4) Mental health and wellness--developing a healthy self-concept. The student develops the capacity for self-assessment and evaluation, goal setting, and decision making in order to develop a healthy self-concept. The student is expected to:

(A) discuss ways to help build self-esteem of self, friends, and others;

(B) explain the advantages of setting short- and long-term goals; and

(C) explain the importance of time management with respect to a goal.

(5) Mental health and wellness--identifying and managing mental health and wellness concerns. The student develops and uses appropriate skills to identify and manage conditions related to mental health and wellness. The student is expected to:

(A) describe methods for managing concerns related to long-term health conditions for self and others;

(B) differentiate between positive and negative stress;

(C) define sources of stress, including trauma, loss, and grief;

(D) discuss ways to promote a healthy body image; and

(E) identify self-harm behaviors that may present when someone is struggling to manage overwhelming emotions or lacks support and explain the importance of telling a parent or trusted adult if observed in self or others.

(6) Healthy eating and physical activity--food and beverage daily recommendations. The student identifies and explains healthy eating strategies for enhancing and maintaining personal health throughout the lifespan. The student is expected to:

(A) explain why the body needs each of the six major nutrients contained in foods;

(B) identify nutritional information on menus and food labels;

(C) determine appropriate portion sizes when eating out, including at fast food restaurants;

(D) identify the recommended guidelines for added sugar consumption and explain how excess sugar consumption can impact health, including causing dental cavities and obesity; and

(E) identify healthy fast food choices such as ordering smaller serving sizes and substituting salads for fries and grilled foods for fried foods and their associated impacts on health.

(7) Healthy eating and physical activity--physical activity. The student identifies, analyzes, and applies strategies for enhancing and maintaining optimal personal physical fitness throughout the lifespan. The student is expected to identify the physical, mental, and social benefits of physical fitness.

(8) Healthy eating and physical activity--nutrition and physical activity literacy. The student obtains, processes, and understands basic physical activity and nutrition information needed to make health-promoting decisions. The student is expected to:

(A) describe the importance of goal setting and set a goal for making healthy food choices; and

(B) gather data from a variety of credible sources to help make informed nutritional and physical activity choices.

(9) Healthy eating and physical activity--risk and protective factors. The student identifies and explains risk and protective factors related to healthy eating and physical activity. The student is expected to:

(A) describe the connection between physical activity and the prevention of obesity, heart disease, and diabetes; and

(B) differentiate between healthy and unhealthy eating habits and demonstrate refusal skills in dealing with unhealthy eating situations.

(10) Injury and violence prevention and safety--safety skills and unintentional injury. The student identifies and demonstrates safety and first aid knowledge to prevent and treat injuries. The student is expected to identify and demonstrate strategies for preventing and responding to injuries.

(11) Injury and violence prevention and safety--healthy relationships and conflict-resolution skills. The student differentiates between healthy and unhealthy relationships and demonstrates effective strategies to address conflict. The student is expected to explain the importance of using refusal skills such as saying "no" when privacy, personal boundaries, or personal space are not respected.

(12) Injury and violence prevention and safety--healthy home, school, and community climate. The student understands that individual actions and awareness can impact safety, community, and environment. The student is expected to:

(A) identify strategies for avoiding violence, gangs, weapons, and drugs;

(B) identify characteristics of gang behavior;

(C) identify strategies that can be used to promote safety in homes, schools, and communities; and

(D) demonstrate safety procedures that can be used in various situations, including violence in the home, school, and community.

(13) Injury and violence prevention and safety--digital citizenship and media. The student understands how to be a safe and responsible citizen in digital and online environments. The student is expected to:

(A) differentiate between appropriate and inappropriate ways to communicate in digital and online environments;

(B) explain what information is appropriate to share and who it is appropriate to share information with in digital and online environments; and

(C) discuss the consequences of cyberbullying and inappropriate digital and online communication in relation to home and school environments.

(14) Injury and violence prevention and safety--interpersonal violence. The student understands the impact of interpersonal violence and the importance of seeking guidance and help to maintain personal safety. The student is expected to:

(A) analyze distinguishing characteristics of cyberbullying;

(B) describe the negative impact bullying, including cyberbullying, has on both the victim and the bully;

(C) explain the importance of seeking guidance from parents and other trusted adults on critical personal safety issues; and

(D) identify types of abuse and neglect and ways to seek help from a parent or trusted adult.

(15) Alcohol, tobacco, and other drugs--use, misuse, and physiological effects. The student understands the difference between the use and misuse of different substances and how the use and misuse of substances impacts health. The student is expected to:

(A) explain why some drugs require a prescription; and

(B) identify the differences between prescription drugs, over-the-counter drugs, other drugs, and dangerous substances, including inhalants, vaping products, and household products.

(16) Alcohol, tobacco, and other drugs--short- and long-term impacts. The student identifies and analyzes the short- and long-term impacts of use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to:

(A) describe the short- and long-term harmful effects of alcohol, tobacco, other drugs, and dangerous substances such as inhalants and household products on mental and social health; and

(B) describe the legal consequences of the misuse of alcohol, tobacco, other drugs, and dangerous substances.

(17) Alcohol, tobacco, and other drugs--treatment. The student understands how to seek emergency help for self and others in poisoning and overdose situations. The student is expected to describe the signs of poisoning or overdose and identify how to respond, including who to contact for help.

(18) Alcohol, tobacco, and other drugs--risk and protective factors. The student understands how various factors can influence decisions regarding substance use and the resources available for help. The student is expected to:

(A) distinguish between positive and negative peer influences and their effects on a person's decision to use or not use alcohol or drugs; and

(B) identify methods available to report unsafe situations related to alcohol, tobacco, and other drugs.

(19) Alcohol, tobacco, and other drugs--prevention. The student demonstrates refusal skills to avoid substance use and misuse. The student is expected to:

(A) demonstrate refusal skills using assertive communication related to alcohol, tobacco, and other drugs; and

(B) identify ways to avoid drugs and discuss healthy alternative activities to the use of drugs and other substances.

(20) Reproductive and sexual health--anatomy, puberty, reproduction, and pregnancy. The student analyzes adolescent development, the process of fertilization, and healthy fetal development. The student is expected to:

(A) explain changes that occur in males and females during puberty and adolescent development; and

(B) define the menstrual cycle.

§115.17. Health Education, Grade 5, Adopted 2020.

(a) Introduction.

(1) The goal of health education is to provide instruction that allows youth to develop and sustain health-promoting behaviors throughout their lives. The understanding and application of these standards will allow students the ability to gather, interpret, and understand health information; achieve health literacy; and adapt to the ever-evolving science of health. The health education knowledge and skills should be presented to students in a positive manner to support the development of a healthy self-concept and responsible decision making. The standards will help students reinforce, foster, and apply positive character traits.

(2) There are essential skills that repeat throughout the six strands and embody the interconnection of health literacy. These skills include decision making, problem solving, goal setting, maintaining healthy relationships with self and others, seeking help and support, and recognizing various influences on health such as social, environmental, media, and genetic. These skills, developed early on and reinforced throughout a student's education, will foster mastery of health concepts. Health class educators are encouraged to partner with school counselors where available to schedule time for them to deliver classroom guidance lessons to help teach these essential competencies.

(3) In Grade 4 and higher, students gain an understanding of health information and skills through six strands: physical health and hygiene; mental health and wellness; healthy eating and physical activity; injury and violence prevention and safety; alcohol, tobacco, and other drugs; and reproductive and sexual health.

(A) Physical health and hygiene education helps to prepare students for improved lifelong health outcomes. Learning about body systems will lay the foundation for personal health and hygiene. Health literacy and preventative behaviors empower students to make informed choices to support self, family, and community.

(B) The mental health and wellness strand recognizes that the knowledge and skills necessary to manage emotions, reactions, and relationships are essential to reaching one's full potential. Students gain knowledge about social and emotional health, developing a healthy self-concept, understanding risk and protective factors, and identifying and managing mental health and wellness concerns. In the early grades, students develop fluency around emotions and self-regu-

lation and understand the relationship between feelings, thoughts, and behavior. In subsequent grades, students learn and practice appropriate ways to solve interpersonal conflicts, work to develop a positive self-image, and develop healthy self-management skills.

(C) The healthy eating and physical activity strand addresses the importance of nutrition and physical activity to support a healthy lifestyle. Students apply critical-thinking and decision-making skills to make positive health choices. Students learn about essential nutrients, food groups, portion control, government nutritional recommendations, and the health benefits of being physically active. Students evaluate the connection between physical activity and nutrition and the prevention of chronic diseases.

(D) By focusing on injury and violence prevention and safety, the standards promote student well-being and awareness of dangerous situations. Supporting student well-being and providing instruction in digital citizenship, bullying, first aid, and the identification of safe and unsafe situations creates empowered and educated students able to make decisions that keep themselves and others safe. Beginning in Kindergarten and continuing through high school, students gain knowledge and skills to support safety and wellness at school, at home, online, and in the community.

(E) The standards under the alcohol, tobacco, and other drugs strand focus on a number of protective factors that develop empowered students who are able to make better-informed decisions, including understanding the impact of substance use on physical, mental, and social health. Through this strand, students learn key concepts about alcohol, tobacco, and other drugs, including the use, misuse, and physiological effects; short- and long-term impacts on health; treatment; risk and protective factors; and prevention. These concepts introduce healthy alternatives and ways for students to ask for and seek out help from parents and trusted adults.

(F) Beginning in Grade 4, students learn about changes associated with adolescent development in the reproductive and sexual health strand. In subsequent grade levels, students identify the purpose of these changes and their role in fertilization and reproduction. Students learn the characteristics of healthy and unhealthy relationships and how to use communication and refusal skills to set personal boundaries in dating/romantic relationships. Students also identify how to respond to sexual harassment and abuse.

(4) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(5) Students should first seek guidance in the area of health from a parent or legal guardian.

(b) Knowledge and skills.

(1) Physical health and hygiene--body systems. The student examines the structure, function, and relationships of body systems and their relevance to personal health. The student is expected to describe the structure, functions, and interdependence of the major body systems, including the reproductive, endocrine, and urinary systems.

(2) Physical health and hygiene--personal health and hygiene. The student understands health literacy, preventative health behaviors, and how to access and evaluate health care information to make informed decisions. The student is expected to:

(A) explain how to manage common minor illnesses such as colds and skin infections;

(B) identify how to distinguish between myth and fact when accessing information about health;

(C) identify decision-making skills that promote individual, family, and community health;

(D) describe the benefits of promoting health maintenance for individuals and households;

(E) analyze how personal hygiene helps prevent the spread of germs and communicable illnesses; and

(F) distinguish between treatments if infected by various vectors, including ticks and mosquitos.

(3) Mental health and wellness--social and emotional health. The student identifies and applies strategies to develop socio-emotional health, self-regulation, and healthy relationships. The student is expected to:

(A) analyze how thoughts and emotions influence behaviors;

(B) practice and apply strategies for calming and self-management;

(C) explain ways of maintaining healthy relationships and resisting peer pressure in social groups;

(D) analyze how to identify perspectives and respectful ways to communicate disagreement with friends, family, teachers, and others;

(E) define and differentiate between sympathy and empathy toward others; and

(F) describe ways to engage in and promote positive interactions when conflict arises.

(4) Mental health and wellness--developing a healthy self-concept. The student develops the capacity for self-assessment and evaluation, goal setting, and decision making in order to develop a healthy self-concept. The student is expected to:

(A) identify and demonstrate strategies to help build self-esteem for self, friends, and others;

(B) describe benefits of setting and implementing short- and long-term goals and perseverance to achieve those goals; and

(C) discuss choices and decision making as part of goal setting.

(5) Mental health and wellness--risk and protective factors. The student recognizes the influence of various factors on mental health and wellness. The student is expected to:

(A) identify factors such as school climate and safety measures that affect an individual's physical, emotional, and social health; and

(B) discuss how brain development during childhood affects emotions and decision making.

(6) Mental health and wellness--identifying and managing mental health and wellness concerns. The student develops and uses appropriate skills to identify and manage conditions related to mental health and wellness. The student is expected to:

(A) compare and contrast healthy and unhealthy methods for managing concerns related to long-term health conditions for self and others;

(B) identify situations in which stress can help to achieve goals and build resiliency;

(C) examine ways to reduce the impact of stress, trauma, loss, and grief;

(D) define eating disorders and disordered eating patterns as mental health concerns and the importance of seeking help from a parent or trusted adult for self or others if these patterns are observed;

(E) describe situations that call for professional mental and behavioral health services; and

(F) discuss healthy self-management alternatives to prevent harming oneself and the importance of telling a parent or trusted adult when someone is struggling to manage overwhelming emotions or lacks support.

(7) Healthy eating and physical activity--food and beverage daily recommendations. The student analyzes and applies healthy eating strategies for enhancing and maintaining personal health throughout the lifespan. The student is expected to:

(A) identify foods that are sources of one or more of the six major nutrients;

(B) examine food labels and menus for nutritional content, calories, and serving sizes;

(C) identify the amount of sugar in common beverages and snacks and the daily recommended allowance for added sugar; and

(D) identify caffeine content of common beverages and health concerns associated with excess caffeine consumption.

(8) Healthy eating and physical activity--physical activity. The student identifies, analyzes, and applies strategies for enhancing and maintaining optimal personal physical fitness throughout the lifespan. The student is expected to explain the physical, mental, and social benefits of fitness.

(9) Healthy eating and physical activity--nutrition and physical activity literacy. The student obtains, processes, and understands basic physical activity and nutrition information needed to make health-promoting decisions. The student is expected to:

(A) describe the importance of goal setting and set a goal for achieving appropriate levels of physical activity; and

(B) research and evaluate health products and information about physical activity and nutritional choices.

(10) Healthy eating and physical activity--risk and protective factors. The student analyzes and applies risk and protective factors related to healthy eating and physical activity. The student is expected to:

(A) describe the connection between dietary choices and the prevention of obesity, heart disease, and diabetes; and

(B) identify attitudes and behaviors that can reduce the likelihood of developing chronic conditions such as obesity, heart disease, or diabetes.

(11) Injury and violence prevention and safety--safety skills and unintentional injury. The student identifies and demonstrates safety and first aid knowledge to prevent and treat injuries. The student is expected to analyze strategies for preventing and responding to injuries.

(12) Injury and violence prevention and safety--healthy home, school, and community climate. The student understands that individual actions and awareness can impact safety, community, and environment. The student is expected to:

(A) explain strategies for avoiding violence, gangs, weapons, and drugs and define human trafficking;

(B) examine characteristics of gang behavior;

(C) define safe haven and identify designated safe haven locations in the community; and

(D) evaluate safety procedures that can be used in various situations, including violence in the home, school, and community.

(13) Injury and violence prevention and safety--digital citizenship and media. The student understands how to be a safe and responsible citizen in digital and online environments. The student is expected to:

(A) distinguish between appropriate and inappropriate boundaries for digital and online communication and research;

(B) explain the benefits of identity protection in digital and online environments; and

(C) analyze the consequences of cyberbullying and inappropriate digital and online communication in relation to home, school, and community environments.

(14) Injury and violence prevention and safety--interpersonal violence. The student understands the impact of interpersonal violence and the importance of seeking guidance and help to maintain personal safety. The student is expected to:

(A) compare and contrast healthy and unhealthy behaviors that may be present in families or households;

(B) identify forms of family violence, including physical, mental, and emotional violence;

(C) identify methods available to report bullying;

(D) identify ways to advocate for self and others to prevent bullying and cyberbullying behavior; and

(E) explain the impact of abuse and neglect and the importance of reporting abuse and neglect.

(15) Alcohol, tobacco, and other drugs--use, misuse, and physiological effects. The student understands the difference between the use and misuse of different substances and how the use and misuse of substances impacts health. The student is expected to:

(A) explain the reasons to avoid the misuse of over-the-counter and prescription drugs;

(B) identify and explain the importance of each component of prescription and over-the-counter drug labels; and

(C) describe the physiological effects of alcohol, vaping products, tobacco, other drugs, and dangerous substances.

(16) Alcohol, tobacco, and other drugs--short- and long-term impacts. The student identifies and analyzes the short- and long-term impacts of use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to:

(A) analyze the short- and long-term harmful effects of alcohol, tobacco, other drugs, and dangerous substances such as inhalants and household products on the functions of the body systems and mental and social health; and

(B) analyze the short- and long-term harmful effects of alcohol, tobacco, other drugs, and dangerous substances and describe the legal consequences of their illegal use.

(17) Alcohol, tobacco, and other drugs--treatment. The student understands how to seek emergency help for self and others in poisoning and overdose situations. The student is expected to de-

scribe the signs of poisoning or overdose and identify how to respond, including who to contact for help.

(18) Alcohol, tobacco, and other drugs--risk and protective factors. The student understands how various factors can influence decisions regarding substance use and the resources available for help. The student is expected to:

(A) analyze how positive peer influence can be used to help a person decide not to use alcohol or drugs; and

(B) describe the importance of seeking help and reporting unsafe situations related to alcohol, tobacco, and other drugs.

(19) Alcohol, tobacco, and other drugs--prevention. The student demonstrates refusal skills to avoid substance use and misuse. The student is expected to:

(A) assess how being assertive, using refusal skills, and evaluating peer influence can affect decision making and problem solving;

(B) identify a variety of scenarios and the different types of refusal skills that can be used to avoid the use of alcohol, tobacco, and other drugs; and

(C) identify and describe healthy alternative activities to the use of drugs and other substances.

(20) Reproductive and sexual health--healthy relationships. The student understands the characteristics of healthy romantic relationships. The student is expected to:

(A) define and distinguish between friendship, infatuation, dating/romantic relationships and marriage; and

(B) identify characteristics of healthy dating/romantic relationships and marriage, including sharing, kindness, honesty, respect, trust, patience, communication, and compatibility.

(21) Reproductive and sexual health--personal safety, limits, and boundaries. The student understands how to set and respect personal boundaries to reduce the risk of sexual abuse and harassment. The student is expected to:

(A) define sexual harassment, sexual abuse, sexual assault, and sex trafficking;

(B) identify ways of reporting suspected sexual abuse involving self or others such as telling a parent or trusted adult;

(C) identify refusal skills such as saying "no" to any unwanted touch that violates personal boundaries in relationships; and

(D) discuss and explain the importance of making decisions regarding setting personal boundaries and respecting the boundaries of others related to physical intimacy such as holding hands, hugging, and kissing.

(22) Reproductive and sexual health--anatomy, puberty, reproduction, and pregnancy. The student analyzes adolescent development, the process of fertilization, and healthy fetal development. The student is expected to:

(A) explain the physical, social, and emotional changes that occur in males and females during puberty and adolescent development;

(B) describe the process of the menstrual cycle;

(C) identify and describe the role of hormones in the growth and development of secondary sex characteristics such as body hair growth and voice change in males; and

(D) define the processes of fertilization and reproduction.

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

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Director, Rulemaking

Texas Education Agency

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



SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §§115.25 - 115.27

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(r), which requires the SBOE to by rule adopt essential knowledge and skills for the health curriculum that address substance abuse; and TEC, §28.002(s), which requires the SBOE to by rule adopt essential knowledge and skills for the health curriculum that address bullying.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §7.102(c)(4) and §28.002(a), (c), (r), and (s).

§115.25. Implementation of Texas Essential Knowledge and Skills for Health Education, Adopted 2020.

(a) The provisions of §115.26 and §115.27 of this subchapter shall be implemented by school districts.

(b) No later than July 31, 2021, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills for health education as adopted in §115.26 and §115.27 of this subchapter.

(c) If the commissioner makes the determination that instructional materials funding has been made available under subsection (b) of this section, §115.26 and §115.27 of this subchapter shall be implemented beginning with the 2022-2023 school year and apply to the 2022-2023 and subsequent school years.

(d) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (b) of this section, the commissioner shall determine no later than July 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that §115.26 and §115.27 of this subchapter shall be implemented for the following school year.

(e) Sections 115.21-115.23 of this subchapter shall be superseded by the implementation of §§115.25-115.27 of this subchapter.

§115.26. Grade 6, Adopted 2020.

(a) Introduction.

(1) The goal of health education is to provide instruction that allows youth to develop and sustain health-promoting behaviors throughout their lives. The understanding and application of these standards will allow students the ability to gather, interpret, and understand health information; achieve health literacy; and adapt to the ever-evolving science of health. The health education knowledge and skills should be presented to students in a positive manner to support the development of a healthy self-concept and responsible decision making. The standards will help students reinforce, foster, and apply positive character traits.

(2) There are essential skills that repeat throughout the six strands and embody the interconnection of health literacy. These skills include decision making, problem solving, goal setting, maintaining healthy relationships with self and others, seeking help and support, and recognizing various influences on health such as social, environmental, media, and genetic. These skills, developed early on and reinforced throughout a student's education, will foster mastery of health concepts.

(3) Students gain an understanding of health information and skills through six strands: physical health and hygiene; mental health and wellness; healthy eating and physical activity; injury and violence prevention and safety; alcohol, tobacco, and other drugs; and reproductive and sexual health.

(A) Physical health and hygiene education helps to prepare students for improved lifelong health outcomes. Learning about body systems lays the foundation for personal health and hygiene. Health literacy and preventative behaviors empower students to make informed choices to support self, family, and community.

(B) The mental health and wellness strand recognizes that the knowledge and skills necessary to manage emotions, reactions, and relationships are essential to reaching one's full potential. Students gain knowledge about social and emotional health, including developing a healthy self-concept, understanding risk and protective factors, and identifying and managing mental health and wellness concerns. In the early grades, students develop fluency around emotions and self-regulation and understand the relationship between feelings, thoughts, and behavior. In subsequent grades, students learn and practice appropriate ways to solve interpersonal conflicts, work to develop a positive self-image, and develop healthy self-management skills.

(C) The healthy eating and physical activity strand addresses the importance of nutrition and physical activity to support a healthy lifestyle. Students apply critical-thinking and decision-making skills to make positive health choices. Students learn about essential nutrients, food groups, portion control, government nutritional recommendations, and the health benefits of being physically active. Students evaluate the connection between physical activity and nutrition and the prevention of chronic diseases.

(D) By focusing on injury and violence prevention and safety, the standards promote student well-being and awareness of dangerous situations. Supporting student well-being and providing instruction in digital citizenship, bullying, first aid, and identification of safe and unsafe situations creates empowered and educated students who are able to make decisions that keep themselves and others safe. Beginning in Kindergarten and continuing through high school, students gain knowledge and skills to support safety and wellness at school, at home, online, and in the community.

(E) The standards under the alcohol, tobacco, and other drugs strand focus on a number of protective factors that develop empowered students who are able to make better-informed decisions, including understanding the impact of substance use on physical, mental, and social health. Through this strand, students learn key concepts about alcohol, tobacco, and other drugs, including the use, misuse, and physiological effects; short- and long-term impacts on health; treatment; risk and protective factors; and prevention. These concepts introduce healthy alternatives and ways for students to ask for and seek out help from parents and trusted adults.

(F) Beginning in Grade 4, students learn about changes associated with adolescent development in the reproductive and sexual health strand. In subsequent grade levels, students identify the purpose of these changes and their role in fertilization and reproduction. Students learn the characteristics of healthy and unhealthy relationships and how to use communication and refusal skills to set personal boundaries in dating/romantic relationships. Students also identify how to respond to sexual harassment and abuse.

(4) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(5) Students should first seek guidance in the area of health from a parent or legal guardian.

(b) Knowledge and skills.

(1) Physical health and hygiene--body systems. The student examines the structure, function, and relationships of body systems and their relevance to personal health. The student is expected to explain how to maintain the healthy status of body systems.

(2) Physical health and hygiene--personal health and hygiene. The student understands health literacy, preventative health behaviors, and how to access and evaluate health care information to make informed decisions. The student is expected to:

(A) compare immediate and long-term effects of personal health care choices such as personal and dental hygiene;

(B) develop criteria for evaluating the validity of health information and sources;

(C) describe ways to demonstrate decision-making skills based on health information;

(D) identify current health-related issues and recommendations or guidelines;

(E) explain the role of preventive health measures, immunizations, and treatment such as wellness exams and dental check-ups in disease prevention;

(F) describe actions that should be taken when illness occurs, including asthma, diabetes, and epilepsy; and

(G) describe and recognize the signs, symptoms, and treatments of vector-borne illnesses such as Lyme disease or West Nile Virus.

(3) Mental health and wellness--social and emotional health. The student identifies and applies strategies to develop socio-emotional health, self-regulation, and healthy relationships. The student is expected to:

(A) demonstrate healthy methods for communicating emotions in a variety of scenarios;

(B) assess and demonstrate healthy ways of responding to conflict;

(C) differentiate between positive and negative peer influence;

(D) describe methods for communicating important issues with and understanding perspectives of parents and peers;

(E) discuss and demonstrate how to listen and respect others' feelings and perspectives in a variety of scenarios; and

(F) identify strategies for using non-violent conflict resolution skills.

(4) Mental health and wellness--developing a healthy self-concept. The student develops the capacity for self-assessment and evaluation, goal setting, and decision making in order to develop a healthy self-concept. The student is expected to:

(A) identify how physical and social changes impact self-esteem;

(B) identify possible health implications of long-term personal goals;

(C) create and discuss personal life goals that one wishes to achieve and consider the financial impact of graduating from high school, having a full-time job, and waiting until marriage if one plans to have children; and

(D) explain the steps in the decision-making process and the importance of following the steps.

(5) Mental health and wellness--risk and protective factors. The student recognizes the influence of various factors on mental health and wellness. The student is expected to:

(A) identify hereditary mental health and wellness conditions;

(B) identify and discuss how adolescent brain development influences emotions, decision making, and logic; and

(C) relate physical environmental factors such as school climate and availability of resources to individual, family, and community health.

(6) Mental health and wellness--identifying and managing mental health and wellness concerns. The student develops and uses appropriate skills to identify and manage conditions related to mental health and wellness. The student is expected to:

(A) examine the outcomes of healthy and unhealthy methods for managing challenges related to long-term health conditions of self and others;

(B) identify and describe lifetime strategies for coping with conditions that impact learning such as attention-deficit disorder (ADD), attention-deficit/hyperactivity disorder (ADHD), dyslexia, dysgraphia, and sensory issues;

(C) identify how to respond positively to develop resiliency;

(D) describe healthy and unhealthy self-management strategies for stress, anxiety, depression, trauma, loss, and grief;

(E) identify causes and effects associated with disordered eating and eating disorders such as bulimia, anorexia, and binge eating disorder and the importance of seeking help from a parent or trusted adult for oneself or others related to disordered eating;

(F) discuss the warning signs associated with suicide as identified by the Centers for Disease Control and Prevention (CDC) and the importance of telling a parent or trusted adult if one observes the warning signs in self or others;

(G) describe why self-harm behaviors can occur when someone is struggling to manage overwhelming emotions or lacks support; and

(H) identify suicide prevention resources such as the National Suicide Prevention Hotline.

(7) Healthy eating and physical activity--food and beverage daily recommendations. The student analyzes and applies healthy eating strategies for enhancing and maintaining personal health throughout the lifespan. The student is expected to:

(A) define micronutrients, including calcium and iron, and their recommended daily allowances;

(B) compare and contrast common food labels and menus for nutritional content and calories;

(C) describe healthy and unhealthy dietary practices;

(D) explain the importance of a realistic personal dietary plan; and

(E) evaluate the importance of choosing lower sodium alternatives to foods that have high levels of sodium such as salty snacks and canned vegetables.

(8) Healthy eating and physical activity--physical activity. The student identifies, analyzes, and applies strategies for enhancing and maintaining optimal personal physical fitness throughout the lifespan. The student is expected to:

(A) identify the CDC guidelines for daily physical activity throughout the lifespan; and

(B) analyze the benefits of regular physical activity on mental, physical, and social health.

(9) Healthy eating and physical activity--nutrition and physical activity literacy. The student obtains, processes, and understands basic physical activity and nutrition information needed to make health-promoting decisions. The student is expected to:

(A) make a variety of healthy personal food choices and develop short- and long-term goals to achieve appropriate levels of physical activity and improve personal physical fitness levels; and

(B) explain the role of media and technology in influencing individual and community health related to physical activity and nutritional choices.

(10) Healthy eating and physical activity--risk and protective factors. The student analyzes and applies risk and protective factors related to healthy eating and physical activity. The student is expected to:

(A) analyze the impact of moderate physical activity and dietary choices on the prevention of obesity, heart disease, and diabetes;

(B) identify strategies to adopt healthy behaviors to reduce the likelihood of developing chronic conditions such as obesity, heart disease, or diabetes;

(C) analyze internal and external factors that influence healthy eating and physical activity behaviors; and

(D) discuss the nutritional differences in preparing and serving fresh foods versus serving ready-prepared, processed foods.

(11) Injury and violence prevention and safety--safety skills and unintentional injury. The student identifies and demonstrates safety and first aid knowledge to prevent and treat injuries. The student is expected to describe basic first-aid procedures.

(12) Injury and violence prevention and safety--healthy home, school, and community climate. The student understands that individual actions and awareness can impact safety, community, and environment. The student is expected to:

(A) discuss and demonstrate strategies for avoiding violence, gangs, weapons, and human trafficking;

(B) examine safety procedures that can be used in various situations, including violence in the home, school, and community;

(C) describe the dangers associated with a variety of weapons; and

(D) explain the importance of complying with rules prohibiting possession of weapons.

(13) Injury and violence prevention and safety--digital citizenship and media. The student understands how to be a safe and responsible citizen in digital and online environments. The student is expected to:

(A) discuss appropriate personal digital and online communication boundaries;

(B) develop strategies to resist inappropriate digital and online communication such as sending and receiving photos, sexting, and pornography;

(C) discuss and analyze consequences resulting from inappropriate digital and online communication such as sending and receiving photos, sexting, and pornography;

(D) discuss strategies and techniques for identity protection in digital and online environments;

(E) identify how technology is used to recruit or manipulate potential victims of sex trafficking; and

(F) identify the current legal consequences of cyberbullying and inappropriate digital and online communication.

(14) Injury and violence prevention and safety--interpersonal violence. The student understands the impact of interpersonal violence and the importance of seeking guidance and help to maintain personal safety. The student is expected to:

(A) identify strategies for managing unhealthy behaviors such as abuse, alcoholism, and neglect in the family or household;

(B) identify how exposure to family violence can influence behavior;

(C) assess healthy and appropriate ways of responding to and discouraging bullying and cyberbullying, including behavior that takes place at school;

(D) analyze the impact that bullying has on both victims and bullies;

(E) identify strategies for prevention and intervention of all forms of bullying or cyberbullying such as emotional, physical, social, and sexual; and

(F) discuss ways to seek the input of parents and other trusted adults in problem solving issues relating to violence and bullying.

(15) Alcohol, tobacco, and other drugs--use, misuse, and physiological effects. The student understands the difference between use and misuse of different substances and how the use and misuse of substances impacts health. The student is expected to:

(A) describe the misuse and abuse of prescription and over-the-counter drugs, including combining drugs, and the dangers associated with each;

(B) compare and contrast examples of prescription and over-the-counter drug labels;

(C) identify and describe practices used to safely store and properly dispose of prescription and over-the-counter drugs; and

(D) describe substance abuse and addiction to prescription drugs, over-the-counter drugs, alcohol, vaping products, tobacco, other drugs, and dangerous substances.

(16) Alcohol, tobacco, and other drugs--short- and long-term impacts. The student identifies and analyzes the short- and long-term impacts of the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to:

(A) describe the short- and long-term health consequences of prescription and over-the-counter drug misuse and substance use disorders;

(B) discuss the legal consequences related to the use and misuse of drugs, including prescription drugs; and

(C) explain the importance of complying with rules prohibiting the possession of drugs.

(17) Alcohol, tobacco, and other drugs--treatment. The student recognizes and understands the options for treatment and how to seek help related to the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to:

(A) identify ways to report a suspected abuse of drugs to a parent, school administrator, teacher, or trusted adult;

(B) identify signs and symptoms of alcohol; tobacco; drugs, including prescription drugs; and other substance use and misuse such as using medicine prescribed for someone else or for reasons other than intended;

(C) identify at least one example of who, when, where, and how to get help related to the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances.

(18) Alcohol, tobacco, and other drugs--risk and protective factors. The student understands how various factors can influence decisions regarding substance use and the resources available for help. The student is expected to:

(A) explain the impact of peer influence on decision making regarding the use of alcohol, tobacco, and other drugs;

(B) describe methods for differentiating between positive and negative relationships that can influence alcohol, tobacco, and other drug use;

(C) identify physical and social influences on alcohol, tobacco, and other drug use behaviors;

(D) explain the relationships between alcohol, tobacco, drugs, and other substances and the role each can play in unsafe situations such as drinking and driving; and

(E) identify methods available to report unsafe situations related to alcohol, tobacco, and other drugs.

(19) Alcohol, tobacco, and other drugs--prevention. The student analyzes information and applies critical-thinking skills to

avoid substance use and misuse and recognizes the benefits of delayed use. The student is expected to:

(A) identify ways such as alternative activities and refusal skills to prevent or avoid the use of alcohol, tobacco, drugs, and other substances;

(B) demonstrate refusal skills in various scenarios where alcohol, tobacco, and other drugs may be present;

(C) identify and describe strategies for avoiding alcohol, tobacco, and other drugs, including opioids; and

(D) identify the benefits of various health behaviors such as choosing not to smoke.

(20) Reproductive and sexual health--healthy relationships. The student understands the characteristics of healthy romantic relationships. The student is expected to:

(A) compare and contrast the differences between friendship, infatuation, dating/romantic relationships, and marriage;

(B) describe how friendships provide a foundation for healthy dating/romantic relationships;

(C) list healthy ways to express friendship, affection, and love;

(D) describe characteristics of healthy dating/romantic relationships and marriage, including sharing, kindness, honesty, respect, trust, patience, communication, and compatibility;

(E) explain that each person in a dating relationship should be treated with dignity and respect; and

(F) describe how healthy marriages can contribute to healthy families and communities.

(21) Reproductive and sexual health--personal safety, limits, and boundaries. The student understands how to set and respect personal boundaries to reduce the risk of sexual harassment, sexual abuse, and sexual assault. The student is expected to:

(A) identify that physical, emotional, and sexual abuse and exploitation are all forms of abuse;

(B) identify the social and emotional impacts of sexual harassment, sexual abuse, sexual assault, and sex trafficking;

(C) list the characteristics of unhealthy or harmful relationships, including anger, controlling behavior, jealousy, manipulation, and isolation;

(D) identify ways of reporting suspected sexual abuse involving self or others such as telling a parent or trusted adult;

(E) explain how a healthy sense of self and decision making regarding safe boundaries and limits promotes healthy dating/romantic relationships;

(F) identify communication and refusal skills and how they can be applied in dating/romantic relationships; and

(G) explain the importance of clearly communicating, respecting personal boundaries, and using refusal skills related to physical intimacy such as holding hands, hugging, and kissing.

(22) Reproductive and sexual health--anatomy, puberty, reproduction, and pregnancy. The student analyzes adolescent development, the process of fertilization, and healthy fetal development. The student is expected to:

(A) describe changes in male and female anatomy and physiology during puberty and how rates and patterns of development can vary between individuals;

(B) describe the process, characteristics, and variations of the menstrual cycle;

(C) analyze the role of hormones related to growth and development and personal health;

(D) describe the cellular process of fertilization in human reproduction; and

(E) identify significant milestones of fetal development.

(23) Reproductive and sexual health--sexual risk. The student understands that there are risks associated with sexual activity and that abstinence from sexual activity is the only 100% effective method to avoid risks. The student is expected to:

(A) identify teen pregnancy as a possible outcome of sexual activity;

(B) identify life goals that one wishes to achieve prior to becoming a parent;

(C) define sexually transmitted infections (STIs) and sexually transmitted diseases (STDs) as infections or diseases that are spread through sex or sexual activity;

(D) identify that there are emotional risks associated with sexual activity between unmarried persons of school age;

(E) define abstinence as refraining from all forms of sexual activity and genital contact between individuals and discuss the importance of seeking support from parents, trusted adults, and peers to be abstinent;

(F) explain why abstinence is the preferred choice of behavior in relationship to all sexual activity for unmarried persons of school age;

(G) identify why abstinence from sexual activity is the only method that is 100% effective in preventing pregnancy; STIs, including human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS); and the emotional risks associated with adolescent sexual activity;

(H) list the benefits of abstinence from sexual activity such as increased self-esteem, self-confidence, student academic achievement, and alignment with personal, family, and moral or religious beliefs and values; and

(I) explain how laws protect victims of sexual harassment, sexual abuse, and sexual assault.

§115.27. Grades 7-8, Adopted 2020.

(a) Introduction.

(1) The goal of health education is to provide instruction that allows youth to develop and sustain health-promoting behaviors throughout their lives. The understanding and application of these standards will allow students the ability to gather, interpret, and understand health information; achieve health literacy; and adapt to the ever-evolving science of health. The health education knowledge and skills should be presented to students in a positive manner to support the development of a healthy self-concept and responsible decision making. The standards will help students reinforce, foster, and apply positive character traits.

(2) There are essential skills that repeat throughout the six strands and embody the interconnection of health literacy. These skills include decision making, problem solving, goal setting, maintaining

healthy relationships with self and others, seeking help and support, and recognizing various influences on health such as social, environmental, media, and genetic. These skills, developed early on and reinforced throughout a student's education, will foster mastery of health concepts.

(3) Students gain an understanding of health information and skills through six strands: physical health and hygiene; mental health and wellness; healthy eating and physical activity; injury and violence prevention and safety; alcohol, tobacco, and other drugs; and reproductive and sexual health.

(A) Physical health and hygiene education helps to prepare students for improved lifelong health outcomes. Learning about body systems lays the foundation for personal health and hygiene. Health literacy and preventative behaviors empower students to make informed choices to support self, family, and community.

(B) The mental health and wellness strand recognizes that the knowledge and skills necessary to manage emotions, reactions, and relationships are essential to reaching one's full potential. Students gain knowledge about social and emotional health, including developing a healthy self-concept, understanding risk and protective factors, and identifying and managing mental health and wellness concerns. In the early grades, students develop fluency around emotions and self-regulation and understand the relationship between feelings, thoughts, and behavior. In subsequent grades, students learn and practice appropriate ways to solve interpersonal conflicts, work to develop a positive self-image, and develop healthy self-management skills.

(C) The healthy eating and physical activity strand addresses the importance of nutrition and physical activity to support a healthy lifestyle. Students apply critical-thinking and decision-making skills to make positive health choices. Students learn about essential nutrients, food groups, portion control, government nutritional recommendations, and the health benefits of being physically active. Students evaluate the connection between physical activity and nutrition and the prevention of chronic diseases.

(D) By focusing on injury and violence prevention and safety, the standards promote student well-being and awareness of dangerous situations. Supporting student well-being and providing instruction in digital citizenship, bullying, first aid, and identification of safe and unsafe situations creates empowered and educated students who are able to make decisions that keep themselves and others safe. Beginning in Kindergarten and continuing through high school, students gain knowledge and skills to support safety and wellness at school, at home, online, and in the community.

(E) The standards under the alcohol, tobacco, and other drugs strand focus on a number of protective factors that develop empowered students who are able to make better-informed decisions, including understanding the impact of substance use on physical, mental, and social health. Through this strand, students learn key concepts about alcohol, tobacco, and other drugs, including the use, misuse, and physiological effects; short- and long-term impacts on health; treatment; risk and protective factors; and prevention. These concepts introduce healthy alternatives and ways for students to ask for and seek out help from parents and trusted adults.

(F) Beginning in Grade 4, students learn about changes associated with adolescent development in the reproductive and sexual health strand. In subsequent grade levels, students identify the purpose of these changes and their role in fertilization and reproduction. Students learn the characteristics of healthy and unhealthy relationships and how to use communication and refusal skills to set personal boundaries in dating/romantic relationships. Students also identify how to respond to sexual harassment and abuse.

(4) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(5) Students should first seek guidance in the area of health from a parent or legal guardian.

(b) Knowledge and skills.

(1) Physical health and hygiene--body systems. The student examines the structures, functions, and relationships of body systems and their relevance to personal health. The student is expected to describe the relationships among the body systems.

(2) Physical health and hygiene--personal health and hygiene. The student understands health literacy, preventative health behaviors, and how to access and evaluate health care information to make informed decisions. The student is expected to:

(A) list specific resources or facilities where members of the community can obtain medical care;

(B) explain ways to use health information to help self and others, including seizure awareness, diabetes education, and response plans such as first aid or cardiopulmonary resuscitation (CPR);

(C) identify barriers related to solving health problems and ways to overcome barriers; and

(D) explain the course, signs, symptoms, and treatments of vector-borne illnesses such as Lyme disease or West Nile Virus.

(3) Mental health and wellness--social and emotional health. The student identifies and applies strategies to develop socio-emotional health, self-regulation, and healthy relationships. The student is expected to:

(A) identify and analyze different emotions and casual thoughts in self;

(B) analyze the relationship between thoughts, feelings, and behaviors and demonstrate healthy techniques for managing reactions in times of emotional stress;

(C) evaluate the importance of social groups and peer influences and explain how they can affect individual mental health and wellness;

(D) demonstrate perspective-taking and communication skills for building and maintaining healthy relationships and determining when and how to end unhealthy relationships;

(E) analyze similarities and differences between one's own and others' perspectives;

(F) analyze and demonstrate appropriate ways to discourage inconsiderate and disrespectful behavior, including in school; and

(G) practice conflict resolution and mediation skills.

(4) Mental health and wellness--developing a healthy self-concept. The student develops the capacity for self-assessment and evaluation, goal setting, and decision making in order to develop a healthy self-concept. The student is expected to:

(A) describe how internal and external factors influence self-esteem;

(B) identify and develop strategies for setting long-term personal goals;

(C) create and discuss personal life goals that one wishes to achieve and consider the financial impact of graduating from high school, having a full-time job, and waiting until marriage if one plans to have children; and

(D) identify decision-making skills that promote individual, family, and community mental health.

(5) Mental health and wellness--risk and protective factors. The student recognizes the influence of various factors on mental health and wellness. The student is expected to:

(A) understand genetic and biological factors in the potential development of mental health and wellness conditions;

(B) explain how adolescent brain development influences cognitive processing, emotions, and decision making;

(C) identify and describe how environmental influences such as air, water, or noise can affect an individual's mental health;

(D) discuss mental health-related social issues such as homelessness; and

(E) discuss the influence of childhood trauma and how to recognize, process, and overcome negative events.

(6) Mental health and wellness--identifying and managing mental health and wellness concerns. The student develops and uses appropriate skills to identify and manage conditions related to mental health and wellness. The student is expected to:

(A) describe methods to support others who have long-term physical health conditions;

(B) examine ways to influence peers positively and promote resiliency in others in stressful situations;

(C) differentiate between healthy and unhealthy self-management strategies for stress, anxiety, depression, trauma, loss, and grief;

(D) describe the consequences of disordered eating and eating disorders such as bulimia, anorexia, and binge eating disorder and the importance of seeking help from a parent or trusted adult for oneself or others related to disordered eating;

(E) discuss protective factors of suicide identified by the Centers for Disease Control and Prevention (CDC);

(F) research healthy self-management strategies to avoid harming oneself; and

(G) examine how the use of suicide prevention resources such as the National Suicide Prevention Hotline can reduce the likelihood of suicide.

(7) Healthy eating and physical activity--food and beverage daily recommendations. The student analyzes and applies healthy eating strategies for enhancing and maintaining personal health throughout the lifespan. The student is expected to:

(A) analyze food labels and menus to determine nutritional value;

(B) analyze the impact of healthy dietary practices;

(C) develop a personal dietary plan; and

(D) identify and practice strategies for choosing healthy foods and beverages in diverse social environments, including at home, at school, and while dining out.

(8) Healthy eating and physical activity--physical activity. The student identifies, analyzes, and applies strategies for enhancing

and maintaining optimal personal physical fitness throughout the lifespan. The student is expected to:

(A) apply the CDC guidelines for daily physical activity to construct a personal activity plan;

(B) explain the relationships between nutrition, physical activity, quality of life, and disease in terms of their mental, physical, and social benefits;

(C) identify how to balance caloric intake and physical activity expenditures; and

(D) develop a physical fitness plan using appropriate technology.

(9) Healthy eating and physical activity--nutrition and physical activity literacy. The student obtains, processes, and understands basic physical activity and nutrition information needed to make health-promoting decisions. The student is expected to:

(A) develop and examine progress of short- and long-term goals toward achieving appropriate levels of physical activity, improving personal physical fitness level, and making healthy personal food choices; and

(B) explain how media influences buying decisions regarding physical fitness equipment or nutritional products.

(10) Healthy eating and physical activity--risk and protective factors. The student analyzes and applies risk and protective factors related to healthy eating and physical activity. The student is expected to:

(A) analyze the impact of moderate physical activity and healthy dietary practices in the prevention of obesity, heart disease, and diabetes;

(B) analyze risk factors that may lead to the development of chronic conditions and formulate strategies to reduce the likelihood of developing chronic conditions;

(C) identify community resources that can assist in developing healthy eating and physical activity behaviors; and

(D) investigate and compare the differences in preparing and serving fresh food and serving ready-prepared, processed foods.

(11) Injury and violence prevention and safety--safety skills and unintentional injury. The student identifies and demonstrates safety and first aid knowledge to prevent and treat injuries. The student is expected to demonstrate basic first-aid procedures, including CPR and the choking rescue.

(12) Injury and violence prevention and safety--healthy home, school, and community climate. The student understands that individual actions and awareness can impact safety, community, and environment. The student is expected to:

(A) analyze strategies for and the benefits of avoiding violence, gangs, weapons, and human trafficking;

(B) define safe haven and identify designated safe haven locations in the community;

(C) examine safety procedures that can be used in various situations, including violence in the home, school, and community;

(D) evaluate the dangers associated with a variety of weapons; and

(E) evaluate the importance of complying with rules prohibiting possession of and the improper use of weapons.

(13) Injury and violence prevention and safety--digital citizenship and media. The student understands how to be a safe and responsible citizen in digital and online environments. The student is expected to:

(A) develop strategies to resist inappropriate digital and online communication such as sending and receiving photos, sexting, and pornography;

(B) discuss and analyze the consequences resulting from inappropriate digital and online communication such as sending and receiving photos, sexting, and pornography;

(C) evaluate strategies and techniques for identity protection in digital and online environments;

(D) identify how technology is used to recruit or manipulate potential victims of sex trafficking; and

(E) research the current legal consequences of cyberbullying and inappropriate digital and online communication.

(14) Injury and violence prevention and safety--interpersonal violence. The student understands the impact of interpersonal violence and the importance of seeking guidance and help to maintain personal safety. The student is expected to:

(A) analyze strategies for managing unhealthy behaviors in the family or household such as abuse, alcoholism, and neglect;

(B) analyze how exposure to family violence can influence behavior;

(C) describe the serious effects of bullying, cyberbullying, or harassment such as suicidal ideation and other effects on the individual;

(D) explain the responsibility to report bullying behavior, including cyberbullying;

(E) describe the seriousness of various forms of bullying such as harassment;

(F) analyze strategies for preventing bullying, including cyberbullying and harassment;

(G) summarize the advantages of seeking advice and feedback regarding the use of decision-making and problem-solving skills related to personal safety; and

(H) discuss the importance of reporting suspected abuse or neglect of self and others.

(15) Alcohol, tobacco, and other drugs--use, misuse, and physiological effects. The student understands the difference between use and misuse of different substances and how the use and misuse of substances impacts health. The student is expected to:

(A) differentiate between appropriate and inappropriate use of prescription and over-the-counter drugs, including combining drugs, and the outcomes of each;

(B) identify and describe the categories of prescription drugs and their proper uses;

(C) identify and explain the importance of each component of an over-the-counter drug warning label;

(D) identify and describe the importance of the safe storage and proper disposal of prescription and over-the-counter drugs;

(E) describe how substance misuse, including prescription drug abuse, and substance use disorders affect the body systems and brain; and

(F) describe the harmful effects of addiction to alcohol, tobacco, drugs, and other substances such as inhalants and vaping and household products.

(16) Alcohol, tobacco, and other drugs--short- and long-term impacts. The student identifies and analyzes the short- and long-term impacts of use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to:

(A) analyze and explain the short- and long-term health consequences of prescription and over-the-counter drug misuse and substance use disorders;

(B) analyze the importance of alternatives to drug and substance use and misuse on mental and social health; and

(C) analyze the legal consequences of the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances.

(17) Alcohol, tobacco, and other drugs--treatment. The student recognizes and understands the options for treatment and how to seek help related to the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to:

(A) identify and describe treatment options for substance abuse and addiction;

(B) identify signs and symptoms of alcohol; tobacco; drugs, including prescription drugs; and other substance use and misuse such as using medicine prescribed for someone else or for reasons other than intended; and

(C) identify at least one example of who, when, where, and how to get help related to the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances.

(18) Alcohol, tobacco, and other drugs--risk and protective factors. The student understands how various factors can influence decisions regarding substance use and the resources available for help. The student is expected to:

(A) examine the effects and role of peer influence on decision making and problem solving regarding the use and misuse of alcohol, tobacco, and other drugs;

(B) examine social influences on alcohol, tobacco, and other drug use behaviors;

(C) discuss the influence of physical and social environmental factors on substance misuse and abuse;

(D) differentiate among the relationships of alcohol, tobacco, drugs, and other substances and the roles these substances play in unsafe situations such as drinking and driving; and

(E) identify support systems and describe ways to report the suspected abuse of drugs to a parent, school administrator, teacher, or other trusted adult.

(19) Alcohol, tobacco, and other drugs--prevention. The student analyzes information and applies critical-thinking skills to avoid substance use and misuse and recognizes the benefits of delayed use. The student is expected to develop and apply strategies, including demonstrating refusal skills, for avoiding alcohol, tobacco, and other drugs in various scenarios.

(20) Reproductive and sexual health--healthy relationships. The student understands the characteristics of healthy romantic relationships. The student is expected to:

(A) describe types of relationships such as platonic, romantic, and casual;

(B) explain how friendships provide a foundation for healthy dating/romantic relationships;

(C) describe healthy ways to express friendship, affection, and love;

(D) describe appropriate and effective methods of communicating emotions in healthy dating/romantic relationships and marriage;

(E) evaluate the importance of mutual respect, trust, support, honesty, commitment, and reliability in healthy dating/romantic relationships and marriage;

(F) describe behaviors in romantic relationships that enhance dignity, respect, and responsibility; and

(G) describe the benefits of healthy marriages, including companionship and social, emotional, financial, and health benefits.

(21) Reproductive and sexual health--personal safety, limits, and boundaries. The student understands how to set and respect personal boundaries to reduce the risk of sexual harassment, sexual abuse, and sexual assault. The student is expected to:

(A) explain that physical, emotional, and sexual abuse and exploitation are all forms of abuse;

(B) explain the social and emotional impacts of sexual harassment, sexual abuse, sexual assault, and sex trafficking;

(C) define dating violence and the characteristics of unhealthy or harmful relationships, including anger, controlling behavior, jealousy, manipulation, and isolation;

(D) identify protective strategies for avoiding unsafe situations that heighten the risk of sexual harassment, sexual abuse, sexual assault, sex trafficking, and teen dating violence;

(E) explain the importance of reporting to a parent or trusted adult sexual harassment, sexual abuse, sexual assault, sex trafficking, and dating violence involving self or others;

(F) describe how a healthy sense of self and making and respecting decisions regarding safe boundaries and limits promote healthy dating/romantic relationships;

(G) discuss and practice refusal skills to resist negative peer pressure and avoid dangerous situations in dating/romantic relationships;

(H) demonstrate how refusal skills can be used to set and reinforce limits and boundaries to avoid behaviors that increase sexual risk;

(I) explain the importance of clearly communicating and respecting personal boundaries and why individuals have the right to refuse sexual contact; and

(J) explain positive and negative peer influences regarding personal boundaries and consent.

(22) Reproductive and sexual health--anatomy, puberty, reproduction, and pregnancy. The student analyzes adolescent development, the process of fertilization, and healthy fetal development. The student is expected to:

(A) compare and contrast the physical, hormonal, and emotional changes in males and females that occur during puberty and adolescence;

(B) identify how the process of fertilization occurs between a man and a woman through sexual intercourse;

(C) explain significant milestones of fetal development and the harmful effects on the fetus of certain substances such as alcohol, tobacco, and prescription drugs and environmental hazards such as lead;

(D) describe the physical signs that indicate pregnancy;

(E) describe the importance of telling a parent or trusted adult, obtaining early pregnancy testing, and seeking prenatal care if signs of pregnancy occur; and

(F) define the emotional changes that may occur during and after pregnancy, including postpartum depression, and discuss resources for support and treatment.

(23) Reproductive and sexual health--sexual risk. The student understands that there are risks associated with sexual activity and that abstinence from sexual activity is the only 100% effective method to avoid risks. The student is expected to:

(A) explain how teen pregnancy is a possible outcome of sexual activity;

(B) explain the short- and long-term educational, financial, and social impacts of pregnancy on teen parents, the child, families, and society;

(C) identify the difference between bacterial and viral sexually transmitted diseases (STDs) and sexually transmitted infections (STIs), including long-term or lifetime effects such as infertility and cancer;

(D) describe various modes of transmission of STDs and STIs, including skin-to-skin contact and the exchange of bodily fluids through sexual contact;

(E) list the signs and symptoms of STDs and STIs, including human papillomavirus (HPV), human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS), chlamydia, syphilis, gonorrhea, herpes, and trichomoniasis, and explain why not all STDs and STIs show symptoms initially;

(F) explain the importance of STD and STI screening, testing, and early treatment for sexually active individuals, including during yearly physicals or if there is a concern;

(G) identify community resources, a minor's right to consent under certain circumstances, and the importance of parent or trusted adult support for STD/STI testing and treatment;

(H) identify emotional risks that can be associated with sexual activity for unmarried persons of school age, including stress, anxiety, and depression;

(I) identify support from parents and trusted adults to be abstinent from sexual activity and create strategies for building peer support to be abstinent;

(J) analyze the importance of abstinence as the preferred choice of behavior in relationship to all sexual activity for unmarried persons of school age;

(K) analyze the effectiveness and the risks and failure rates (human-use reality rates) of condoms and other contraceptive methods in the prevention of STDs, STIs, and pregnancy;

(L) explain that HPV vaccines can help prevent the transmission of HPV, a virus that can cause genital warts and cervical or other cancers in males and females;

(M) research and explain the benefits of abstinence from sexual activity such as increased self-esteem, self-confidence, and student academic achievement;

(N) define legal implications regarding teen pregnancy, including child support and acknowledgement of paternity;

(O) describe legal implications, including the legal age of consent, and offenses regarding sexual activity as they relate to minor persons, including statutory rape, aggravated sexual assault, sexual assault, and indecency with a child; and

(P) examine the legal ramifications of sexual offenses such as sexual harassment, sexual abuse, and sexual assault.

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

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Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: November 8, 2020

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SUBCHAPTER C. HIGH SCHOOL

19 TAC §§115.37 - 115.40

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(r), which requires the SBOE to by rule adopt essential knowledge and skills for the health curriculum that address substance abuse; TEC, §28.002(s), which requires the SBOE to by rule adopt essential knowledge and skills for the health curriculum that address bullying; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (r), and (s); and 28.025(a).

§115.37. Implementation of Texas Essential Knowledge and Skills for Health Education, Adopted 2020.

(a) The provisions of §§115.38-115.40 of this subchapter shall be implemented by school districts.

(b) No later than July 31, 2021, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills for health education as adopted in §§115.38-115.40 of this subchapter.

(c) If the commissioner makes the determination that instructional materials funding has been made available under subsection (b) of this section, §§115.38-115.40 of this subchapter shall be implemented beginning with the 2022-2023 school year and apply to the 2022-2023 and subsequent school years.

(d) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (b) of this section, the commissioner shall determine no later than July 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that §§115.38-115.40 of this subchapter shall be implemented for the following school year.

(e) Sections 115.31-115.33 of this subchapter shall be superseded by the implementation of §§115.37-115.40 of this subchapter.

§115.38. Health I (One-Half Credit), Adopted 2020.

(a) General requirements. Students shall be awarded one-half credit for successful completion of this course. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) The goal of health education is to provide instruction that allows youth to develop and sustain health-promoting behaviors throughout their lives. The understanding and application of these standards will allow students the ability to gather, interpret, and understand health information; achieve health literacy; and adapt to the ever-evolving science of health. The health education knowledge and skills should be presented to students in a positive manner to support the development of a healthy self-concept and responsible decision making. The standards will help students reinforce, foster, and apply positive character traits.

(2) There are essential skills that repeat throughout six strands and embody the interconnection of health literacy. These skills include decision making, problem solving, goal setting, maintaining healthy relationships with self and others, seeking help and support, and recognizing various influences on health such as social, environmental, media, and genetic. These skills, developed early on and reinforced throughout a student's education, will foster mastery of health concepts.

(3) Students will gain an understanding of health information and skills through six strands: physical health and hygiene; mental health and wellness; healthy eating and physical activity; injury and violence prevention and safety; alcohol, tobacco, and other drugs; and reproductive and sexual health.

(A) Physical health and hygiene education helps to prepare students for improved lifelong health outcomes. Learning about body systems lays the foundation for personal health and hygiene. Health literacy and preventative behaviors empowers students to make informed choices to support self, family, and community.

(B) The mental health and wellness strand recognizes that the knowledge and skills necessary to manage emotions, reactions, and relationships are essential to reaching one's full potential. Students gain knowledge about social and emotional health, including developing a healthy self-concept, understanding risk and protective factors, and identifying and managing mental health and wellness concerns. In the early grades, students develop fluency around emotions and self-regulation and understand the relationship between feelings, thoughts, and behavior. In subsequent grades, students learn and practice appropriate ways to solve interpersonal conflicts, work to develop a positive self-image, and develop healthy self-management skills.

(C) The healthy eating and physical activity strand addresses the importance of nutrition and physical activity to support a healthy lifestyle. Students apply critical-thinking and decision-making skills to make positive health choices. Students learn about essential nutrients, food groups, portion control, government nutritional recommendations, and the health benefits of being physically active. Students evaluate the connection between physical activity and nutrition and the prevention of chronic diseases.

(D) By focusing on injury and violence prevention and safety, the standards promote student well-being and awareness of dangerous situations. Supporting student well-being and providing instruction in digital citizenship, bullying, first aid, and identification of safe and unsafe situations creates empowered and educated students who are able to make decisions that keep themselves and others safe. Beginning in Kindergarten and continuing through high school, students gain knowledge and skills to support safety and wellness at school, at home, online, and in the community.

(E) The standards under the alcohol, tobacco, and other drugs strand focus on a number of protective factors that develop empowered students who are able to make better-informed decisions, including understanding the impact of substance use on physical, mental, and social health. Through this strand, students learn key concepts about alcohol, tobacco, and other drugs, including the use, misuse, and physiological effects; short- and long-term impacts on health; treatment; risk and protective factors; and prevention. These concepts introduce healthy alternatives and ways for students to ask for and seek out help from parents and trusted adults.

(F) In the reproductive and sexual health strand, students identify the characteristics of healthy and unhealthy relationships and learn to use communication and refusal skills to set personal boundaries and develop strategies for responding to sexual harassment and abuse. Students describe the changes associated with adolescent development and explain the process of fertilization, fetal development, and the importance of prenatal care. Students also learn that sexual abstinence until marriage is the only 100% effective means of avoiding unplanned pregnancies and sexually transmitted infections (STIs) as well as the legal, financial, and social issues associated with sexual health and reproduction.

(4) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(5) Students should first seek guidance in the area of health from a parent or legal guardian.

(c) Knowledge and skills.

(1) Physical health and hygiene--personal health and hygiene. The student understands health literacy, preventative health behaviors, and how to access and evaluate health care information to make informed decisions. The student is expected to:

(A) analyze health information based on health-related standards;

(B) develop and analyze strategies to prevent communicable and non-communicable diseases; and

(C) discuss the importance of early detection and warning signs that prompt individuals of all ages to seek health care.

(2) Mental health and wellness--social and emotional health. The student identifies and applies strategies to develop socio-emotional health, self-regulation, and healthy relationships. The student is expected to:

(A) discuss and demonstrate ways to express empathy toward others; and

(B) analyze forms of communication such as passive, aggressive, or assertive and their impact on conflict resolution.

(3) Mental health and wellness--developing a healthy self-concept. The student develops the capacity for self-assessment and evaluation, goal setting, and decision making in order to develop a healthy self-concept. The student is expected to explain and demonstrate decision-making skills based on mental health information.

(4) Mental health and wellness--risk and protective factors. The student recognizes the influence of various factors influencing mental health and wellness. The student is expected to:

(A) research and explain how genetic factors predispose a person to schizophrenia, bipolar disorder, depression, anxiety, and other mental health and wellness conditions; and

(B) analyze how adverse childhood experiences such as abuse, neglect, and trauma can influence brain development and how to recognize, process, and overcome negative effects for overall mental health and wellness.

(5) Mental health and wellness--identifying and managing mental health and wellness concerns. The student develops and uses appropriate skills to identify and manage conditions related to mental health and wellness. The student is expected to:

(A) discuss the warning signs and protective factors of suicide as identified by the Centers for Disease Control and Prevention (CDC) and the importance of telling a parent or trusted adult if one observes the warning signs in self or others;

(B) assess how the use of suicide prevention resources such as the National Suicide Prevention Hotline reduces the likelihood of suicide; and

(C) research and discuss data on and prevalence of local, state, and national suicide rates among various groups.

(6) Healthy eating and physical activity--food and beverage daily recommendations. The student analyzes and applies healthy eating strategies for enhancing and maintaining personal health throughout the lifespan. The student is expected to:

(A) evaluate food labels and menus for nutritional content and value, including recommended daily calories;

(B) compare and contrast the impact of healthy and unhealthy dietary practices; and

(C) describe how a personal dietary plan affects overall health and how a plan might differ over the lifespan.

(7) Healthy eating and physical activity--physical activity. The student identifies, analyzes, and applies strategies for enhancing and maintaining optimal personal physical fitness throughout the lifespan. The student is expected to analyze the relationships between nutrition, physical activity, and quality of life as they relate to mental, physical, and social health benefits.

(8) Healthy eating and physical activity--risk and protective factors. The student analyzes and applies risk and protective factors related to healthy eating and physical activity. The student is expected to:

(A) evaluate the differences in preparing and serving fresh food versus serving ready-prepared or processed foods; and

(B) research and discuss the social and economic impact of chronic conditions, including obesity, heart disease, and diabetes.

(9) Injury and violence prevention and safety--safety skills and unintentional injury. The student identifies and demonstrates safety and first aid knowledge to prevent and treat injuries. The student is expected to demonstrate basic first-aid procedures, including how to perform cardiopulmonary resuscitation (CPR) and choking rescue and how to use an automated external defibrillator (AED).

(10) Injury and violence prevention and safety--healthy home, school, and community climate. The student understands that individual actions and awareness can impact safety, community, and environment. The student is expected to:

(A) formulate strategies for avoiding violence, gangs, weapons, and human trafficking; and

(B) assess the dynamics of gang behaviors.

(11) Injury and violence prevention and safety--digital citizenship and media. The student understands how to be a safe and responsible citizen in digital and online environments. The student is expected to:

(A) develop strategies to resist inappropriate digital and online communication such as sending and receiving photos, sexting, and pornography; and

(B) identify appropriate responses to situations in which digital and online safety are at risk, including identity protection and recognition of predators.

(12) Injury and violence prevention and safety--interpersonal violence. The student understands the impact of interpersonal violence and the importance of seeking guidance and help to maintain personal safety. The student is expected to:

(A) research and analyze how exposure to family violence can influence cyclical behavioral patterns;

(B) create a personal action plan, including identifying areas of support, for use when encountering bullying, cyberbullying, or harassment; and

(C) describe the ramifications of bullying behavior.

(13) Alcohol, tobacco, and other drugs--use, misuse, and physiological effects. The student understands the difference between use and misuse of different substances and how the use and misuse of substances impacts health. The student is expected to:

(A) examine examples of drug labels to determine the drug category and intended use;

(B) identify and describe the importance of the safe storage and proper disposal of prescription and over-the-counter drugs; and

(C) develop strategies for preventing the misuse of prescription and over-the-counter drugs, including recognizing the negative effects of combining drugs.

(14) Alcohol, tobacco, and other drugs--short- and long-term impacts. The student identifies and analyzes the short- and long-term impacts of the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to describe the interrelatedness of alcohol and other drugs to health problems.

(15) Alcohol, tobacco, and other drugs--treatment. The student recognizes and understands the options for treatment and how

to seek help related to the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to:

(A) investigate and identify treatment options for substance abuse and addiction and misuse, including prescription drugs; and

(B) explain how to report suspected abuse of drugs to a parent, school administrator, teacher, or trusted adult.

(16) Alcohol, tobacco, and other drugs--risk and protective factors. The student understands how various factors can influence decisions regarding substance use and the resources available for help. The student is expected to:

(A) compare and contrast social influences on alcohol, tobacco, and other drug use behaviors;

(B) design materials for health advocacy such as promoting a substance-free life; and

(C) discuss ways to participate in school-related efforts to address health-risk behaviors.

(17) Alcohol, tobacco, and other drugs--prevention. The student analyzes information and applies critical-thinking skills to avoid substance use and misuse and recognizes the benefits of delayed use. The student is expected to:

(A) analyze the relationship between the use of refusal skills and the avoidance of alcohol, tobacco, and other drugs; and

(B) analyze the role that alcohol and other drugs play in unsafe situations, including sexual abuse and assault.

(18) Reproductive and sexual health--healthy relationships. The student understands the characteristics of healthy romantic relationships. The student is expected to:

(A) differentiate between types of relationships such as platonic, romantic, and casual;

(B) analyze how friendships provide a foundation for healthy dating relationships; and

(C) identify character traits that promote healthy dating/romantic relationships and marriage.

(19) Reproductive and sexual health--personal safety, limits, and boundaries. The student understands how to set and respect personal boundaries to reduce the risk of sexual harassment, sexual abuse, and sexual assault. The student is expected to:

(A) describe the characteristics of sex trafficking such as grooming, controlling behavior, exploitation, force, fraud, coercion, and violence;

(B) analyze the characteristics of harmful relationships that can lead to dating violence;

(C) identify healthy strategies for preventing physical, sexual, and emotional abuse;

(D) analyze how a healthy sense of self and making and respecting decisions about safe boundaries and limits promote healthy dating/romantic relationships; and

(E) explain and demonstrate how refusal strategies can be used to say "no" assertively to unhealthy behaviors in dating/romantic relationships.

(20) Reproductive and sexual health--anatomy, puberty, reproduction, and pregnancy. The student analyzes adolescent develop-

ment, the process of fertilization, and healthy fetal development. The student is expected to:

(A) explain how the process of fertilization occurs between a man and a woman through sexual intercourse;

(B) analyze the physical signs that indicate pregnancy; and

(C) analyze the importance of telling a parent or trusted adult, obtaining early pregnancy testing, and seeking prenatal care if signs of pregnancy occur.

(21) Reproductive and sexual health--sexual risk. The student understands that there are risks associated with sexual activity and that abstinence from sexual activity is the only 100% effective method to avoid risks. The student is expected to:

(A) research and analyze the educational, financial, and social impacts of pregnancy on teen parents, the child, families, and society, including considering the effects on one's personal life goals;

(B) describe various modes of transmission of sexually transmitted diseases (STDs) and STIs, including skin-to-skin contact, oral sex, vaginal sex, and anal sex;

(C) describe signs and symptoms of STDs and STIs, including human papillomavirus (HPV), human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS), chlamydia, syphilis, gonorrhea, herpes, and trichomoniasis, and identify that not all STDs and STIs show symptoms;

(D) analyze the importance of STD and STI screening, testing, and early treatment for sexually active people, including if there is a concern or during yearly physicals;

(E) analyze emotional risks that can be associated with sexual activity for unmarried persons of school age, including stress, anxiety, and depression;

(F) analyze the importance and benefits of abstinence from sexual activity as it relates to emotional health and the prevention of pregnancy, STDs, and STIs;

(G) analyze the effectiveness and the risks and failure rates (human-use reality rates) of barrier protection and other contraceptive methods, including how they work and may reduce the risk of STDs, STIs, and pregnancy; and

(H) explain the legal responsibilities related to teen pregnancy, including child support and acknowledgement of paternity.

§115.39. *Health II (One-Half Credit), Adopted 2020.*

(a) General requirements. Students shall be awarded one-half credit for successful completion of this course. Recommended prerequisite: Health I. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) The goal of health education is to provide instruction that allows youth to develop and sustain health-promoting behaviors throughout their lives. The understanding and application of these standards will allow students the ability to gather, interpret, and understand health information; achieve health literacy; and adapt to the ever-evolving science of health. The health education knowledge and skills should be presented to students in a positive manner to support the development of a healthy self-concept and responsible decision making. The standards will help students reinforce, foster, and apply positive character traits.

(2) There are essential skills that repeat throughout six strands and embody the interconnection of health literacy. These skills include decision making, problem solving, goal setting, maintaining healthy relationships with self and others, seeking help and support, and recognizing various influences on health such as social, environmental, media, and genetic. These skills, developed early on and reinforced throughout a student's education, will foster mastery of health concepts.

(3) Students will gain an understanding of health information and skills through six strands: physical health and hygiene; mental health and wellness; healthy eating and physical activity; injury and violence prevention and safety; alcohol, tobacco, and other drugs; and reproductive and sexual health.

(A) Physical health and hygiene education helps to prepare students for improved lifelong health outcomes. Learning about body systems lays the foundation for personal health and hygiene. Health literacy and preventative behaviors empowers students to make informed choices to support self, family, and community.

(B) The mental health and wellness strand recognizes that the knowledge and skills necessary to manage emotions, reactions, and relationships are essential to reaching one's full potential. Students gain knowledge about social and emotional health, including developing a healthy self-concept, understanding risk and protective factors, and identifying and managing mental health and wellness concerns. In the early grades, students develop fluency around emotions and self-regulation and understand the relationship between feelings, thoughts, and behavior. In subsequent grades, students learn and practice appropriate ways to solve interpersonal conflicts, work to develop a positive self-image, and develop healthy self-management skills.

(C) The healthy eating and physical activity strand addresses the importance of nutrition and physical activity to support a healthy lifestyle. Students apply critical-thinking and decision-making skills to make positive health choices. Students learn about essential nutrients, food groups, portion control, government nutritional recommendations, and the health benefits of being physically active. Students evaluate the connection between physical activity and nutrition and the prevention of chronic diseases.

(D) By focusing on injury and violence prevention and safety, the standards promote student well-being and awareness of dangerous situations. Supporting student well-being and providing instruction in digital citizenship, bullying, first aid, and identification of safe and unsafe situations creates empowered and educated students who are able to make decisions that keep themselves and others safe. Beginning in Kindergarten and continuing through high school, students gain knowledge and skills to support safety and wellness at school, at home, online, and in the community.

(E) The standards under the alcohol, tobacco, and other drugs strand focus on a number of protective factors that develop empowered students who are able to make better-informed decisions, including understanding the impact of substance use on physical, mental, and social health. Through this strand, students learn key concepts about alcohol, tobacco, and other drugs, including the use, misuse, and physiological effects; short- and long-term impacts on health; treatment; risk and protective factors; and prevention. These concepts introduce healthy alternatives and ways for students to ask for and seek out help from parents and trusted adults.

(F) In the reproductive and sexual health strand, students identify the characteristics of healthy and unhealthy relationships and learn to use communication and refusal skills to set personal boundaries and develop strategies for responding to sexual harassment and

abuse. Students describe the changes associated with adolescent development and explain the process of fertilization, fetal development, and the importance of prenatal care. Students also learn that sexual abstinence until marriage is the only 100% effective means of avoiding unplanned pregnancies and sexually transmitted infections (STIs) as well as the legal, financial, and social issues associated with sexual health and reproduction.

(4) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(5) Students should first seek guidance in the area of health from a parent or legal guardian.

(c) Knowledge and skills.

(1) Physical health and hygiene--personal health and hygiene. The student understands health literacy, preventative health behaviors, and how to access and evaluate health care information to make informed decisions. The student is expected to:

(A) analyze the cost, availability, and accessibility of health care services;

(B) analyze methods of overcoming barriers related to solving health problems; and

(C) analyze the influence of laws, policies, and practices, including those related to disease prevention, on health-related issues.

(2) Mental health and wellness--social and emotional health. The student identifies and applies strategies to develop socio-emotional health, self-regulation, and healthy relationships. The student is expected to:

(A) evaluate positive and negative effects of various relationships on physical, emotional, and social health;

(B) apply communication skills that demonstrate consideration and respect for individual differences and perspectives; and

(C) evaluate the effectiveness of conflict resolution techniques in various situations.

(3) Mental health and wellness--developing a healthy self-concept. The student develops the capacity for self-assessment and evaluation, goal setting, and decision making in order to develop a healthy self-concept. The student is expected to describe how internal and external factors influence self-esteem.

(4) Mental health and wellness--risk and protective factors. The student recognizes the influence of various factors influencing mental health and wellness. The student is expected to formulate strategies for combating environmental factors that have a detrimental effect on mental health.

(5) Mental health and wellness--identifying and managing mental health and wellness concerns. The student develops and uses appropriate skills to identify and manage conditions related to mental health and wellness. The student is expected to:

(A) describe the impact of positive stress on building resiliency and promoting mental health and wellness;

(B) discuss the impact of choosing healthy self-management strategies for stress, anxiety, depression, trauma, loss, and grief on mental health and wellness; and

(C) research and explain the behaviors associated with eating disorders and their impact on health.

(6) Healthy eating and physical activity--food and beverage daily recommendations. The student analyzes and applies healthy eating strategies for enhancing and maintaining personal health throughout the lifespan. The student is expected to design a realistic, long-term personal dietary plan that promotes individual and family health.

(7) Healthy eating and physical activity--physical activity. The student identifies, analyzes, and applies strategies for enhancing and maintaining optimal personal physical fitness throughout the lifespan. The student is expected to:

(A) compare and contrast the impact of active and sedentary lifestyles on overall health; and

(B) develop a physical fitness profile using appropriate technology.

(8) Healthy eating and physical activity--nutrition and physical activity literacy. The student will obtain, process, and understand basic physical activity and nutrition information needed to make health-promoting decisions. The student is expected to:

(A) analyze the progress of short- and long-term goals in achieving appropriate levels of physical activity, improving personal physical fitness levels, and making healthy personal food choices; and

(B) analyze marketing and advertising techniques in health product and service promotion.

(9) Healthy eating and physical activity--risk and protective factors. The student analyzes and applies risk and protective factors related to healthy eating and physical activity. The student is expected to:

(A) evaluate the connection between physical activity and dietary choices as they relate to the prevention of chronic conditions; and

(B) create a plan for accessing community resources that can assist in developing healthy eating and physical activity behaviors.

(10) Injury and violence prevention and safety--safety skills and unintentional injury. The student identifies and demonstrates safety and first aid knowledge to prevent and treat injuries. The student is expected to discuss risk-taking behaviors, including driving under the influence and distracted driving, and their associated consequences.

(11) Injury and violence prevention and safety--healthy home, school, and community climate. The student understands that individual actions and awareness can impact safety, community, and environment. The student is expected to:

(A) discuss and evaluate ways to respond to harmful situations that involve weapons; and

(B) develop educational safety models for children and adults for use at home, school, and in the community.

(12) Injury and violence prevention and safety--digital citizenship and media. The student understands how to be a safe and responsible citizen in digital and online environments. The student is expected to:

(A) discuss and analyze consequences resulting from inappropriate digital and online communication such as sending and receiving photos, sexting, and pornography; and

(B) assess the legal and ethical ramifications of unacceptable behaviors in digital and online environments.

(13) Injury and violence prevention and safety--interpersonal violence. The student understands the impact of interpersonal violence and the importance of seeking guidance and help to maintain personal safety. The student is expected to:

(A) discuss and evaluate strategies for managing unhealthy behaviors in the family or household such as abuse, alcoholism, and neglect;

(B) identify and respond to situations requiring intervention for victims of bullying, cyberbullying, or harassment; and

(C) promote strategies for prevention and intervention of all forms of bullying and cyberbullying such as emotional, physical, social, and sexual.

(14) Alcohol, tobacco, and other drugs--use, misuse, and physiological effects. The student understands the difference between use and misuse of different substances and how the use and misuse of substances impacts health. The student is expected to:

(A) analyze how addiction to alcohol, tobacco, drugs, and other substances impacts community health;

(B) analyze the importance of alternative activities to drug and substance misuse and abuse; and

(C) identify individual and community protective factors and skills that prevent substance misuse and substance use disorders.

(15) Alcohol, tobacco, and other drugs--short- and long-term impacts. The student identifies and analyzes the short- and long-term impacts of the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to:

(A) discuss how substance misuse, including prescription drug misuse, and substance use disorders impact families and communities; and

(B) evaluate the impact of laws relating to the use and misuse of prescription and over-the-counter drugs, alcohol, tobacco, and other substances on self and community.

(16) Alcohol, tobacco, and other drugs--treatment. The student recognizes and understands the options for treatment and how to seek help related to the use and misuse of alcohol; tobacco; drugs, including prescription drugs; and other substances. The student is expected to identify ways to support and assist someone who shows signs and symptoms of alcohol, tobacco, or drug use and misuse.

(17) Alcohol, tobacco, and other drugs--risk and protective factors. The student understands how various factors can influence decisions regarding substance use and the resources available for help. The student is expected to:

(A) discuss risk-taking behaviors such as drinking and driving with their associated legal, social, and physical consequences;

(B) analyze physical and social environmental influences on the misuse and abuse of prescription drugs in places such as school, sports, or entertainment; and

(C) design a public health information campaign related to safe havens, where to go for help, or reporting drug-related behaviors.

(18) Alcohol, tobacco, and other drugs--prevention. The student analyzes information and applies critical-thinking skills to avoid substance use and misuse and recognizes the benefits of delayed

use. The student is expected to develop strategies for preventing use or misuse of alcohol, tobacco, and other drugs, including opioids.

(19) Reproductive and sexual health--healthy relationships. The student understands the characteristics of healthy romantic relationships. The student is expected to:

(A) compare and contrast effective and ineffective methods of communicating emotions in healthy dating/romantic relationships and marriage;

(B) analyze behaviors in romantic relationships that enhance dignity and respect; and

(C) describe how a healthy marriage can provide a supportive environment for the nurturing and development of children.

(20) Reproductive and sexual health--personal safety, limits, and boundaries. The student understands how to set and respect personal boundaries to reduce the risk of sexual harassment, sexual abuse, and sexual assault. The student is expected to:

(A) identify community resources to support individuals who have experienced sexual harassment, sexual abuse, sexual assault, dating violence, and sex trafficking;

(B) explain the importance of reporting to a parent or trusted adult sexual harassment, sexual abuse, sexual assault, and dating violence involving self or others;

(C) discuss how refusal skills can be used to set limits and boundaries to avoid behaviors that increase sexual risk;

(D) analyze factors, including alcohol and other substances, that increase sexual risk and that affect setting, perceiving, respecting, and making decisions about boundaries; and

(E) examine and discuss influences and pressures to become sexually active and why it is wrong to violate another person's boundaries and manipulate or threaten someone into sexual activity.

(21) Reproductive and sexual health--anatomy, puberty, reproduction, and pregnancy. The student analyzes adolescent development, the process of fertilization, and healthy fetal development. The student is expected to:

(A) analyze the significance of hormonal, physical, emotional, and social changes in males and females and their relationship to sexual health;

(B) list factors such as heredity, environment, sexually transmitted diseases (STDs) and STIs, and the mother's health and nutrition that can affect fetal development from conception through birth;

(C) analyze the emotional changes that can occur during pregnancy; and

(D) describe the emotional changes that may occur during and after pregnancy, including postpartum depression, and identify resources for support and treatment.

(22) Reproductive and sexual health--sexual risk. The student understands that there are risks associated with sexual activity and that abstinence from sexual activity is the only 100% effective method to avoid risks. The student is expected to:

(A) analyze the options available to teenage parents such as parenting or the process of adoption and the legal rights of parties involved;

(B) evaluate long-term or lifetime effects of bacterial and viral STDs and STIs, including infertility and cancer;

(C) identify community resources, minors' right to consent under certain circumstances, and the importance of parent or trusted adult support for STD and STI testing and treatment;

(D) analyze the effectiveness and the risks and failure rates (human-use reality rates) of barrier protection and other contraceptive methods, including how they work and may reduce the risk of STDs and STIs and pregnancy;

(E) identify the effectiveness of vaccines in preventing the transmission of HPV, a virus that may cause genital warts and head and neck, cervical, anal, or other cancers in males and females;

(F) analyze the benefits of abstinence from sexual activity, including focusing on personal development and encouraging individuals to build healthy relationships not complicated by sexual involvement;

(G) identify support from parents and trusted adults and create strategies, including building peer support, to be abstinent or for return to abstinence if sexually active;

(H) describe the legal implications, including the legal age of consent, and offenses regarding sexual activity as they relate to minor persons, including statutory rape, aggravated sexual assault, sexual assault, and indecency with a child; and

(I) investigate and summarize current laws relating to sexual offenses such as sexual harassment, abuse, and assault.

§115.40. Your Health in the Real World (One-Half Credit), Adopted 2020.

(a) General requirements. Students shall be awarded one-half credit for successful completion of this course. This course is recommended for students in Grades 9-12.

(b) Introduction.

(1) Living your best life is understanding how to navigate the health care system. The objective of this course is to empower students and their families to sustain or improve their quality of life as it relates to their own health and the health of their community. To achieve this objective, students will understand health care terminology as it relates to insurance and public health. Further, students will acquire the knowledge and skills needed to utilize community, state, and federal health care services and related resources.

(2) Statements containing the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(3) Students should first seek guidance in the area of health from a parent or legal guardian.

(c) Knowledge and skills.

(1) Health literacy--health consumerism. The student understands medical terminology in health decision making. The student is expected to:

(A) identify and characterize medical expressions or terms used by health care professionals; and

(B) define basic terminology for general use such as reading prescription labels.

(2) Health literacy--health consumerism. The student interprets personal medical information for health decision making. The student is expected to:

(A) interpret and apply take-home instructions from a health care professional;

(B) identify normal vital signs, including temperature, blood pressure, heart rate, body mass index (BMI), oxygen, and blood glucose levels;

(C) interpret medication labels, including supplements and over-the-counter and prescription drugs; and

(D) analyze the importance of each component of personal medical history, including immunizations, previous treatments, current medical records, and family history.

(3) Health literacy--health consumerism. The student analyzes the different facets of health insurance. The student is expected to:

(A) differentiate between types of insurance, including health, vision, and dental insurance;

(B) evaluate the advantages, disadvantages, and costs of public and private insurance benefits;

(C) compare and contrast different components of insurance, including copay and deductible;

(D) describe different ways to pay for health care, including paying cash, health savings accounts, and flexible spending accounts; and

(E) interpret the components of a medical bill such as the explanation of benefits (EOB).

(4) Health literacy--health consumerism. The student identifies the proper use of medications and becomes familiar with the effects of pharmaceuticals. The student is expected to:

(A) compare and contrast the differences between generic and name-brand medications;

(B) identify cost differentials of similar medications and the rights of the consumer, including the ability to ask a pharmacist for other options;

(C) explain the limitations of medications, including the differences between symptomatic treatment and treatment for a cure;

(D) identify different types of improper use of medications, including using expired medications and using, overusing, and misusing non-prescribed medications;

(E) identify ways to properly dispose of medications and equipment and explain the importance of proper disposal; and

(F) explain what Food and Drug Administration (FDA) approval means, including off-label use.

(5) Health literacy--patient advocacy. The student identifies alternatives to health insurance coverage. The student is expected to:

(A) research and describe available health care sharing plans;

(B) identify the options of community health care resources, including federally qualified healthcare centers (FQHC) and non-profit community clinics; and

(C) identify available community resources such as medical, dental, vision, pharmacy, x-ray, and laboratory services.

(6) Health literacy--patient advocacy. The student demonstrates proper patient/health care professional communication. The student is expected to:

(A) define the Health Information Privacy and Portability Act (HIPPA) and explain how it relates to confidentiality of medical records;

(B) identify patient and physician privileges and expectations, including rights to sexually transmitted infection (STI) testing and pregnancy health care;

(C) define the role of a chaperone in a medical setting, including the patient's ability to request or remove one;

(D) demonstrate the ability to have a collaborative conversation with a health care professional, including asking questions and advocating for self and others;

(E) analyze the impact of medical bias on health outcomes; and

(F) evaluate resources relevant to patients' legal rights, including the Centers for Medicare and Medicaid Services' Patient's Bill of Rights (2020).

(7) Health literacy--health applications and technology. The student analyzes and evaluates software applications and other technology as they relate to personal health care. The student is expected to:

(A) compare and contrast remote (telehealth and e-medicine) and in-person health care and treatment;

(B) research and describe the effects of inequitable distribution of technology in health care, including medical facilities and home environments;

(C) differentiate between credible and false health information on the internet and social media;

(D) analyze the risks of sharing private health information; and

(E) evaluate the use and effectiveness of a personal fitness device or health application.

(8) Health literacy--navigating the health care system. The student examines and interprets various health insurance plans, government guidelines for health plans, and coverage of non-traditional health care. The student is expected to:

(A) compare and contrast insurance plans, including health maintenance organization (HMO), preferred provider organization (PPO), Medicare, Medicaid, and the Children's Health Insurance Program (CHIP);

(B) research and explain current federal, state, and local government guidelines for health insurance; and

(C) distinguish between insurable and non-insurable health services, including elective procedures and integrative and non-traditional health care.

(9) Health care occupations--working within the health care system. The student explores different careers in the health care industry and analyzes their various roles. The student is expected to:

(A) explore and describe a variety of careers in the health care industry; and

(B) analyze the various roles in the health care delivery system, including health care administration, health care professionals, public health professionals, corporate health care, and research and development.

(10) Public health--policy resources. The student understands the resources available for protecting and improving the health

of people and their local, national, and international communities. The student is expected to:

(A) identify the roles of leading public health organizations such as county health departments, the Centers for Disease Control and Prevention (CDC), and the World Health Organization (WHO);

(B) compare and contrast the characteristics of U.S. and global health issues;

(C) explain the ways that local, state, national, and international organizations support public health; and

(D) analyze the effects of public policy on the prevention of communicable and noncommunicable diseases.

(11) Public health--policy recommendations. The student applies public health resources to create solutions to daily health challenges. The student is expected to:

(A) research and discuss an emerging health issue or topic such as health equity or a pandemic;

(B) appraise the impact of leading health organizations on emerging health issues and topics;

(C) explore and explain the effects of environmental policy on public health;

(D) analyze the interconnectedness of different sectors of the health care industry and how they improve public health; and

(E) evaluate the impact of public health policy on emergency preparedness.

(12) Public health--mental health. The student recognizes the interconnectedness of mental health and public health. The student is expected to:

(A) examine the relationship between mental health and physical health;

(B) evaluate the importance of social interaction and its impact on health;

(C) describe the connection between mental health and the increase in homelessness and incarceration; and

(D) analyze the impact of social stigma on accessing mental health services, including barriers to treatment.

(13) Prevention--healthy living. The student evaluates the effects of health behaviors on preventing disease. The student is expected to:

(A) appraise the effect of biological family medical history (genetics), including maternal and paternal, on health outcomes or risk for illness;

(B) explore the benefits of regular checkups;

(C) classify primary, secondary, and tertiary preventions;

(D) define comorbidities and their impact on health;

(E) examine health risk factors such as sedentary lifestyle and poor diet that can lead to negative health outcomes;

(F) explore and describe preventative services covered by insurance plans;

(G) explain the importance of vaccines across the lifespan;

(H) evaluate the effectiveness of a personal health plan that includes nutrition, exercise, healthy weight, and sleep in preventing chronic disease; and

(I) evaluate the effectiveness of prevention campaigns on health behavior such as substance use, misuse, and abuse.

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

Filed with the Office of the Secretary of State on September 28, 2020.

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Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: November 8, 2020

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



CHAPTER 116. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR PHYSICAL EDUCATION

The State Board of Education (SBOE) proposes new §§116.11-116.17, 116.25-116.28, and 116.61-116.64, concerning Texas Essential Knowledge and Skills (TEKS) for physical education. The proposed new sections would update the standards to reflect current physical education research and best practices and align with changes to requirements in state statute.

BACKGROUND INFORMATION AND JUSTIFICATION: In accordance with statutory requirements that the SBOE by rule identify the essential knowledge and skills of each subject in the required curriculum, the SBOE follows a board-approved cycle to review and revise the essential knowledge and skills for each subject.

The review of the TEKS for physical education is taking place concurrently with the review of the health education TEKS. In March 2019, applications to serve on the physical education TEKS review work groups were posted on the Texas Education Agency (TEA) website. At the April 2019 meeting, SBOE members were asked to designate content advisors for the physical education TEKS review. In May 2019, TEA distributed a survey to collect information from educators regarding the review and revision of the physical education TEKS. TEA staff provided applications for the physical education review work groups to SBOE members on a monthly basis from June 2019 to May 2020.

In August 2019, physical education TEKS review content advisors met in a face-to-face meeting to develop consensus recommendations regarding revisions to the physical education TEKS to share with future work groups. At that time, the content advisors met with representatives from Work Group A to discuss the consensus recommendations. Work Group A convened in September 2019 to review survey results and recommend specific topics that should be included in the proposed framework developed by the content advisors. The work group was also charged with identifying where student expectations from the current TEKS would fit into the proposed framework. Work Group B was convened in October 2019 and was charged with identifying the grade levels where topics developed by Work

Group A should be taught. Work Group C was convened in December 2019 to draft recommendations for student expectations for two of the six strands in the proposed framework. Work Group D was convened at the end of February 2020 to draft recommendations for the remaining strands. Work Group E was convened for a face-to-face meeting in March 2020 and in subsequent virtual meetings in April-May 2020 to review the vertical alignment of the strands across all grade levels and to ensure horizontal alignment with the health education TEKS. In May 2020, content advisors were sent the draft recommendations for review and met virtually to develop consensus recommendations to be provided to the SBOE. At the June-July SBOE meeting, the board asked TEA to reconvene the content advisors to develop final recommendations for revisions to the physical education TEKS. The content advisors met virtually in July 2020 to develop final recommendations for revisions to the physical education TEKS for Kindergarten-Grade 8.

The proposed new sections would supersede the existing physical education TEKS for elementary, middle school, and high school in §§116.1-116.7, 116.21-116.24, and 116.51-116.56. The proposed new sections would be implemented beginning with the 2022-2023 school year.

The SBOE approved the proposed new sections for first reading and filing authorization at its September 11, 2020 meeting.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and support services, has determined that for the first five years the proposal is in effect (2021-2025), there are no fiscal implications to the state. However, in fiscal years 2019 and 2020, there was a fiscal impact to TEA to reimburse committee members for travel to review the physical education TEKS. For fiscal years 2019 and 2020, the combined estimated cost to TEA was \$72,928. There will also be implications for the TEA if the state develops professional development to help teachers and administrators understand the revised TEKS. Any professional development that is created would be based on whether the TEA received an appropriation for professional development in the next biennium.

There may be fiscal implications for school districts and charter schools to implement the proposed revisions to the TEKS, which may include the need for professional development and revisions to district-developed databases, curriculum, and scope and sequence documents. Since curriculum and instruction decisions are made at the local district level, it is difficult to estimate the fiscal impact on any given district.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would repeal existing regulations and create new regulations by revising the physical education TEKS required to be offered by school districts and charter schools.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand or limit an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be better alignment of the TEKS and coordination of the standards with the adoption of instructional materials. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no new data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins October 9, 2020, and ends November 13, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_\(TAC\)/Proposed_State_Board_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/SBOE_Rules_(TAC)/Proposed_State_Board_of_Education_Rules/). The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in November 2020 in accordance with the SBOE board operating policies and procedures. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on October 9, 2020.

SUBCHAPTER A. ELEMENTARY

19 TAC §§116.11 - 116.17

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.002(d), which requires the SBOE to by rule adopt essential knowledge and skills for the physical education curriculum.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §7.102(c)(4) and §28.002(a), (c), and (d).

§116.11. Implementation of Texas Essential Knowledge and Skills for Physical Education, Elementary School, Adopted 2020.

(a) The provisions of §§116.12-116.17 of this subchapter shall be implemented by school districts.

(b) No later than July 31, 2021, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills for physical education as adopted in §§116.12-116.17 of this subchapter.

(c) If the commissioner makes the determination that instructional materials funding has been made available under subsection (b) of this section, §§116.12-116.17 of this subchapter shall be implemented beginning with the 2022-2023 school year and apply to the 2022-2023 and subsequent school years.

(d) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (b) of this section, the commissioner shall determine no later than July 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that §§116.12-116.17 of this subchapter shall be implemented for the following school year.

(e) Sections 116.1-116.7 of this subchapter shall be superseded by the implementation of §§116.11-116.17 of this subchapter.

§116.12. Physical Education, Kindergarten, Adopted 2020.

(a) Introduction.

(1) Physical education is the foundation of a well-balanced curriculum. "It is an academic subject with a planned and sequential K-12 curriculum based on the national standards for physical education. Physical education provides cognitive content and instruction designed to develop motor skills, knowledge, and behaviors for physical activity and physical fitness. Supporting schools to establish daily physical education can provide students with the ability and confidence to be physically active for a lifetime" (Centers for Disease Control and Prevention (CDC), CDC Healthy Schools, May 2019).

(A) Physical education is designed to develop motor skills, knowledge, and behaviors for active living, physical fitness, sportsmanship, self-efficacy, and emotional intelligence. Physical education addresses the three domains of learning: cognitive skills related to the knowledge of movement, affective skills related to feelings and attitudes about movement, and psychomotor skills related to the manual or physical skills in movement literacy (SHAPE America, 2014, p. 4).

(B) Physically literate students have the ability to develop a lifetime of wellness. Physical literacy can be described as the ability to move with competence and confidence, to acquire knowledge and understanding, and to value and take responsibility for engagement in a wide variety of physical activities in multiple environments that benefit the healthy development of the whole person (Mandigo, Francis, Lodewyk & Lopez, 2012, and Whitehead, 2016).

(C) Research shows physical education is important to the development of the whole child and increases a lifetime of wellness. The Association for Supervision and Curriculum Development and the National Academy of Medicine support the belief that physical education, taught at a developmentally appropriate level, improves physical fitness and skill development, supports and improves academic achievement, reinforces self-discipline and teacher goal setting, reduces stress and increases blood flow to the brain, strengthens peer relationships, and improves self-confidence and self-esteem.

(2) The physical education standards are categorized into five strands that are of equal importance and value. The movement patterns and movement skills strand guides the physically literate student in the development of fundamental movement patterns, spatial and body awareness, and rhythmic activities. The performance strategies strand guides the physically literate student in utilizing strategies in fundamental components of games, activities, and outdoor and recreational pursuits. The health, physical activity, and fitness strand encompasses health-related fitness, environmental awareness, and safety practices that guide students to a health-enhancing, physically active lifestyle. The physically literate student demonstrates skills and mechanics used during physical activity and analyzes data used during fitness performance. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The social and emotional health strand incorporates working with others, responding to class expectations, and applying self-management skills. The lifetime wellness strand engages students in physical activity for the purposes of self-expression, enjoyment, and challenge.

(3) Quality physical education programs include a comprehensive curriculum, physical activity, safety policies, safe environments, qualified physical education specialists instructing the class, and student assessment and do not use physical activity as a form of punishment. Texas state law outlines state requirements that support these essential components. In accordance with state law, physical education curriculum and instruction must be sequential, developmentally appropriate, and designed to meet the needs of all students, including students with disabilities and of all physical ability levels. At least 50% of the physical education class must be used for actual student physical activity at a moderate or vigorous intensity level, which aligns with additional state requirements for a minimum number of minutes for moderate or vigorous physical activity in Kindergarten-Grade 8. Required student-to-teacher ratios of 45-to-1 ensure the proper supervision and safety of students in physical education classes, and school districts must identify how student safety will be maintained if that ratio is exceeded. State law also requires that school districts and charter schools annually assess the physical fitness of students in Grade 3 or higher who are enrolled in a physical education course.

(4) Access to age-appropriate physical education equipment is essential to quality instruction. Basic, age-appropriate equipment for all students is imperative for the development of motor skills, manipulative skills, and eventually becoming a physically literate lifelong learner. Without basic, age-appropriate equipment, students will not have the necessary experiences to become physically literate, lifelong learners. All equipment should be age appropriate for the grade levels to be taught. The term "age appropriate" means that the equipment must include a variety of sizes, weights, and textures to provide differentiated experiences for various ages and ability levels of students. Basic equipment for quality instruction includes, but is not limited to, the following list: sports balls, including fleece balls, foam balls, tennis balls, beach balls, volleyballs, basketballs, soccer balls, footballs, baseballs, softballs, and unity balls; striking implements, including golf clubs, hockey sticks, baseball bats, pool noodles, tennis rackets, racquetball rackets, pickleball paddles, lollipop paddles, and ping pong paddles; goals for various sports, including soccer goals and basketball goals; nets and standards for a variety of sports, including volleyball, pickleball, badminton, and tennis; fitness-related equipment; other basic equipment, including scarves, bean bags, hula hoops, jump ropes, and scooters; classroom management equipment, including cones, mats, pinnies, poly spots, and ball inflators; and technology, including microphones, projectors, speakers, heart rate monitors, timers, and other technology appropriate for instruction.

(5) In Kindergarten-Grade 5, students learn fundamental movement skills and cues; begin to understand that the body functions

in relation to physical activity; develop body control; become aware of the health-related fitness components; begin applying strategies, rules, etiquette, and conflict resolution techniques in dynamic situations; and identify safety practices and protocols while being physically active. Students engage in activities that develop basic levels of strength, endurance, and flexibility. Activities are presented to complement a student's natural inclination to view physical activity as challenging and enjoyable.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Movement patterns and movement skills--locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate locomotor skills. The student is expected to:

(A) practice proper foot patterns and form and maintain balance while hopping, galloping, running, sliding, skipping, and walking;

(B) practice correct technique while jumping in place, forward and backward, and side to side;

(C) demonstrate visual tracking and tracing, simple balancing, cross lateralization, and sequencing of two skills; and

(D) spin and roll at different levels, speeds, and positions.

(2) Movement patterns and movement skills--non-locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate non-locomotor skills. The student is expected to:

(A) maintain balance while bearing weight using different bases of support; and

(B) practice bending, stretching, twisting, and curling while maintaining balance.

(3) Movement patterns and movement skills--manipulative skills. The physically literate student demonstrates competency in developmentally appropriate manipulative skills. The student is expected to:

(A) self-toss an object and throw underhand with opposite foot forward;

(B) catch a self-dropped ball before it bounces twice and catch a self-tossed object before it hits the ground;

(C) practice dribbling with one hand;

(D) tap a ball using the inside of the foot;

(E) kick a stationary ball from a stationary position;

(F) volley a lightweight object to self;

(G) strike a lightweight object using hand or short-handled implement;

(H) jump at least once with a self-turned rope; and

(I) demonstrate swinging a long rope back and forth with a partner.

(4) Movement patterns and movement skills--spatial and body awareness. The physically literate student demonstrates competency in spatial and body awareness, including pathways, shapes, levels, speed, direction, and force. The student is expected to:

(A) differentiate between personal and general space while moving to simple rhythms and maintaining balance;

(B) demonstrate a variety of pathways, shapes, and levels while maintaining balance; and

(C) demonstrate clear contrast when moving in different speeds and directions while maintaining balance.

(5) Movement patterns and movement skills--rhythmic activities. The physically literate student demonstrates competency in rhythmic activities and rhythmic combinations. The student is expected to mirror and follow teacher movement and basic rhythm patterns.

(6) Performance strategies--games and activities. The physically literate student demonstrates competency in performance strategies in invasion, target, net or wall, fielding, striking, and cooperative games. The student is expected to:

(A) demonstrate the skills of chasing, fleeing, and dodging to avoid or catch others during a variety of games while maintaining appropriate space and speed;

(B) practice the correct techniques for motor development skills following teacher direction; and

(C) demonstrate safe practices by following rules, procedures, and directions during class and activities.

(7) Performance strategies--outdoor and recreational pursuits. The physically literate student demonstrates competency in outdoor and recreational pursuits. The student is expected to discuss outdoor recreation, health, and fitness activities in school and the community.

(8) Health, physical activity, and fitness--fitness principles. The physically literate student demonstrates and recognizes a health-enhancing, physically active lifestyle. The student is expected to:

(A) discuss the immediate effect of physical activity on the heart and lungs;

(B) describe the importance of daily active play; and

(C) participate in exercises that promote health-related fitness.

(9) Health, physical activity, and fitness--analyze data. The physically literate student demonstrates competency in the ability to analyze data used during fitness performance. The student is expected to:

(A) describe the importance of goal setting; and

(B) identify how to measure improvement in physical skills such as counting the number of times a student can hop while maintaining balance.

(10) Health, physical activity, and fitness--nutrition and hydration. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The student is expected to:

(A) recognize that eating a variety of foods produces energy for physical activity; and

(B) identify the best source of hydration during physical activity.

(11) Health, physical activity, and fitness--environmental awareness and safety practices. The physically literate student demonstrates competency in environmental awareness and understands safety practices. The student is expected to:

(A) identify proper clothing and footwear for physical activity; and

(B) identify safety precautions, including pedestrian, water, sun, and cycling safety, with teacher guidance.

(12) Social and emotional health--personal responsibility and self-management. The physically literate student demonstrates competency in personal responsibility. The student is expected to:

(A) give examples of consequences resulting from personal actions;

(B) demonstrate respect for differences and similarities in abilities of self and others; and

(C) identify personal impulses and emotions with teacher guidance.

(13) Social and emotional health--resolving conflict and social interaction. The physically literate student demonstrates competency in resolving conflict and social interaction. The student is expected to:

(A) demonstrate respect and cooperation through words and actions with teacher guidance; and

(B) communicate feelings and thoughts appropriately with teacher guidance.

(14) Social and emotional health--perseverance. The physically literate student perseveres while addressing challenges. The student is expected to explain why some physical activities are challenging.

(15) Social and emotional health--accepting and providing constructive feedback. The physically literate student accepts and provides constructive feedback. The student is expected to listen respectfully and respond appropriately to corrective feedback with teacher guidance.

(16) Lifetime wellness--application of lifetime wellness. The physically literate student identifies the value of lifetime wellness. The student is expected to:

(A) participate in moderate to vigorous physical activity on a regular basis; and

(B) identify physical activity for personal enjoyment with teacher guidance.

§116.13. Physical Education, Grade 1, Adopted 2020.

(a) Introduction.

(1) Physical education is the foundation of a well-balanced curriculum. "It is an academic subject with a planned and sequential K-12 curriculum based on the national standards for physical education. Physical education provides cognitive content and instruction designed to develop motor skills, knowledge, and behaviors for physical activity and physical fitness. Supporting schools to establish daily physical education can provide students with the ability and confidence to be physically active for a lifetime" (Centers for Disease Control and Prevention (CDC), CDC Healthy Schools, May 2019).

(A) Physical education is designed to develop motor skills, knowledge, and behaviors for active living, physical fitness, sportsmanship, self-efficacy, and emotional intelligence. Physical education addresses the three domains of learning: cognitive skills related to the knowledge of movement, affective skills related to feelings and attitudes about movement, and psychomotor skills related to the manual or physical skills in movement literacy (SHAPE America, 2014, p. 4).

(B) Physically literate students have the ability to develop a lifetime of wellness. Physical literacy can be described as the ability to move with competence and confidence, to acquire knowledge and understanding, and to value and take responsibility for engagement in a wide variety of physical activities in multiple environments that benefit the healthy development of the whole person (Mandigo, Francis, Lodewyk & Lopez, 2012, and Whitehead, 2016).

(C) Research shows physical education is important to the development of the whole child and increases a lifetime of wellness. The Association for Supervision and Curriculum Development and the National Academy of Medicine support the belief that physical education, taught at a developmentally appropriate level, improves physical fitness and skill development, supports and improves academic achievement, reinforces self-discipline and teacher goal setting, reduces stress and increases blood flow to the brain, strengthens peer relationships, and improves self-confidence and self-esteem.

(2) The physical education standards are categorized into five strands that are of equal importance and value. The movement patterns and movement skills strand guides the physically literate student in the development of fundamental movement patterns, spatial and body awareness, and rhythmic activities. The performance strategies strand guides the physically literate student in utilizing strategies in fundamental components of games, activities, and outdoor and recreational pursuits. The health, physical activity, and fitness strand encompasses health-related fitness, environmental awareness, and safety practices that guide students to a health-enhancing, physically active lifestyle. The physically literate student demonstrates skills and mechanics used during physical activity and analyzes data used during fitness performance. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The social and emotional health strand incorporates working with others, responding to class expectations, and applying self-management skills. The lifetime wellness strand engages students in physical activity for the purposes of self-expression, enjoyment, and challenge.

(3) Quality physical education programs include a comprehensive curriculum, physical activity, safety policies, safe environments, qualified physical education specialists instructing the class, and student assessment and do not use physical activity as a form of punishment. Texas state law outlines state requirements that support these essential components. In accordance with state law, physical education curriculum and instruction must be sequential, developmentally appropriate, and designed to meet the needs of all students, including students with disabilities and of all physical ability levels. At least 50% of the physical education class must be used for actual student physical activity at a moderate or vigorous intensity level, which aligns with additional state requirements for a minimum number of minutes for moderate or vigorous physical activity in Kindergarten-Grade 8. Required student-to-teacher ratios of 45-to-1 ensure the proper supervision and safety of students in physical education classes, and school districts must identify how student safety will be maintained if that ratio is exceeded. State law also requires that school districts and charter schools annually assess the physical fitness of students in Grade 3 or higher who are enrolled in a physical education course.

(4) Access to age-appropriate physical education equipment is essential to quality instruction. Basic, age-appropriate equipment for all students is imperative for the development of motor skills, manipulative skills, and eventually becoming a physically literate lifelong learner. Without basic, age-appropriate equipment, students will not have the necessary experiences to become physically literate, lifelong learners. All equipment should be age appropriate for the grade levels to be taught. The term "age appropriate" means that the equipment must include a variety of sizes, weights, and textures to

provide differentiated experiences for various ages and ability levels of students. Basic equipment for quality instruction includes, but is not limited to, the following list: sports balls, including fleece balls, foam balls, tennis balls, beach balls, volleyballs, basketballs, soccer balls, footballs, baseballs, softballs, and unity balls; striking implements, including golf clubs, hockey sticks, baseball bats, pool noodles, tennis rackets, racquetball rackets, pickleball paddles, lollipop paddles, and ping pong paddles; goals for various sports, including soccer goals and basketball goals; nets and standards for a variety of sports, including volleyball, pickleball, badminton, and tennis; fitness-related equipment; other basic equipment, including scarves, bean bags, hula hoops, jump ropes, and scooters; classroom management equipment, including cones, mats, pinnies, poly spots, and ball inflators; and technology, including microphones, projectors, speakers, heart rate monitors, timers, and other technology appropriate for instruction.

(5) In Kindergarten-Grade 5, students learn fundamental movement skills and cues; begin to understand that the body functions in relation to physical activity; develop body control; become aware of the health-related fitness components; begin applying strategies, rules, etiquette, and conflict resolution techniques in dynamic situations; and identify safety practices and protocols while being physically active. Students engage in activities that develop basic levels of strength, endurance, and flexibility. Activities are presented to complement a student's natural inclination to view physical activity as challenging and enjoyable.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Movement patterns and movement skills--locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate locomotor skills. The student is expected to:

(A) practice proper foot patterns and maintain balance while hopping, galloping, running, sliding, and skipping;

(B) practice correct technique while jumping in place, forward and backward, side to side, and quarter turns while maintaining balance;

(C) demonstrate visual tracking and tracing, simple balancing, cross lateralization, and sequencing of three skills; and

(D) spin and roll at different levels, speeds, and positions.

(2) Movement patterns and movement skills--non-locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate non-locomotor skills. The student is expected to:

(A) maintain balance standing on one foot for five seconds while placing the free leg in a variety of different positions; and

(B) demonstrate bending, stretching, twisting, curling, and swaying while maintaining balance.

(3) Movement patterns and movement skills--manipulative skills. The physically literate student demonstrates competency in developmentally appropriate manipulative skills. The student is expected to:

(A) demonstrate key elements of self-tossing and throwing underhand while stepping with the opposite foot forward to a target;

(B) demonstrate key elements of catching an accurately and softly thrown large ball and a self-tossed object;

(C) practice dribbling continuously with one hand while stationary using preferred hand;

(D) tap or dribble a ball using the inside of the foot while walking;

(E) approach and kick a stationary ball;

(F) volley a lightweight object to self and partner;

(G) strike an object using a short-handled implement, projecting the object upward;

(H) jump consecutively with a self-turned rope; and

(I) turn a long rope.

(4) Movement patterns and movement skills--spatial and body awareness. The physically literate student demonstrates competency in spatial and body awareness, including pathways, shapes, levels, speed, direction, and force. The student is expected to:

(A) move in personal and general space to rhythms and beats while maintaining balance;

(B) travel over, under, around, and through using a variety of pathways, shapes, and levels; and

(C) differentiate between fast and slow speeds, strong and light force, and various directions.

(5) Movement patterns and movement skills--rhythmic activities. The physically literate student demonstrates competency in rhythmic activities and rhythmic combinations. The student is expected to mirror and follow teacher movement and basic rhythm patterns in four counts.

(6) Performance strategies--games and activities. The physically literate student demonstrates competency in performance strategies in invasion, target, net or wall, fielding, striking, and cooperative games. The student is expected to:

(A) apply the skills of chasing, fleeing, and dodging to avoid or catch others while maintaining appropriate space and speed during a variety of games;

(B) identify and follow teacher instructions to improve performance for specific motor development skills; and

(C) demonstrate safe practices by using equipment appropriately and respecting personal space with teacher guidance.

(7) Performance strategies--outdoor and recreational pursuits. The physically literate student demonstrates competency in outdoor and recreational pursuits. The student is expected to identify outdoor recreation, health, and fitness activities in school and the community.

(8) Health, physical activity, and fitness--fitness principles. The physically literate student demonstrates and recognizes a health-enhancing, physically active lifestyle. The student is expected to:

(A) identify the immediate effect of physical activity on the heart and lungs;

(B) explain the importance of warm-ups and cool-downs for physical activity; and

(C) demonstrate exercises that promote health-related fitness.

(9) Health, physical activity, and fitness--analyze data. The physically literate student demonstrates competency in the ability to analyze data used during fitness performance. The student is expected to:

(A) develop a health-related goal with teacher guidance; and

(B) explain how to measure improvement in physical skills with or without a measuring tool.

(10) Health, physical activity, and fitness--nutrition and hydration. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The student is expected to:

(A) identify healthy foods that produce energy for physical activity; and

(B) identify different hydration options, including water, that enhance physical activity.

(11) Health, physical activity, and fitness--environmental awareness and safety practices. The physically literate student demonstrates competency in environmental awareness and understands safety practices. The student is expected to:

(A) identify proper clothing, footwear, and safety equipment for a variety of physical activities; and

(B) identify and describe safety precautions, including pedestrian, water, sun, and cycling safety with teacher guidance.

(12) Social and emotional health--personal responsibility and self-management. The physically literate student demonstrates competency in personal responsibility. The student is expected to:

(A) describe how personal actions may have positive or negative consequences;

(B) demonstrate respect for differences and similarities in the abilities of self and others; and

(C) identify personal impulses and emotions with teacher guidance.

(13) Social and emotional health--resolving conflict and social interaction. The physically literate student demonstrates competency in resolving conflict and social interaction. The student is expected to:

(A) demonstrate respect and cooperation through words and actions with self and others with teacher guidance; and

(B) communicate feelings and thoughts appropriately with teacher guidance.

(14) Social and emotional health--perseverance. The physically literate student perseveres while addressing challenges. The student is expected to explain how, with practice, challenges in physical activities can turn into successes.

(15) Social and emotional health--accepting and providing constructive feedback. The physically literate student accepts and provides constructive feedback. The student is expected to listen respectfully and respond appropriately to corrective feedback with teacher guidance.

(16) Lifetime wellness--application of lifetime wellness. The physically literate student identifies the value of lifetime wellness. The student is expected to:

(A) participate in moderate to vigorous physical activity on a regular basis; and

(B) describe physical activity for personal enjoyment with teacher guidance.

§116.14. Physical Education, Grade 2, Adopted 2020.

(a) Introduction.

(1) Physical education is the foundation of a well-balanced curriculum. "It is an academic subject with a planned and sequential K-12 curriculum based on the national standards for physical education. Physical education provides cognitive content and instruction designed to develop motor skills, knowledge, and behaviors for physical activity and physical fitness. Supporting schools to establish daily physical education can provide students with the ability and confidence to be physically active for a lifetime" (Centers for Disease Control and Prevention (CDC), CDC Healthy Schools, May 2019).

(A) Physical education is designed to develop motor skills, knowledge, and behaviors for active living, physical fitness, sportsmanship, self-efficacy, and emotional intelligence. Physical education addresses the three domains of learning: cognitive skills related to the knowledge of movement, affective skills related to feelings and attitudes about movement, and psychomotor skills related to the manual or physical skills in movement literacy (SHAPE America, 2014, p. 4).

(B) Physically literate students have the ability to develop a lifetime of wellness. Physical literacy can be described as the ability to move with competence and confidence, to acquire knowledge and understanding, and to value and take responsibility for engagement in a wide variety of physical activities in multiple environments that benefit the healthy development of the whole person (Mandigo, Francis, Lodewyk & Lopez, 2012, and Whitehead, 2016).

(C) Research shows physical education is important to the development of the whole child and increases a lifetime of wellness. The Association for Supervision and Curriculum Development and the National Academy of Medicine support the belief that physical education, taught at a developmentally appropriate level, improves physical fitness and skill development, supports and improves academic achievement, reinforces self-discipline and teacher goal setting, reduces stress and increases blood flow to the brain, strengthens peer relationships, and improves self-confidence and self-esteem.

(2) The physical education standards are categorized into five strands that are of equal importance and value. The movement patterns and movement skills strand guides the physically literate student in the development of fundamental movement patterns, spatial and body awareness, and rhythmic activities. The performance strategies strand guides the physically literate student in utilizing strategies in fundamental components of games, activities, and outdoor and recreational pursuits. The health, physical activity, and fitness strand encompasses health-related fitness, environmental awareness, and safety practices that guide students to a health-enhancing, physically active lifestyle. The physically literate student demonstrates skills and mechanics used during physical activity and analyzes data used during fitness performance. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The social and emotional health strand incorporates working with others, responding to class expectations, and applying self-management skills. The lifetime wellness strand engages students in physical activity for the purposes of self-expression, enjoyment, and challenge.

(3) Quality physical education programs include a comprehensive curriculum, physical activity, safety policies, safe environments, qualified physical education specialists instructing the class, and student assessment and do not use physical activity as a form of punishment. Texas state law outlines state requirements that support these essential components. In accordance with state law, physical educa-

tion curriculum and instruction must be sequential, developmentally appropriate, and designed to meet the needs of all students, including students with disabilities and of all physical ability levels. At least 50% of the physical education class must be used for actual student physical activity at a moderate or vigorous intensity level, which aligns with additional state requirements for a minimum number of minutes for moderate or vigorous physical activity in Kindergarten-Grade 8. Required student-to-teacher ratios of 45-to-1 ensure the proper supervision and safety of students in physical education classes, and school districts must identify how student safety will be maintained if that ratio is exceeded. State law also requires that school districts and charter schools annually assess the physical fitness of students in Grade 3 or higher who are enrolled in a physical education course.

(4) Access to age-appropriate physical education equipment is essential to quality instruction. Basic, age-appropriate equipment for all students is imperative for the development of motor skills, manipulative skills, and eventually becoming a physically literate lifelong learner. Without basic, age-appropriate equipment, students will not have the necessary experiences to become physically literate, lifelong learners. All equipment should be age appropriate for the grade levels to be taught. The term "age appropriate" means that the equipment must include a variety of sizes, weights, and textures to provide differentiated experiences for various ages and ability levels of students. Basic equipment for quality instruction includes, but is not limited to, the following list: sports balls, including fleece balls, foam balls, tennis balls, beach balls, volleyballs, basketballs, soccer balls, footballs, baseballs, softballs, and unity balls; striking implements, including golf clubs, hockey sticks, baseball bats, pool noodles, tennis rackets, racquetball rackets, pickleball paddles, lollipop paddles, and ping pong paddles; goals for various sports, including soccer goals and basketball goals; nets and standards for a variety of sports, including volleyball, pickleball, badminton, and tennis; fitness-related equipment; other basic equipment, including scarves, bean bags, hula hoops, jump ropes, and scooters; classroom management equipment, including cones, mats, pinnies, poly spots, and ball inflators; and technology, including microphones, projectors, speakers, heart rate monitors, timers, and other technology appropriate for instruction.

(5) In Kindergarten-Grade 5, students learn fundamental movement skills and cues; begin to understand that the body functions in relation to physical activity; develop body control; become aware of the health-related fitness components; begin applying strategies, rules, etiquette, and conflict resolution techniques in dynamic situations; and identify safety practices and protocols while being physically active. Students engage in activities that develop basic levels of strength, endurance, and flexibility. Activities are presented to complement a student's natural inclination to view physical activity as challenging and enjoyable.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Movement patterns and movement skills--locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate skills. The student is expected to:

(A) practice and apply correct technique while hopping, galloping, running, sliding, and skipping;

(B) demonstrate correct jumping and landing technique while consecutively jumping in place, forward and backward, side to side, half turns, and in tuck position;

(C) demonstrate basic balancing, cross lateralization, and sequencing of three skills with repetition; and

(D) spin and roll at different levels, speeds, and positions.

(2) Movement patterns and movement skills--non-locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate skills. The student is expected to:

(A) demonstrate maintaining balance standing on one foot while placing the free leg in a variety of different positions for eight seconds; and

(B) differentiate between bending, stretching, twisting, curling, pushing, pulling, and swaying.

(3) Movement patterns and movement skills--manipulative skills. The physically literate student demonstrates competency in developmentally appropriate manipulative skills. The student is expected to:

(A) demonstrate key elements in underhand throwing to a partner and overhand throwing to a target with opposite foot forward;

(B) demonstrate key elements when catching an accurately and softly thrown large ball without trapping against the body;

(C) demonstrate key elements of hand dribbling while walking;

(D) dribble a ball with control using both feet while walking;

(E) kick a moving ball using a continuous running approach;

(F) volley a lightweight object with consecutive hits to self or partner;

(G) strike a stationary object off the ground or an elevated surface with a hand or short- or long-handled implement consecutively;

(H) jump forward and backward with a self-turned rope; and

(I) demonstrate turning and jumping a long rope.

(4) Movement patterns and movement skills--spatial and body awareness. The physically literate student demonstrates competency in spatial and body awareness, including pathways, shapes, levels, speed, direction, and force. The student is expected to:

(A) demonstrate locomotor, non-locomotor, and manipulative skills safely in personal and general space;

(B) combine pathways, shapes, and levels into simple sequences; and

(C) combine speed and direction as directed by the teacher.

(5) Movement patterns and movement skills--rhythmic activities. The physically literate student demonstrates competency in rhythmic activities and rhythmic combinations. The student is expected to demonstrate simple rhythmic sequences using various locomotor and coordination skills in eight counts.

(6) Performance strategies--games and activities. The physically literate student demonstrates competency in performance strategies in invasion, target, net or wall, fielding, striking, and cooperative games. The student is expected to:

(A) apply the skills of chasing, fleeing, and dodging to avoid or catch others during a variety of games at low, middle, and high levels with appropriate speed and direction;

(B) participate in appropriate drills and activities to enhance the learning of specific motor development skills; and

(C) demonstrate safe practices by using equipment appropriately and respecting personal space with minimal teacher guidance.

(7) Performance strategies--outdoor and recreational pursuits. The physically literate student demonstrates competency in outdoor and recreational pursuits. The student is expected to describe outdoor recreation, health, and fitness activities in school and the community.

(8) Health, physical activity, and fitness--fitness principles. The physically literate student demonstrates and recognizes a health-enhancing, physically active lifestyle. The student is expected to:

(A) list the benefits of regular physical activity on the heart and lungs;

(B) define frequency and endurance as it relates to physical activities; and

(C) demonstrate correct technique of exercises that promote health-related fitness.

(9) Health, physical activity, and fitness--analyze data. The physically literate student demonstrates competency in the ability to analyze data used during fitness performance. The student is expected to:

(A) develop health-and skill-related goals with teacher guidance; and

(B) identify how to measure improvement and track progress in physical skills with a measuring tool.

(10) Health, physical activity, and fitness--nutrition and hydration. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The student is expected to:

(A) identify the types of food that produce energy to enhance physical activity; and

(B) explain the need for proper hydration to enhance physical activity.

(11) Health, physical activity, and fitness--environmental awareness and safety practices. The physically literate student demonstrates competency in environmental awareness and understands safety practices. The student is expected to:

(A) explain how proper attire and safety equipment promote safe participation and prevent injury in a variety of physical activities; and

(B) identify and explain safety precautions, including pedestrian, water, sun, cycling, and skating safety.

(12) Social and emotional health--personal responsibility and self-management. The physically literate student demonstrates competency in personal responsibility. The student is expected to:

(A) differentiate between the positive and negative consequences of personal actions;

(B) explain and demonstrate respect for differences and similarities in abilities of self and others; and

(C) identify self-management skills to control personal impulses and emotions.

(13) Social and emotional health--resolving conflict and social interaction. The physically literate student demonstrates competency in resolving conflict and social interaction. The student is expected to:

(A) identify the causes of problems and propose solutions with teacher guidance; and

(B) communicate feelings and thoughts appropriately without cue.

(14) Social and emotional health--perseverance. The physically literate student perseveres while addressing challenges. The student is expected to explain how practicing challenging physical activities can build confidence and minimize frustration when learning skills.

(15) Social and emotional health--accepting and providing constructive feedback. The physically literate student accepts and provides constructive feedback. The student is expected to listen respectfully and respond appropriately to specific corrective feedback with teacher guidance.

(16) Lifetime wellness--application of lifetime wellness. The physically literate student identifies the value of lifetime wellness. The student is expected to:

(A) participate in moderate to vigorous physical activity on a regular basis; and

(B) identify and select physical activities for personal enjoyment.

§116.15. Physical Education, Grade 3, Adopted 2020.

(a) Introduction.

(1) Physical education is the foundation of a well-balanced curriculum. "It is an academic subject with a planned and sequential K-12 curriculum based on the national standards for physical education. Physical education provides cognitive content and instruction designed to develop motor skills, knowledge, and behaviors for physical activity and physical fitness. Supporting schools to establish daily physical education can provide students with the ability and confidence to be physically active for a lifetime" (Centers for Disease Control and Prevention (CDC), CDC Healthy Schools, May 2019).

(A) Physical education is designed to develop motor skills, knowledge, and behaviors for active living, physical fitness, sportsmanship, self-efficacy, and emotional intelligence. Physical education addresses the three domains of learning: cognitive skills related to the knowledge of movement, affective skills related to feelings and attitudes about movement, and psychomotor skills related to the manual or physical skills in movement literacy (SHAPE America, 2014, p. 4).

(B) Physically literate students have the ability to develop a lifetime of wellness. Physical literacy can be described as the ability to move with competence and confidence, to acquire knowledge and understanding, and to value and take responsibility for engagement in a wide variety of physical activities in multiple environments that benefit the healthy development of the whole person (Mandigo, Francis, Lodewyk & Lopez, 2012, and Whitehead, 2016).

(C) Research shows physical education is important to the development of the whole child and increases a lifetime of wellness. The Association for Supervision and Curriculum Development and the National Academy of Medicine support the belief that physical education, taught at a developmentally appropriate level, improves physical fitness and skill development, supports and improves aca-

ademic achievement, reinforces self-discipline and teacher goal setting, reduces stress and increases blood flow to the brain, strengthens peer relationships, and improves self-confidence and self-esteem.

(2) The physical education standards are categorized into five strands that are of equal importance and value. The movement patterns and movement skills strand guides the physically literate student in the development of fundamental movement patterns, spatial and body awareness, and rhythmic activities. The performance strategies strand guides the physically literate student in utilizing strategies in fundamental components of games, activities, and outdoor and recreational pursuits. The health, physical activity, and fitness strand encompasses health-related fitness, environmental awareness, and safety practices that guide students to a health-enhancing, physically active lifestyle. The physically literate student demonstrates skills and mechanics used during physical activity and analyzes data used during fitness performance. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The social and emotional health strand incorporates working with others, responding to class expectations, and applying self-management skills. The lifetime wellness strand engages students in physical activity for the purposes of self-expression, enjoyment, and challenge.

(3) Quality physical education programs include a comprehensive curriculum, physical activity, safety policies, safe environments, qualified physical education specialists instructing the class, and student assessment and do not use physical activity as a form of punishment. Texas state law outlines state requirements that support these essential components. In accordance with state law, physical education curriculum and instruction must be sequential, developmentally appropriate, and designed to meet the needs of all students, including students with disabilities and of all physical ability levels. At least 50% of the physical education class must be used for actual student physical activity at a moderate or vigorous intensity level, which aligns with additional state requirements for a minimum number of minutes for moderate or vigorous physical activity in Kindergarten-Grade 8. Required student-to-teacher ratios of 45-to-1 ensure the proper supervision and safety of students in physical education classes, and school districts must identify how student safety will be maintained if that ratio is exceeded. State law also requires that school districts and charter schools annually assess the physical fitness of students in Grade 3 or higher who are enrolled in a physical education course.

(4) Access to age-appropriate physical education equipment is essential to quality instruction. Basic, age-appropriate equipment for all students is imperative for the development of motor skills, manipulative skills, and eventually becoming a physically literate lifelong learner. Without basic, age-appropriate equipment, students will not have the necessary experiences to become physically literate, lifelong learners. All equipment should be age appropriate for the grade levels to be taught. The term "age appropriate" means that the equipment must include a variety of sizes, weights, and textures to provide differentiated experiences for various ages and ability levels of students. Basic equipment for quality instruction includes, but is not limited to, the following list: sports balls, including fleece balls, foam balls, tennis balls, beach balls, volleyballs, basketballs, soccer balls, footballs, baseballs, softballs, and unity balls; striking implements, including golf clubs, hockey sticks, baseball bats, pool noodles, tennis rackets, racquetball rackets, pickleball paddles, lollipop paddles, and ping pong paddles; goals for various sports, including soccer goals and basketball goals; nets and standards for a variety of sports, including volleyball, pickleball, badminton, and tennis; fitness-related equipment; other basic equipment, including scarves, bean bags, hula hoops, jump ropes, and scooters; classroom management equipment, including cones, mats, pinnies, poly spots, and ball inflators; and

technology, including microphones, projectors, speakers, heart rate monitors, timers, and other technology appropriate for instruction.

(5) In Kindergarten-Grade 5, students learn fundamental movement skills and cues; begin to understand that the body functions in relation to physical activity; develop body control; become aware of the health-related fitness components; begin applying strategies, rules, etiquette, and conflict resolution techniques in dynamic situations; and identify safety practices and protocols while being physically active. Students engage in activities that develop basic levels of strength, endurance, and flexibility. Activities are presented to complement a student's natural inclination to view physical activity as challenging and enjoyable.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Movement patterns and movement skills--locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate locomotor skills. The student is expected to:

(A) demonstrate correct technique while hopping, galloping, running, sliding, skipping, and leaping;

(B) demonstrate correct jumping and landing technique from different heights;

(C) demonstrate intermediate balancing to include equipment, cross lateralization using a variety of coordination skills, and sequencing of three skills with repetition; and

(D) spin and roll with control at different levels, speeds, and positions with manipulatives.

(2) Movement patterns and movement skills--non-locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate non-locomotor skills. The student is expected to:

(A) demonstrate moving in and out of a balanced position with control during dynamic activities; and

(B) combine bending, stretching, twisting, curling, pushing, pulling, and swaying in a variety of activities.

(3) Movement patterns and movement skills--manipulative skills. The physically literate student demonstrates competency in developmentally appropriate manipulative skills. The student is expected to:

(A) demonstrate key elements in underhand and overhand throwing to a partner with accuracy;

(B) demonstrate key elements when catching an accurately and softly thrown large ball with a partner without trapping against the body;

(C) demonstrate key elements of hand dribbling while slowly jogging and maintaining ball control;

(D) dribble a ball with control using both feet while slowly jogging;

(E) kick a moving ball on the ground and in the air using a continuous running approach;

(F) demonstrate correct technique in volleying to a wall or partner and over an object or net;

(G) demonstrate correct technique when striking a moving object over a low net or to a wall with a hand or short- or long-handled implement;

(H) jump a self-turned rope using a variety of basic skills; and

(I) enter and exit a turned long rope using basic jumping skills.

(4) Movement patterns and movement skills--spatial and body awareness. The physically literate student demonstrates competency in spatial and body awareness, including pathways, shapes, levels, speed, direction, and force. The student is expected to:

(A) demonstrate locomotor, non-locomotor, and manipulative skills safely in personal and open space;

(B) combine pathways and levels into various movement patterns in a wide variety of physical activities; and

(C) combine speed, direction, and force as directed by teacher.

(5) Movement patterns and movement skills--rhythmic activities. The physically literate student demonstrates competency in rhythmic activities and rhythmic combinations. The student is expected to demonstrate various rhythmic combinations of locomotor skills of eight counts in repeatable patterns when leading or following a partner.

(6) Performance strategies--games and activities. The physically literate student demonstrates competency in performance strategies in invasion, target, net or wall, fielding, striking, and cooperative games. The student is expected to:

(A) combine the skills of chasing, fleeing, and dodging to avoid or catch others during a variety of games;

(B) demonstrate specific movement skills to improve performance in designated dynamic activities; and

(C) explain and follow rules, procedures, and safe practices during games and activities.

(7) Performance strategies--outdoor and recreational pursuits. The physically literate student demonstrates competency in outdoor and recreational pursuits. The student is expected to participate in introductory outdoor recreational skills and activities such as rock climbing, hiking, paddle sports, disc golf, or challenge courses.

(8) Health, physical activity, and fitness--fitness principles. The physically literate student demonstrates and recognizes a health-enhancing, physically active lifestyle. The student is expected to:

(A) describe the benefits of regular physical activity, including stress management;

(B) identify the importance of frequency and intensity during endurance activities; and

(C) explain and demonstrate the correct techniques of health-related fitness components.

(9) Health, physical activity, and fitness--analyze data. The physically literate student demonstrates competency in the ability to analyze data used during fitness performance. The student is expected to:

(A) describe the importance of setting personal fitness goals in improving health-related fitness; and

(B) identify how to measure improvement and track progress for health-related fitness.

(10) Health, physical activity, and fitness--nutrition and hydration. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The student is expected to:

(A) differentiate between healthy and unhealthy foods and their impact on sustainable energy for physical activity; and

(B) differentiate between water and processed sugar or high-calorie drinks and their impact on sustainable energy for physical activity.

(11) Health, physical activity, and fitness--environmental awareness and safety practices. The physically literate student demonstrates competency in environmental awareness and understands safety practices. The student is expected to:

(A) select proper attire and safety equipment that promote safe participation and prevent injury in a variety of physical activities; and

(B) exhibit correct safety precautions, including pedestrian, water, sun, cycling, skating, and scooter safety.

(12) Social and emotional health--personal responsibility and self-management. The physically literate student demonstrates competency in personal responsibility. The student is expected to:

(A) explain that personal actions have consequences for self and others;

(B) demonstrate respect for differences and similarities in abilities of self and others; and

(C) explain and demonstrate self-management skills to control personal impulses and emotions.

(13) Social and emotional health--resolving conflict and social interaction. The physically literate student demonstrates competency in resolving conflict and social interaction. The student is expected to:

(A) demonstrate respect and cooperation through words and actions during various group activities; and

(B) identify the feelings of others.

(14) Social and emotional health--perseverance. The physically literate student perseveres while addressing challenges. The student is expected to explain how practicing challenging physical activities can build confidence and minimize frustration when learning a variety of new skills.

(15) Social and emotional health--accepting and providing constructive feedback. The physically literate student accepts and provides constructive feedback. The student is expected to listen respectfully to make appropriate changes in performance based on feedback.

(16) Lifetime wellness--application of lifetime wellness. The physically literate student identifies the value of lifetime wellness. The student is expected to:

(A) differentiate among types of and participate in moderate to vigorous physical activity for a sustained period of time on a regular basis using technology when available; and

(B) select and participate in physical activity for personal enjoyment.

§116.16. Physical Education, Grade 4, Adopted 2020.

(a) Introduction.

(1) Physical education is the foundation of a well-balanced curriculum. "It is an academic subject with a planned and sequential

K-12 curriculum based on the national standards for physical education. Physical education provides cognitive content and instruction designed to develop motor skills, knowledge, and behaviors for physical activity and physical fitness. Supporting schools to establish daily physical education can provide students with the ability and confidence to be physically active for a lifetime" (Centers for Disease Control and Prevention (CDC), CDC Healthy Schools, May 2019).

(A) Physical education is designed to develop motor skills, knowledge, and behaviors for active living, physical fitness, sportsmanship, self-efficacy, and emotional intelligence. Physical education addresses the three domains of learning: cognitive skills related to the knowledge of movement, affective skills related to feelings and attitudes about movement, and psychomotor skills related to the manual or physical skills in movement literacy (SHAPE America, 2014, p. 4).

(B) Physically literate students have the ability to develop a lifetime of wellness. Physical literacy can be described as the ability to move with competence and confidence, to acquire knowledge and understanding, and to value and take responsibility for engagement in a wide variety of physical activities in multiple environments that benefit the healthy development of the whole person (Mandigo, Francis, Lodewyk & Lopez, 2012, and Whitehead, 2016).

(C) Research shows physical education is important to the development of the whole child and increases a lifetime of wellness. The Association for Supervision and Curriculum Development and the National Academy of Medicine support the belief that physical education, taught at a developmentally appropriate level, improves physical fitness and skill development, supports and improves academic achievement, reinforces self-discipline and teacher goal setting, reduces stress and increases blood flow to the brain, strengthens peer relationships, and improves self-confidence and self-esteem.

(2) The physical education standards are categorized into five strands that are of equal importance and value. The movement patterns and movement skills strand guides the physically literate student in the development of fundamental movement patterns, spatial and body awareness, and rhythmic activities. The performance strategies strand guides the physically literate student in utilizing strategies in fundamental components of games, activities, and outdoor and recreational pursuits. The health, physical activity, and fitness strand encompasses health-related fitness, environmental awareness, and safety practices that guide students to a health-enhancing, physically active lifestyle. The physically literate student demonstrates skills and mechanics used during physical activity and analyzes data used during fitness performance. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The social and emotional health strand incorporates working with others, responding to class expectations, and applying self-management skills. The lifetime wellness strand engages students in physical activity for the purposes of self-expression, enjoyment, and challenge.

(3) Quality physical education programs include a comprehensive curriculum, physical activity, safety policies, safe environments, qualified physical education specialists instructing the class, and student assessment and do not use physical activity as a form of punishment. Texas state law outlines state requirements that support these essential components. In accordance with state law, physical education curriculum and instruction must be sequential, developmentally appropriate, and designed to meet the needs of all students, including students with disabilities and of all physical ability levels. At least 50% of the physical education class must be used for actual student physical activity at a moderate or vigorous intensity level, which aligns with additional state requirements for a minimum number of minutes for moderate or vigorous physical activity in Kindergarten-Grade 8. Required

student-to-teacher ratios of 45-to-1 ensure the proper supervision and safety of students in physical education classes, and school districts must identify how student safety will be maintained if that ratio is exceeded. State law also requires that school districts and charter schools annually assess the physical fitness of students in Grade 3 or higher who are enrolled in a physical education course.

(4) Access to age-appropriate physical education equipment is essential to quality instruction. Basic, age-appropriate equipment for all students is imperative for the development of motor skills, manipulative skills, and eventually becoming a physically literate lifelong learner. Without basic, age-appropriate equipment, students will not have the necessary experiences to become physically literate, lifelong learners. All equipment should be age appropriate for the grade levels to be taught. The term "age appropriate" means that the equipment must include a variety of sizes, weights, and textures to provide differentiated experiences for various ages and ability levels of students. Basic equipment for quality instruction includes, but is not limited to, the following list: sports balls, including fleece balls, foam balls, tennis balls, beach balls, volleyballs, basketballs, soccer balls, footballs, baseballs, softballs, and unity balls; striking implements, including golf clubs, hockey sticks, baseball bats, pool noodles, tennis rackets, racquetball rackets, pickleball paddles, lollipop paddles, and ping pong paddles; goals for various sports, including soccer goals and basketball goals; nets and standards for a variety of sports, including volleyball, pickleball, badminton, and tennis; fitness-related equipment; other basic equipment, including scarves, bean bags, hula hoops, jump ropes, and scooters; classroom management equipment, including cones, mats, pinnies, poly spots, and ball inflators; and technology, including microphones, projectors, speakers, heart rate monitors, timers, and other technology appropriate for instruction.

(5) In Kindergarten-Grade 5, students learn fundamental movement skills and cues; begin to understand that the body functions in relation to physical activity; develop body control; become aware of the health-related fitness components; begin applying strategies, rules, etiquette, and conflict resolution techniques in dynamic situations; and identify safety practices and protocols while being physically active. Students engage in activities that develop basic levels of strength, endurance, and flexibility. Activities are presented to complement a student's natural inclination to view physical activity as challenging and enjoyable.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Movement patterns and movement skills--locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate locomotor skills. The student is expected to:

(A) demonstrate and apply correct technique in a variety of locomotor skills during dynamic activities;

(B) demonstrate correct jumping and landing technique while performing a long jump and a full turn jump;

(C) demonstrate intermediate balancing to include equipment, cross lateralization using a variety of coordination skills, and sequencing of four skills with repetition; and

(D) spin and roll with control at different levels, speeds, and positions with manipulatives.

(2) Movement patterns and movement skills--non-locomotor skills. The physically literate student demonstrates competency

in fundamental movement patterns and developmentally appropriate non-locomotor skills. The student is expected to:

(A) transfer body weight over, under, and on equipment with good control; and

(B) move into and out of various combinations of bending, stretching, twisting, curling, pushing, pulling, and swaying in a variety of activities.

(3) Movement patterns and movement skills--manipulative skills. The physically literate student demonstrates competency in developmentally appropriate manipulative skills. The student is expected to:

(A) practice the key elements of manipulative skills, including eye on target, follow-through, body weight transfer, and body position, during dynamic activities;

(B) practice the key elements of catching a ball at a variety of levels above and below the waist;

(C) demonstrate key elements of hand dribbling with dominant and non-dominant hand while changing both speed and direction;

(D) dribble a ball with control alternating feet while changing both speed and direction with a partner;

(E) identify and demonstrate the key elements in kicking patterns, including body position, weight transfer, and follow-through;

(F) demonstrate correct technique in underhand and overhead volleying to a wall, net, or partner;

(G) demonstrate correct technique when striking an object with a hand or short- or long-handled implement with a partner;

(H) jump a self-turned rope using a variety of intermediate skills; and

(I) demonstrate entering and exiting a turned long rope using intermediate jumping skills.

(4) Movement patterns and movement skills--spatial and body awareness. The physically literate student demonstrates competency in spatial and body awareness, including pathways, shapes, levels, speed, direction, and force. The student is expected to:

(A) demonstrate the appropriate use of open space and closing space during dynamic activities;

(B) demonstrate appropriate use of pathways and levels during dynamic activities and lead-up games; and

(C) apply speed, direction, and force during dynamic activities and lead-up games.

(5) Movement patterns and movement skills--rhythmic activities. The physically literate student demonstrates competency in rhythmic activities and rhythmic combinations. The student is expected to demonstrate a rhythmic routine with appropriate steps and movement patterns individually or in a group.

(6) Performance strategies--games and activities. The physically literate student demonstrates competency in performance strategies in invasion, target, net or wall, fielding, striking, and cooperative games. The student is expected to:

(A) explain fundamental components and strategies of dynamic activities and lead-up games;

(B) practice and demonstrate specific movement skills in designated dynamic activities and lead-up games with a partner or a small group; and

(C) exhibit appropriate sporting behavior during independent games and activities.

(7) Performance strategies--outdoor and recreational pursuits. The physically literate student demonstrates competency in outdoor and recreational pursuits. The student is expected to participate in a variety of outdoor recreational skills and activities such as camping, backpacking, fishing, rock climbing, hiking, paddle sports, disc golf, cornhole, bocce ball, or croquet.

(8) Health, physical activity, and fitness--fitness principles. The physically literate student demonstrates and recognizes a health-enhancing, physically active lifestyle. The student is expected to:

(A) describe the benefits of regular physical activity on overall health and wellness;

(B) demonstrate frequency and intensity during endurance activities; and

(C) identify and demonstrate the components of health- and skill-related fitness.

(9) Health, physical activity, and fitness--analyze data. The physically literate student demonstrates competency in the ability to analyze data used during fitness performance. The student is expected to:

(A) develop personal fitness goals for health-related fitness; and

(B) track progress and analyze data for health-related fitness activities.

(10) Health, physical activity, and fitness--nutrition and hydration. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The student is expected to:

(A) examine the relationship between nutrition and optimal physical performance; and

(B) explain the importance of proper hydration before, during, and after physical activity.

(11) Health, physical activity, and fitness--environmental awareness and safety practices. The physically literate student demonstrates competency in environmental awareness and understands safety practices. The student is expected to:

(A) work independently to select proper attire and safety equipment that promote safe participation and prevent injury in dynamic activities and lead-up games; and

(B) apply correct safety precautions, including pedestrian, water, sun, cycling, skating, and scooter safety.

(12) Social and emotional health--personal responsibility and self-management. The physically literate student demonstrates competency in personal responsibility. The student is expected to:

(A) accept and take responsibility for personal actions that affect self and others;

(B) demonstrate respect for differences and similarities in abilities of self and others; and

(C) demonstrate self-management skills to control personal impulses and emotions during dynamic activities and lead-up games.

(13) Social and emotional health--resolving conflict and social interaction. The physically literate student demonstrates competency in resolving conflict and social interaction. The student is expected to:

(A) discuss ways to resolve conflict in socially acceptable ways and respond to winning and losing with dignity and understanding;

(B) identify effective communication to enhance healthy interactions while settling disagreements; and

(C) demonstrate respect for the feelings of others.

(14) Social and emotional health--perseverance. The physically literate student perseveres while addressing challenges. The student is expected to identify ways to accept individual challenges and use self-management skills to persevere in a positive manner when learning a variety of new skills.

(15) Social and emotional health--accepting and providing constructive feedback. The physically literate student accepts and provides constructive feedback. The student is expected to listen respectfully to make appropriate changes in performance based on feedback from teacher and peers.

(16) Lifetime wellness--application of lifetime wellness. The physically literate student identifies the value of lifetime wellness. The student is expected to:

(A) differentiate among types of and participate in moderate to vigorous physical activities for a sustained period of time on a regular basis using technology when available; and

(B) participate in a variety of physical activities in the school and community for personal enjoyment.

§116.17. Physical Education, Grade 5, Adopted 2020.

(a) Introduction.

(1) Physical education is the foundation of a well-balanced curriculum. "It is an academic subject with a planned and sequential K-12 curriculum based on the national standards for physical education. Physical education provides cognitive content and instruction designed to develop motor skills, knowledge, and behaviors for physical activity and physical fitness. Supporting schools to establish daily physical education can provide students with the ability and confidence to be physically active for a lifetime" (Centers for Disease Control and Prevention (CDC), CDC Healthy Schools, May 2019).

(A) Physical education is designed to develop motor skills, knowledge, and behaviors for active living, physical fitness, sportsmanship, self-efficacy, and emotional intelligence. Physical education addresses the three domains of learning: cognitive skills related to the knowledge of movement, affective skills related to feelings and attitudes about movement, and psychomotor skills related to the manual or physical skills in movement literacy (SHAPE America, 2014, p. 4).

(B) Physically literate students have the ability to develop a lifetime of wellness. Physical literacy can be described as the ability to move with competence and confidence, to acquire knowledge and understanding, and to value and take responsibility for engagement in a wide variety of physical activities in multiple environments that benefit the healthy development of the whole person (Mandigo, Francis, Lodewyk & Lopez, 2012, and Whitehead, 2016).

(C) Research shows physical education is important to the development of the whole child and increases a lifetime of wellness. The Association for Supervision and Curriculum Development and the National Academy of Medicine support the belief that physi-

cal education, taught at a developmentally appropriate level, improves physical fitness and skill development, supports and improves academic achievement, reinforces self-discipline and teacher goal setting, reduces stress and increases blood flow to the brain, strengthens peer relationships, and improves self-confidence and self-esteem.

(2) The physical education standards are categorized into five strands that are of equal importance and value. The movement patterns and movement skills strand guides the physically literate student in the development of fundamental movement patterns, spatial and body awareness, and rhythmic activities. The performance strategies strand guides the physically literate student in utilizing strategies in fundamental components of games, activities, and outdoor and recreational pursuits. The health, physical activity, and fitness strand encompasses health-related fitness, environmental awareness, and safety practices that guide students to a health-enhancing, physically active lifestyle. The physically literate student demonstrates skills and mechanics used during physical activity and analyzes data used during fitness performance. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The social and emotional health strand incorporates working with others, responding to class expectations, and applying self-management skills. The lifetime wellness strand engages students in physical activity for the purposes of self-expression, enjoyment, and challenge.

(3) Quality physical education programs include a comprehensive curriculum, physical activity, safety policies, safe environments, qualified physical education specialists instructing the class, and student assessment and do not use physical activity as a form of punishment. Texas state law outlines state requirements that support these essential components. In accordance with state law, physical education curriculum and instruction must be sequential, developmentally appropriate, and designed to meet the needs of all students, including students with disabilities and of all physical ability levels. At least 50% of the physical education class must be used for actual student physical activity at a moderate or vigorous intensity level, which aligns with additional state requirements for a minimum number of minutes for moderate or vigorous physical activity in Kindergarten-Grade 8. Required student-to-teacher ratios of 45-to-1 ensure the proper supervision and safety of students in physical education classes, and school districts must identify how student safety will be maintained if that ratio is exceeded. State law also requires that school districts and charter schools annually assess the physical fitness of students in Grade 3 or higher who are enrolled in a physical education course.

(4) Access to age-appropriate physical education equipment is essential to quality instruction. Basic, age-appropriate equipment for all students is imperative for the development of motor skills, manipulative skills, and eventually becoming a physically literate lifelong learner. Without basic, age-appropriate equipment, students will not have the necessary experiences to become physically literate, lifelong learners. All equipment should be age appropriate for the grade levels to be taught. The term "age appropriate" means that the equipment must include a variety of sizes, weights, and textures to provide differentiated experiences for various ages and ability levels of students. Basic equipment for quality instruction includes, but is not limited to, the following list: sports balls, including fleece balls, foam balls, tennis balls, beach balls, volleyballs, basketballs, soccer balls, footballs, baseballs, softballs, and unity balls; striking implements, including golf clubs, hockey sticks, baseball bats, pool noodles, tennis rackets, racquetball rackets, pickleball paddles, lollipop paddles, and ping pong paddles; goals for various sports, including soccer goals and basketball goals; nets and standards for a variety of sports, including volleyball, pickleball, badminton, and tennis; fitness-related equipment; other basic equipment, including scarves, bean bags, hula hoops, jump ropes, and scooters; classroom management equipment,

including cones, mats, pinnies, poly spots, and ball inflators; and technology, including microphones, projectors, speakers, heart rate monitors, timers, and other technology appropriate for instruction.

(5) In Kindergarten-Grade 5, students learn fundamental movement skills and cues; begin to understand that the body functions in relation to physical activity; develop body control; become aware of the health-related fitness components; begin applying strategies, rules, etiquette, and conflict resolution techniques in dynamic situations; and identify safety practices and protocols while being physically active. Students engage in activities that develop basic levels of strength, endurance, and flexibility. Activities are presented to complement a student's natural inclination to view physical activity as challenging and enjoyable.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Movement patterns and movement skills--locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate locomotor skills. The student is expected to:

(A) demonstrate and apply correct technique in a variety of locomotor skills and combinations during lead-up activities;

(B) demonstrate correct jumping and landing technique while performing a long jump and a full turn jump in both directions; and

(C) demonstrate advanced balancing to include equipment, cross lateralization during increasingly complex movements, and sequencing of four or more skills with repetition.

(2) Movement patterns and movement skills--non-locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate non-locomotor skills. The student is expected to:

(A) maintain balance and transfer body weight with control during dynamic activities and lead-up games; and

(B) perform a combination of bending, stretching, twisting, curling, pushing, pulling, and swaying in a variety of activities.

(3) Movement patterns and movement skills--manipulative skills. The physically literate student demonstrates competency in developmentally appropriate manipulative skills. The student is expected to:

(A) demonstrate the key elements of manipulative skills, including eye on target, follow-through, body weight transfer, and body position, during games and activities;

(B) demonstrate the key elements of catching while moving during games and activities;

(C) demonstrate key elements of hand dribbling with either hand when stationary while protecting the ball from a defender during dynamic activities and lead-up games;

(D) combine foot dribbling with other skills during dynamic activities and lead-up games;

(E) demonstrate appropriate form when kicking and punting during dynamic activities and lead-up games;

(F) demonstrate correct technique in volleying in dynamic activities and lead-up games;

(G) demonstrate correct technique when striking an object with a hand or short- or long-handled implement in dynamic activities and lead-up games;

(H) jump a self-turned rope in a routine using a variety of advanced skills; and

(I) demonstrate entering and exiting a turned long rope using advanced jumping skills.

(4) Movement patterns and movement skills--spatial and body awareness. The physically literate student demonstrates competency in spatial and body awareness, including pathways, shapes, levels, speed, direction, and force. The student is expected to:

(A) demonstrate the appropriate use of open space and closing space in small groups during dynamic activities and lead-up games;

(B) apply appropriate use of pathways and levels in small groups during dynamic activities and lead-up games; and

(C) apply speed, direction, and force with a short-handled implement during dynamic activities and lead-up games.

(5) Movement patterns and movement skills--rhythmic activities. The physically literate student demonstrates competency in rhythmic activities and rhythmic combinations. The student is expected to create rhythmic routines in counts of eight using basic steps and coordinated movement patterns individually or in a group.

(6) Performance strategies--games and activities. The physically literate student demonstrates competency in performance strategies in invasion, target, net or wall, fielding, striking, and cooperative games. The student is expected to:

(A) identify and demonstrate the relationships among a variety of game skills, including preparation, movement, follow-through, and recovery, used in net or wall, invasion, target, fielding, or striking games;

(B) demonstrate specific movement skills in designated dynamic activities and lead-up games with a partner or group; and

(C) engage appropriately in physical activity, sporting behavior, and game etiquette without teacher cue.

(7) Performance strategies--outdoor and recreational pursuits. The physically literate student demonstrates competency in outdoor and recreational pursuits. The student is expected to participate in outdoor recreational skills and activities such as rock climbing, orienteering, hiking, paddle sports, archery, cycling, or challenge courses.

(8) Health, physical activity, and fitness--fitness principles. The physically literate student demonstrates and recognizes a health-enhancing, physically active lifestyle. The student is expected to:

(A) describe the benefits of moderate to vigorous physical activity on overall health and wellness;

(B) describe the frequency, intensity, time, and type (FITT) principle and how it improves fitness; and

(C) differentiate between health-related and skill-related fitness components.

(9) Health, physical activity, and fitness--analyze data. The physically literate student demonstrates competency in the ability to analyze data used during fitness performance. The student is expected to:

(A) analyze personal fitness goals for self-improvement; and

(B) track progress and analyze data, with teacher guidance, to target areas needing improvement.

(10) Health, physical activity, and fitness--nutrition and hydration. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The student is expected to:

(A) identify healthy foods that enhance physical activity; and

(B) explain the importance of proper hydration before, during, and after physical activity.

(11) Health, physical activity, and fitness--environmental awareness and safety practices. The physically literate student demonstrates competency in environmental awareness and understands safety practices. The student is expected to:

(A) describe and select proper attire and safety equipment that promote safe participation and prevent injury in dynamic activities and games; and

(B) demonstrate correct safety precautions, including water, sun, cycling, skating, and scooter safety.

(12) Social and emotional health--personal responsibility and self-management. The physically literate student demonstrates competency in personal responsibility. The student is expected to:

(A) accept and take responsibility for personal actions that affect self and others during dynamic activities and lead-up games;

(B) accept responsibility and demonstrate respect for differences and similarities in abilities of self and others during dynamic activities and lead-up games; and

(C) apply self-management skills to demonstrate self-control of impulses and emotions during dynamic activities and lead-up games.

(13) Social and emotional health--resolving conflict and social interaction. The physically literate student demonstrates competency in resolving conflict and social interaction. The student is expected to:

(A) explain the importance of and demonstrate how to resolve conflict in socially acceptable ways and respond to winning and losing with dignity and understanding;

(B) identify and describe effective communication to enhance healthy interactions while settling disagreements; and

(C) identify and describe the concepts of empathy and mutual respect for the feelings of others.

(14) Social and emotional health--perseverance. The physically literate student perseveres while addressing challenges. The student is expected to discuss the importance of accepting individual challenges and use self-management skills to persevere in a positive manner during dynamic activities and lead-up games.

(15) Social and emotional health--accepting and providing constructive feedback. The physically literate student accepts and provides constructive feedback. The student is expected to apply appropriate changes to performance based on feedback from peers.

(16) Lifetime wellness--application of lifetime wellness. The physically literate student identifies the value of lifetime wellness. The student is expected to:

(A) differentiate among types of and participate in moderate to vigorous physical activity for a sustained period of time on a regular basis using technology when available; and

(B) analyze the level of personal enjoyment in a variety of activities in the school and community.

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

Filed with the Office of the Secretary of State on September 28, 2020.

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Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: November 8, 2020

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



SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §§116.25 - 116.28

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(r), which requires the SBOE to by rule adopt essential knowledge and skills for the health curriculum that address substance abuse; and TEC, §28.002(s), which requires the SBOE to by rule adopt essential knowledge and skills for the health curriculum that address bullying.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §7.102(c)(4) and §28.002(a), (c), (r), and (s).

§116.25. Implementation of Texas Essential Knowledge and Skills for Physical Education, Middle School, Adopted 2020.

(a) The provisions of §§116.26-116.28 of this subchapter shall be implemented by school districts.

(b) No later than July 31, 2021, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills for physical education as adopted in §§116.26-116.28 of this subchapter.

(c) If the commissioner makes the determination that instructional materials funding has been made available under subsection (b) of this section, §§116.26-116.28 of this subchapter shall be implemented beginning with the 2022-2023 school year and apply to the 2022-2023 and subsequent school years.

(d) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (b) of this section, the commissioner shall determine no later than July 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the com-

missioner shall notify the State Board of Education and school districts that §§116.26-116.28 of this subchapter shall be implemented for the following school year.

(e) Sections 116.21-116.24 of this subchapter shall be superseded by the implementation of §§116.25-116.28 of this subchapter.

§116.26. Physical Education, Grade 6, Adopted 2020.

(a) Introduction.

(1) Physical education is the foundation of a well-balanced curriculum. "It is an academic subject with a planned and sequential K-12 curriculum based on the national standards for physical education. Physical education provides cognitive content and instruction designed to develop motor skills, knowledge, and behaviors for physical activity and physical fitness. Supporting schools to establish daily physical education can provide students with the ability and confidence to be physically active for a lifetime" (Centers for Disease Control and Prevention (CDC), CDC Healthy Schools, May 2019).

(A) Physical education is designed to develop motor skills, knowledge, and behaviors for active living, physical fitness, sportsmanship, self-efficacy, and emotional intelligence. Physical education addresses the three domains of learning: cognitive skills related to the knowledge of movement, affective skills related to feelings and attitudes about movement, and psychomotor skills related to the manual or physical skills in movement literacy (SHAPE America, 2014, p. 4).

(B) Physically literate students have the ability to develop a lifetime of wellness. Physical literacy can be described as the ability to move with competence and confidence, to acquire knowledge and understanding, and to value and take responsibility for engagement in a wide variety of physical activities in multiple environments that benefit the healthy development of the whole person (Mandigo, Francis, Lodewyk & Lopez, 2012, and Whitehead, 2016).

(C) Research shows physical education is important to the development of the whole child and increases a lifetime of wellness. The Association for Supervision and Curriculum Development and the National Academy of Medicine support the belief that physical education, taught at a developmentally appropriate level, improves physical fitness and skill development, supports and improves academic achievement, reinforces self-discipline and teacher goal setting, reduces stress and increases blood flow to the brain, strengthens peer relationships, and improves self-confidence and self-esteem.

(2) The physical education standards are categorized into five strands that are of equal importance and value. The movement patterns and movement skills strand guides the physically literate student in the development of fundamental movement patterns, spatial and body awareness, and rhythmic activities. The performance strategies strand guides the physically literate student in utilizing strategies in fundamental components of games, activities, and outdoor and recreational pursuits. The health, physical activity, and fitness strand encompasses health-related fitness, environmental awareness, and safety practices that guide students to a health-enhancing, physically active lifestyle. The physically literate student demonstrates skills and mechanics used during physical activity and analyzes data used during fitness performance. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The social and emotional health strand incorporates working with others, responding to class expectations, and applying self-management skills. The lifetime wellness strand engages students in physical activity for the purposes of self-expression, enjoyment, and challenge.

(3) Quality physical education programs include a comprehensive curriculum, physical activity, safety policies, safe environ-

ments, qualified physical education specialists instructing the class, and student assessment and do not use physical activity as a form of punishment. Texas state law outlines state requirements that support these essential components. In accordance with state law, physical education curriculum and instruction must be sequential, developmentally appropriate, and designed to meet the needs of all students, including students with disabilities and of all physical ability levels. At least 50% of the physical education class must be used for actual student physical activity at a moderate or vigorous intensity level, which aligns with additional state requirements for a minimum number of minutes for moderate or vigorous physical activity in Kindergarten-Grade 8. Required student-to-teacher ratios of 45-to-1 ensure the proper supervision and safety of students in physical education classes, and school districts must identify how student safety will be maintained if that ratio is exceeded. State law also requires that school districts and charter schools annually assess the physical fitness of students in Grade 3 or higher who are enrolled in a physical education course.

(4) Access to age-appropriate physical education equipment is essential to quality instruction. Basic, age-appropriate equipment for all students is imperative for the development of motor skills, manipulative skills, and eventually becoming a physically literate, lifelong learner. Without basic, age-appropriate equipment, students will not have the necessary experiences to become physically literate, lifelong learners. All equipment should be age appropriate for the grade levels to be taught. The term "age appropriate" means that the equipment must include a variety of sizes, weights, and textures to provide differentiated experiences for students of various ages and ability levels. Basic equipment for quality instruction includes, but is not limited to, the following: sports balls, including fleece balls, foam balls, tennis balls, beach balls, volleyballs, basketballs, soccer balls, footballs, baseballs, softballs, and unity balls; striking implements, including golf clubs, hockey sticks, baseball bats, pool noodles, tennis rackets, racquetball rackets, pickleball paddles, lollipop paddles, and ping pong paddles; goals for various sports, including soccer goals and basketball goals; nets and standards for a variety of sports, including volleyball, pickleball, badminton, and tennis; fitness-related equipment; other basic equipment, including scarves, bean bags, hula hoops, jump ropes, and scooters; classroom management equipment, including cones, mats, pinnies, poly spots, and ball inflators; and technology, including microphones, projectors, speakers, heart rate monitors, timers, and other technology appropriate for instruction.

(5) In Grades 6-8 physical education, students apply sport concepts; recognize key elements for success; develop plans for health-related fitness, skill-related fitness, and skill improvement; apply knowledge of safety practices and self-management; and understand in greater detail the function of the body. Students learn to use technology to assist in measuring and monitoring personal performance. An emphasis is placed on opportunities for participation, activity choices, enjoyment, and challenge, both in and out of school.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Movement patterns and movement skills--locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate locomotor skills. The student is expected to:

(A) perform a variety of locomotor skills and combinations during dynamic activities and games; and

(B) demonstrate correct jumping and landing technique during dynamic activities, game situations, and sports.

(2) Movement patterns and movement skills--non-locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate non-locomotor skills. The student is expected to:

(A) demonstrate balance with control during dynamic activities and games; and

(B) demonstrate proper body positioning, proficiency, footwork, and offensive and defensive skills during dynamic activities and games.

(3) Movement patterns and movement skills--manipulative skills. The physically literate student demonstrates competency in developmentally appropriate manipulative skills. The student is expected to:

(A) demonstrate correct technique when throwing to a moving target;

(B) demonstrate correct catching technique from different levels and trajectories with a variety of objects;

(C) demonstrate correct hand dribbling technique when changing both speed and direction while maintaining ball control;

(D) demonstrate correct foot dribbling technique with control while changing both speed and direction during dynamic activities and game situations;

(E) demonstrate correct technique in kicking and punting with accuracy during dynamic activities and lead-up games;

(F) demonstrate correct technique in volleying to a target with control and accuracy;

(G) demonstrate correct technique when striking an object with speed, accuracy, force, and distance using a hand or handled implement during dynamic activities and lead-up games; and

(H) create and perform a jump rope routine using a variety of advanced skills.

(4) Movement patterns and movement skills--spatial and body awareness. The physically literate student demonstrates competency in spatial and body awareness including pathways, shapes, levels, speed, direction, and force. The student is expected to:

(A) demonstrate the appropriate use of open space and closing space during dynamic activities, games, and sports; and

(B) apply speed, direction, and force with a long-handled implement during dynamic activities, games, and sports.

(5) Movement patterns and movement skills--rhythmic activities. The physically literate student demonstrates competency in rhythmic activities and rhythmic combinations. The student is expected to perform rhythmic routines with intermediate steps and movement patterns.

(6) Performance strategies--games and activities. The physically literate student demonstrates competency in performance strategies in invasion, target, net or wall, fielding, striking, and cooperative games. The student is expected to:

(A) demonstrate offensive and defensive strategies used in net or wall, invasion, target, striking, and fielding games;

(B) demonstrate combinations of locomotor, manipulative, and game skills in dynamic activities to achieve individual or team goals; and

(C) demonstrate appropriate sporting behavior with teammates, opponents, and officials.

(7) Performance strategies--outdoor and recreational pursuits. The physically literate student demonstrates competency in outdoor and recreational pursuits. The student is expected to participate in self-selected, organized outdoor recreational skills, activities, and games.

(8) Health, physical activity, and fitness--fitness principles. The physically literate student demonstrates and recognizes a health-enhancing, physically active lifestyle. The student is expected to:

(A) describe the long-term benefits of moderate to vigorous physical activity on overall health and wellness;

(B) describe the frequency, intensity, time, and type (FITT) principle and how it improves fitness in relation to aerobic and anaerobic activities; and

(C) describe health-related and skill-related fitness components and their impact on personal fitness.

(9) Health, physical activity, and fitness--analyze data. The physically literate student demonstrates competency in the ability to analyze data used during fitness performance. The student is expected to:

(A) develop an individual fitness plan using personal fitness goals; and

(B) analyze results of fitness assessments to identify strategies for self-improvement.

(10) Health, physical activity, and fitness--nutrition and hydration. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The student is expected to:

(A) identify macronutrients, including carbohydrates, fats, and proteins, and examine their relationship to optimal physical performance; and

(B) identify how environmental temperature and humidity each contribute to dehydration and heat illness.

(11) Health, physical activity, and fitness--environmental awareness and safety practices. The physically literate student demonstrates competency in environmental awareness and understands safety practices. The student is expected to:

(A) perform, without cue, the selection and use of proper attire and safety equipment that promote safe participation and prevent injury in dynamic activities, games, and sports; and

(B) perform, without cue, the correct safety precautions, including water, sun, cycling, skating, and scooter safety.

(12) Social and emotional health--personal responsibility and self-management. The physically literate student demonstrates competency in personal responsibility. The student is expected to:

(A) explain the importance of and accept responsibility for personal actions that affect self and others during game situations and sports;

(B) explain the importance of and accept responsibility and demonstrate respect for differences and similarities in abilities of self and others during dynamic activities and lead-up games; and

(C) apply self-management skills to demonstrate self-control of impulses and emotions, without cue, during games, situations, and sports.

(13) Social and emotional health--resolving conflict and social interaction. The physically literate student demonstrates com-

petency in resolving conflict and social interaction. The student is expected to:

(A) discuss the importance of and resolve conflict, without cue, in socially acceptable ways, and respond to winning and losing with dignity and understanding;

(B) explain and demonstrate effective communication to enhance healthy interactions while settling disagreements; and

(C) demonstrate empathy and mutual respect for the feelings of others.

(14) Social and emotional health--perseverance. The physically literate student perseveres while addressing challenges. The student is expected to discuss the importance of accepting individual challenges and demonstrate self-management skills to persevere in a positive manner during game situations and sports.

(15) Social and emotional health--accepting and providing constructive feedback. The physically literate student accepts and provides constructive feedback. The student is expected to analyze feedback to make appropriate changes to improve performance.

(16) Lifetime wellness--application of lifetime wellness. The physically literate student identifies the value of lifetime wellness. The student is expected to:

(A) develop a plan using available technology to participate in moderate to vigorous physical activity for a sustained period of time on a regular basis; and

(B) describe how participation in a variety of physical activities builds confidence and increases personal enjoyment.

§116.27. *Physical Education, Grade 7, Adopted 2020.*

(a) Introduction.

(1) Physical education is the foundation of a well-balanced curriculum. "It is an academic subject with a planned and sequential K-12 curriculum based on the national standards for physical education. Physical education provides cognitive content and instruction designed to develop motor skills, knowledge, and behaviors for physical activity and physical fitness. Supporting schools to establish daily physical education can provide students with the ability and confidence to be physically active for a lifetime" (Centers for Disease Control and Prevention (CDC), CDC Healthy Schools, May 2019).

(A) Physical education is designed to develop motor skills, knowledge, and behaviors for active living, physical fitness, sportsmanship, self-efficacy, and emotional intelligence. Physical education addresses the three domains of learning: cognitive skills related to the knowledge of movement, affective skills related to feelings and attitudes about movement, and psychomotor skills related to the manual or physical skills in movement literacy (SHAPE America, 2014, p. 4).

(B) Physically literate students have the ability to develop a lifetime of wellness. Physical literacy can be described as the ability to move with competence and confidence, to acquire knowledge and understanding, and to value and take responsibility for engagement in a wide variety of physical activities in multiple environments that benefit the healthy development of the whole person (Mandigo, Francis, Lodewyk & Lopez, 2012, and Whitehead, 2016).

(C) Research shows physical education is important to the development of the whole child and increases a lifetime of wellness. The Association for Supervision and Curriculum Development and the National Academy of Medicine support the belief that physical education, taught at a developmentally appropriate level, improves physical fitness and skill development, supports and improves aca-

ademic achievement, reinforces self-discipline and teacher goal setting, reduces stress and increases blood flow to the brain, strengthens peer relationships, and improves self-confidence and self-esteem.

(2) The physical education standards are categorized into five strands that are of equal importance and value. The movement patterns and movement skills strand guides the physically literate student in the development of fundamental movement patterns, spatial and body awareness, and rhythmic activities. The performance strategies strand guides the physically literate student in utilizing strategies in fundamental components of games, activities, and outdoor and recreational pursuits. The health, physical activity, and fitness strand encompasses health-related fitness, environmental awareness, and safety practices that guide students to a health-enhancing, physically active lifestyle. The physically literate student demonstrates skills and mechanics used during physical activity and analyzes data used during fitness performance. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The social and emotional health strand incorporates working with others, responding to class expectations, and applying self-management skills. The lifetime wellness strand engages students in physical activity for the purposes of self-expression, enjoyment, and challenge.

(3) Quality physical education programs include a comprehensive curriculum, physical activity, safety policies, safe environments, qualified physical education specialists instructing the class, and student assessment and do not use physical activity as a form of punishment. Texas state law outlines state requirements that support these essential components. In accordance with state law, physical education curriculum and instruction must be sequential, developmentally appropriate, and designed to meet the needs of all students, including students with disabilities and of all physical ability levels. At least 50% of the physical education class must be used for actual student physical activity at a moderate or vigorous intensity level, which aligns with additional state requirements for a minimum number of minutes for moderate or vigorous physical activity in Kindergarten-Grade 8. Required student-to-teacher ratios of 45-to-1 ensure the proper supervision and safety of students in physical education classes, and school districts must identify how student safety will be maintained if that ratio is exceeded. State law also requires that school districts and charter schools annually assess the physical fitness of students in Grade 3 or higher who are enrolled in a physical education course.

(4) Access to age-appropriate physical education equipment is essential to quality instruction. Basic, age-appropriate equipment for all students is imperative for the development of motor skills, manipulative skills, and eventually becoming a physically literate, lifelong learner. Without basic, age-appropriate equipment, students will not have the necessary experiences to become physically literate, lifelong learners. All equipment should be age appropriate for the grade levels to be taught. The term "age appropriate" means that the equipment must include a variety of sizes, weights, and textures to provide differentiated experiences for students of various ages and ability levels. Basic equipment for quality instruction includes, but is not limited to, the following: sports balls, including fleece balls, foam balls, tennis balls, beach balls, volleyballs, basketballs, soccer balls, footballs, baseballs, softballs, and unity balls; striking implements, including golf clubs, hockey sticks, baseball bats, pool noodles, tennis rackets, racquetball rackets, pickleball paddles, lollipop paddles, and ping pong paddles; goals for various sports, including soccer goals and basketball goals; nets and standards for a variety of sports, including volleyball, pickleball, badminton, and tennis; fitness-related equipment; other basic equipment, including scarves, bean bags, hula hoops, jump ropes, and scooters; classroom management equipment, including cones, mats, pinnies, poly spots, and ball inflators; and

technology, including microphones, projectors, speakers, heart rate monitors, timers, and other technology appropriate for instruction.

(5) In Grades 6-8 physical education, students apply sport concepts; recognize key elements for success; develop plans for health-related fitness, skill-related fitness, and skill improvement; apply knowledge of safety practices and self-management; and understand in greater detail the function of the body. Students learn to use technology to assist in measuring and monitoring personal performance. An emphasis is placed on opportunities for participation, activity choices, enjoyment, and challenge, both in and out of school.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Movement patterns and movement skills--locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate locomotor skills. The student is expected to:

(A) combine and apply a variety of locomotor skills during dynamic fitness, sport, and rhythmic activities; and

(B) apply correct jumping and landing technique during dynamic activities, game situations, and sports.

(2) Movement patterns and movement skills--non-locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate non-locomotor skills. The student is expected to:

(A) move between positions with controlled balance during dynamic activities, game situations, and sports; and

(B) demonstrate proper body positioning, proficiency, and footwork and perform offensive and defensive skills during dynamic activities, game situations, and sports.

(3) Movement patterns and movement skills--manipulative skills. The physically literate student demonstrates competency in developmentally appropriate manipulative skills. The student is expected to:

(A) apply correct throwing techniques with distance, power, and accuracy while both partners are moving during dynamic activities, game situations, and sports;

(B) apply correct catching technique with a variety of objects from different levels and trajectories during dynamic activities, game situations, and sports;

(C) apply offensive and defensive patterns in game strategies while hand dribbling;

(D) apply offensive and defensive foot dribbling strategies during game situations and sports;

(E) apply correct technique in kicking and punting with control, distance, and accuracy during game situations and sports;

(F) apply correct technique in volleying with both control and accuracy during game situations and sports;

(G) apply correct technique when striking an object with speed, accuracy, force, and distance during game situations and sports; and

(H) create and perform a jump rope routine using a variety of skills that require agility, speed, and endurance.

(4) Movement patterns and movement skills--spatial and body awareness. The physically literate student demonstrates competency in spatial and body awareness, including pathways, shapes, levels, speed, direction, and force. The student is expected to:

(A) execute the appropriate use of open space and closing space during dynamic activities, games, and sports; and

(B) execute the appropriate use of speed, direction, and force with or without an implement during dynamic activities, games, and sports.

(5) Movement patterns and movement skills--rhythmic activities. The physically literate student demonstrates competency in rhythmic activities and rhythmic combinations. The student is expected to perform rhythmic routines with advanced steps and movement patterns with a partner.

(6) Performance strategies--games and activities. The physically literate student demonstrates competency in performance strategies in invasion, target, net or wall, fielding, striking, and cooperative games. The student is expected to:

(A) apply offensive and defensive strategies used in net or wall, invasion, target, striking, and fielding games and sports;

(B) apply combinations or sequences of game skills to achieve individual or team goals; and

(C) demonstrate self-responsibility and appropriate sporting behavior in game situations and sports.

(7) Performance strategies--outdoor and recreational pursuits. The physically literate student demonstrates competency in outdoor and recreational pursuits. The student is expected to demonstrate a variety of correct techniques for outdoor recreational skills, activities, and games.

(8) Health, physical activity, and fitness--fitness principles. The physically literate student demonstrates and recognizes a health-enhancing, physically active lifestyle. The student is expected to:

(A) analyze the long-term benefits of moderate to vigorous physical activity on overall health and wellness;

(B) apply basic frequency, intensity, time, and type (FITT) principle in a variety of aerobic and anaerobic activities; and

(C) apply health-related and skill-related fitness components and explain how each component impacts personal fitness.

(9) Health, physical activity, and fitness--analyze data. The physically literate student demonstrates competency in the ability to analyze data used during fitness performance. The student is expected to:

(A) create a collaborative physical fitness plan to target areas for improvement in health-related fitness; and

(B) monitor and evaluate personal fitness goals and make appropriate changes for improvement.

(10) Health, physical activity, and fitness--nutrition and hydration. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The student is expected to:

(A) evaluate healthy food choices that show a balanced daily intake of macronutrients to enhance physical performance; and

(B) analyze and determine the appropriate times to consume traditional sports drinks that have the appropriate carbohydrate and sodium content.

(11) Health, physical activity, and fitness--environmental awareness and safety practices. The physically literate student demonstrates competency in environmental awareness and understands safety practices. The student is expected to:

(A) perform, without cue, the selection and use of proper attire and safety equipment that promote safe participation and prevent injury in dynamic activities, games, and sports; and

(B) perform, without cue, the correct safety precautions, including water, sun, cycling, skating, and scooter safety.

(12) Social and emotional health--personal responsibility and self-management. The physically literate student demonstrates competency in personal responsibility. The student is expected to:

(A) discuss the importance of and accept responsibility and demonstrate respect for differences and similarities in abilities of self and others during game situations and sports; and

(B) analyze self-management skills to demonstrate self-control of impulses and emotions, without cue, during game situations and sports.

(13) Social and emotional health--resolving conflict and social interaction. The physically literate student demonstrates competency in resolving conflict and social interaction. The student is expected to:

(A) discuss the importance of and resolve conflict, without cue, in socially acceptable ways, and respond to winning and losing with dignity and understanding;

(B) communicate effectively to enhance healthy interactions while settling disagreements; and

(C) demonstrate empathy and mutual respect for the feelings of others.

(14) Social and emotional health--perseverance. The physically literate student perseveres while addressing challenges. The student is expected to develop and apply a plan of action and make effective decisions when faced with challenges, obstacles, or difficulties during game situations and sports.

(15) Social and emotional health--accepting and providing constructive feedback. The physically literate student accepts and provides constructive feedback. The student is expected to provide constructive feedback to peers following teacher guidelines to improve performance.

(16) Lifetime wellness--application of lifetime wellness. The physically literate student identifies the value of lifetime wellness. The student is expected to:

(A) implement a plan using available technology to participate in moderate to vigorous physical activity for a sustained period of time on a regular basis; and

(B) evaluate self-selected physical activities for personal enjoyment.

§116.28. Physical Education, Grade 8, Adopted 2020.

(a) Introduction.

(1) Physical education is the foundation of a well-balanced curriculum. "It is an academic subject with a planned and sequential K-12 curriculum based on the national standards for physical education. Physical education provides cognitive content and instruction designed to develop motor skills, knowledge, and behaviors for physical activity and physical fitness. Supporting schools to establish daily physical education can provide students with the ability and confidence

to be physically active for a lifetime" (Centers for Disease Control and Prevention (CDC), CDC Healthy Schools, May 2019).

(A) Physical education is designed to develop motor skills, knowledge, and behaviors for active living, physical fitness, sportsmanship, self-efficacy, and emotional intelligence. Physical education addresses the three domains of learning: cognitive skills related to the knowledge of movement, affective skills related to feelings and attitudes about movement, and psychomotor skills related to the manual or physical skills in movement literacy (SHAPE America, 2014, p. 4).

(B) Physically literate students have the ability to develop a lifetime of wellness. Physical literacy can be described as the ability to move with competence and confidence, to acquire knowledge and understanding, and to value and take responsibility for engagement in a wide variety of physical activities in multiple environments that benefit the healthy development of the whole person (Mandigo, Francis, Lodewyk & Lopez, 2012, and Whitehead, 2016).

(C) Research shows physical education is important to the development of the whole child and increases a lifetime of wellness. The Association for Supervision and Curriculum Development and the National Academy of Medicine support the belief that physical education, taught at a developmentally appropriate level, improves physical fitness and skill development, supports and improves academic achievement, reinforces self-discipline and teacher goal setting, reduces stress and increases blood flow to the brain, strengthens peer relationships, and improves self-confidence and self-esteem.

(2) The physical education standards are categorized into five strands that are of equal importance and value. The movement patterns and movement skills strand guides the physically literate student in the development of fundamental movement patterns, spatial and body awareness, and rhythmic activities. The performance strategies strand guides the physically literate student in utilizing strategies in fundamental components of games, activities, and outdoor and recreational pursuits. The health, physical activity, and fitness strand encompasses health-related fitness, environmental awareness, and safety practices that guide students to a health-enhancing, physically active lifestyle. The physically literate student demonstrates skills and mechanics used during physical activity and analyzes data used during fitness performance. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The social and emotional health strand incorporates working with others, responding to class expectations, and applying self-management skills. The lifetime wellness strand engages students in physical activity for the purposes of self-expression, enjoyment, and challenge.

(3) Quality physical education programs include a comprehensive curriculum, physical activity, safety policies, safe environments, qualified physical education specialists instructing the class, and student assessment and do not use physical activity as a form of punishment. Texas state law outlines state requirements that support these essential components. In accordance with state law, physical education curriculum and instruction must be sequential, developmentally appropriate, and designed to meet the needs of all students, including students with disabilities and of all physical ability levels. At least 50% of the physical education class must be used for actual student physical activity at a moderate or vigorous intensity level, which aligns with additional state requirements for a minimum number of minutes for moderate or vigorous physical activity in Kindergarten-Grade 8. Required student-to-teacher ratios of 45-to-1 ensure the proper supervision and safety of students in physical education classes, and school districts must identify how student safety will be maintained if that ratio is exceeded. State law also requires that school districts and charter schools

annually assess the physical fitness of students in Grade 3 or higher who are enrolled in a physical education course.

(4) Access to age-appropriate physical education equipment is essential to quality instruction. Basic, age-appropriate equipment for all students is imperative for the development of motor skills, manipulative skills, and eventually becoming a physically literate, lifelong learner. Without basic, age-appropriate equipment, students will not have the necessary experiences to become physically literate, lifelong learners. All equipment should be age appropriate for the grade levels to be taught. The term "age appropriate" means that the equipment must include a variety of sizes, weights, and textures to provide differentiated experiences for students of various ages and ability levels. Basic equipment for quality instruction includes, but is not limited to, the following: sports balls, including fleece balls, foam balls, tennis balls, beach balls, volleyballs, basketballs, soccer balls, footballs, baseballs, softballs, and unity balls; striking implements, including golf clubs, hockey sticks, baseball bats, pool noodles, tennis rackets, racquetball rackets, pickleball paddles, lollipop paddles, and ping pong paddles; goals for various sports, including soccer goals and basketball goals; nets and standards for a variety of sports, including volleyball, pickleball, badminton, and tennis; fitness-related equipment; other basic equipment, including scarves, bean bags, hula hoops, jump ropes, and scooters; classroom management equipment, including cones, mats, pinnies, poly spots, and ball inflators; and technology, including microphones, projectors, speakers, heart rate monitors, timers, and other technology appropriate for instruction.

(5) In Grades 6-8 physical education, students apply sport concepts; recognize key elements for success; develop plans for health-related fitness, skill-related fitness, and skill improvement; apply knowledge of safety practices and self-management; and understand in greater detail the function of the body. Students learn to use technology to assist in measuring and monitoring personal performance. An emphasis is placed on opportunities for participation, activity choices, enjoyment, and challenge, both in and out of school.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(b) Knowledge and skills.

(1) Movement patterns and movement skills--locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate locomotor skills. The student is expected to:

(A) combine and apply a variety of locomotor skills during dynamic fitness, sport, and rhythmic activities; and

(B) combine correct jumping and landing technique during dynamic activities, game situations, and sports.

(2) Movement patterns and movement skills--non-locomotor skills. The physically literate student demonstrates competency in fundamental movement patterns and developmentally appropriate non-locomotor skills. The student is expected to:

(A) combine and apply balance with control during dynamic activities, game situations, and sports; and

(B) demonstrate proper body positioning, proficiency, and footwork and perform offensive and defensive skills during dynamic activities, game situations, and sports.

(3) Movement patterns and movement skills--manipulative skills. The physically literate student demonstrates competency in developmentally appropriate manipulative skills. The student is expected to:

(A) combine appropriate throwing techniques during game situations and sports;

(B) apply appropriate catching technique from different levels and trajectories with an implement during game situations and sports;

(C) perform, without cue, key elements in hand dribbling during game situations and sports;

(D) perform, without cue, key elements in foot dribbling during game situations and sports;

(E) apply correct technique in kicking and punting during game situations and sports with control, distance, and accuracy;

(F) perform, without cue, key elements in volleying during game situations and sports;

(G) perform, without cue, key elements in striking during game situations and sports; and

(H) create and perform a jump rope routine with a partner or a small group using a variety of skills that include agility, speed, and endurance.

(4) Movement patterns and movement skills--spatial and body awareness. The physically literate student demonstrates competency in spatial and body awareness, including pathways, shapes, levels, speed, direction, and force. The student is expected to:

(A) perform, without cue, the appropriate use of open space and closing space during dynamic activities, games, and sports; and

(B) perform, without cue, the appropriate speed, direction, and force with or without an implement during dynamic activities, games, and sports.

(5) Movement patterns and movement skills--rhythmic activities. The physically literate student demonstrates competency in rhythmic activities and rhythmic combinations. The student is expected to create and perform with a small group a rhythmic routine with varying tempos using advanced steps and movement patterns.

(6) Performance strategies--games and activities. The physically literate student demonstrates competency in performance strategies in invasion, target, net or wall, fielding, striking, and cooperative games. The student is expected to:

(A) perform, without cue, offensive and defensive strategies used in net or wall, invasion, target, striking, and fielding games and sports;

(B) perform, without cue, combinations or sequences of game skills to achieve individual or team goals; and

(C) follow rules, demonstrate appropriate sporting behavior, self-officiate, and respect consequences for the game being played without cue.

(7) Performance strategies--outdoor and recreational pursuits. The physically literate student demonstrates competency in outdoor and recreational pursuits. The student is expected to engage in a variety of self-selected outdoor recreational activities and games.

(8) Health, physical activity, and fitness--fitness principles. The physically literate student demonstrates and recognizes a health-enhancing, physically active lifestyle. The student is expected to:

(A) perform a variety of lifelong physical activities and explain their effects on overall health and wellness;

(B) perform basic frequency, intensity, time, and type (FITT) principle in a variety of self-selected aerobic and anaerobic activities; and

(C) develop and analyze a personal fitness plan using health-related and skill-related fitness components.

(9) Health, physical activity, and fitness--analyze data. The physically literate student demonstrates competency in the ability to analyze data used during fitness performance. The student is expected to:

(A) create and implement a personal physical fitness plan and analyze the results for effectiveness; and

(B) evaluate personal fitness goals and make appropriate changes for improvement.

(10) Health, physical activity, and fitness--nutrition and hydration. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The student is expected to:

(A) develop a healthy food choice plan that enhances physical performance; and

(B) determine hydration needs, without cue, based on physical performance and environmental factors.

(11) Health, physical activity, and fitness--environmental awareness and safety practices. The physically literate student demonstrates competency in environmental awareness and understands safety practices. The student is expected to:

(A) perform, without cue, the selection and use of proper attire and safety equipment that promote safe participation and prevent injury in dynamic activities, games, and sports; and

(B) perform, without cue, the correct safety precautions, including pedestrian, water, sun, cycling, skating, and scooter safety.

(12) Social and emotional health--personal responsibility and self-management. The physically literate student demonstrates competency in personal responsibility. The student is expected to:

(A) discuss the importance of and accept responsibility and demonstrate respect for differences and similarities in abilities of self and others during game situations and sports; and

(B) evaluate self-management skills to demonstrate self-control of impulses and emotions, without cue, during games, situations, and sports.

(13) Social and emotional health--resolving conflict and social interaction. The physically literate student demonstrates competency in resolving conflict and social interaction. The student is expected to:

(A) discuss the importance of and resolve conflict, without cue, in socially acceptable ways, and respond to winning and losing with dignity and understanding;

(B) communicate effectively to enhance healthy interactions while settling disagreements; and

(C) demonstrate empathy and mutual respect for the feelings of others.

(14) Social and emotional health--perseverance. The physically literate student perseveres while addressing challenges. The student is expected to develop and apply a plan of action and make ef-

fective decisions when faced with challenges, obstacles, or difficulties during game situations and sports.

(15) Social and emotional health--accepting and providing constructive feedback. The physically literate student accepts and provides constructive feedback. The student is expected to provide constructive feedback to peers using a positive tone to improve performance.

(16) Lifetime wellness--application of lifetime wellness. The physically literate student identifies the value of lifetime wellness. The student is expected to:

(A) implement a plan using available technology to participate in moderate to vigorous physical activity for a sustained period of time on a regular basis; and

(B) participate in self-selected physical activities for personal enjoyment.

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

Filed with the Office of the Secretary of State on September 28, 2020.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: November 8, 2020

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



SUBCHAPTER C. HIGH SCHOOL

19 TAC §§116.61 - 116.64

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; TEC, §28.002(r), which requires the SBOE to by rule adopt essential knowledge and skills for the health curriculum that address substance abuse; TEC, §28.002(s), which requires the SBOE to by rule adopt essential knowledge and skills for the health curriculum that address bullying; and TEC, §28.025(a), which requires the SBOE to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under TEC, §28.002.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§7.102(c)(4); 28.002(a), (c), (r), and (s); and 28.025(a).

§116.61. Implementation of Texas Essential Knowledge and Skills for Physical Education, Adopted 2020.

(a) The provisions of §§116.62-116.64 of this subchapter shall be implemented by school districts.

(b) No later than July 31, 2021, the commissioner of education shall determine whether instructional materials funding has been made available to Texas public schools for materials that cover the essential knowledge and skills for physical education as adopted in §§116.62-116.64 of this subchapter.

(c) If the commissioner makes the determination that instructional materials funding has been made available under subsection (b) of this section, §§116.62-116.64 of this subchapter shall be implemented beginning with the 2022-2023 school year and apply to the 2022-2023 and subsequent school years.

(d) If the commissioner does not make the determination that instructional materials funding has been made available under subsection (b) of this section, the commissioner shall determine no later than July 31 of each subsequent school year whether instructional materials funding has been made available. If the commissioner determines that instructional materials funding has been made available, the commissioner shall notify the State Board of Education and school districts that §§116.62-116.64 of this subchapter shall be implemented for the following school year.

(e) Sections 116.51-116.56 of this subchapter shall be superseded by the implementation of §§116.61-116.64 of this subchapter.

§116.62. Lifetime Fitness and Wellness Pursuits (One Credit), Adopted 2020.

(a) General requirements. Students shall be awarded one credit for successful completion of this course.

(b) Introduction.

(1) Physical education is the foundation of a well-balanced curriculum. "It is an academic subject with a planned and sequential K-12 curriculum based on the national standards for physical education. Physical education provides cognitive content and instruction designed to develop motor skills, knowledge, and behaviors for physical activity and physical fitness. Supporting schools to establish daily physical education can provide students with the ability and confidence to be physically active for a lifetime" (Centers for Disease Control and Prevention (CDC), CDC Healthy Schools, May 2019).

(A) Physical education is designed to develop motor skills, knowledge, and behaviors for active living, physical fitness, sportsmanship, self-efficacy, and emotional intelligence. Physical education addresses the three domains of learning: cognitive skills related to the knowledge of movement, affective skills related to feelings and attitudes about movement, and psychomotor skills related to the manual or physical skills in movement literacy (SHAPE America, 2014, p. 4).

(B) Physically literate students have the ability to develop a lifetime of wellness. Physical literacy can be described as the ability to move with competence and confidence, to acquire knowledge and understanding, and to value and take responsibility for engagement in a wide variety of physical activities in multiple environments that benefit the healthy development of the whole person (Mandigo, Francis, Lodewyk & Lopez, 2012, and Whitehead, 2016).

(C) Research shows physical education is important to the development of the whole child and increases a lifetime of wellness. The Association for Supervision and Curriculum Development and the National Academy of Medicine support the belief that physical education, taught at a developmentally appropriate level, improves physical fitness and skill development, supports and improves academic achievement, reinforces self-discipline and teacher goal setting, reduces stress and increases blood flow to the brain, strengthens peer relationships, and improves self-confidence and self-esteem.

(2) The physical education standards are categorized into five strands that are of equal importance and value. The movement patterns and movement skills strand guides the physically literate student in the development of fundamental movement patterns, spatial and body awareness, and rhythmic activities. The performance strategies strand guides the physically literate student in using strategies in fundamental components of games, activities, and outdoor and recreational pursuits. The health, physical activity, and fitness strand encompasses health-related fitness, environmental awareness, and safety practices that guide students to a health-enhancing, physically active lifestyle. The physically literate student demonstrates skills and mechanics used during physical activity and analyzes data used during fitness performance. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The social and emotional health strand incorporates working with others, responding to class expectations, and applying self-management skills. The lifetime wellness strand engages students in physical activity for the purposes of self-expression, enjoyment, and challenge.

(3) Quality physical education programs include a comprehensive curriculum, physical activity, safety policies, safe environments, qualified physical education specialists instructing the class, and student assessment and do not use physical activity as a form of punishment. Texas state law outlines state requirements that support these essential components. In accordance with state law, physical education curriculum and instruction must be sequential, developmentally appropriate, and designed to meet the needs of all students, including students with disabilities, and of all physical ability levels. At least 50% of the physical education class must be used for actual student physical activity at a moderate or vigorous intensity level, which aligns with additional state requirements for a minimum number of minutes for moderate or vigorous physical activity in Kindergarten-Grade 8. Required student-to-teacher ratios of 45-to-1 ensure the proper supervision and safety of students in physical education classes, and school districts must identify how student safety will be maintained if that ratio is exceeded. State law also requires that school districts and charter schools annually assess the physical fitness of students in Grade 3 or higher who are enrolled in a physical education course.

(4) Access to course-appropriate physical education equipment is essential to quality instruction. Course-appropriate equipment for all students is imperative for the development of motor skills, manipulative skills, and eventually becoming a physically literate, life-long learner. Equipment should include a variety of sizes, weights, and textures to provide differentiated experiences for students of various ability levels.

(5) The Lifetime Fitness and Wellness Pursuits course offers current approaches for the foundation of personal fitness, physical literacy, lifetime wellness, and healthy living. Students in Lifetime Fitness and Wellness Pursuits will apply the knowledge and skills to demonstrate mastery of the concepts needed to achieve lifetime wellness. Students will participate in a variety of physical activities for attaining personal fitness and lifetime wellness.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Movement patterns and movement skills. While participating in physical activity, the physically literate student applies physiological and biomechanical principles to improve health-related fitness. The student is expected to:

(A) apply physiological and fitness principles related to exercise and training, including warm-up and cool-down, overload, frequency, intensity, time, and specificity; and

(B) apply basic biomechanical principles related to exercise and training, including force, leverage, and type of contraction.

(2) Performance strategies. During physical activity, the physically literate student applies skills, techniques, and safety practices associated with physical activity. The student is expected to:

(A) apply appropriate procedures to ensure safety;

(B) apply appropriate practices and procedures to improve skills in various fitness activities;

(C) perform skills and appropriate techniques at a basic level of competency;

(D) modify movement during performance using appropriate internal and external feedback; and

(E) explain various methods to achieve personal fitness, including interval training, circuit training, high-intensity interval training (HIIT), and functional fitness training.

(3) Health, physical activity, and fitness. The physically literate student applies fitness principles that encompass personal fitness programs, nutrition, technology, and environmental awareness. The student is expected to:

(A) demonstrate appropriate safety procedures, including wearing proper attire, using equipment safely, practicing exercise etiquette, and recognizing situational environmental hazards;

(B) identify and describe exercise techniques that may be harmful or unsafe;

(C) explain the relationships among hydration, physical activity, and environmental conditions;

(D) explain the relationship between physical fitness and wellness;

(E) participate in a variety of activities that develop health-related physical fitness;

(F) describe training principles appropriate to enhance cardiorespiratory endurance, muscular strength and endurance, and flexibility;

(G) exhibit a basic level of competency in two or more aerobic and two or more anaerobic activities;

(H) select and use appropriate technology tools to evaluate, monitor, and improve health-related fitness;

(I) design and implement a personal fitness program that includes health-related fitness components;

(J) measure and evaluate personal skill-related components of physical fitness, including agility, balance, coordination, power, reaction time, and speed; and

(K) measure and evaluate personal fitness in terms of health-related fitness components.

(4) Social and emotional health. During physical activity, the physically literate student develops positive self-management and social skills needed to work independently and with others. The student is expected to:

(A) describe and analyze the relationship between physical activity and social and emotional health;

(B) discuss how improvement is possible with appropriate practice;

(C) identify and respond to challenges, successes, conflicts, and failures in physical activities in socially appropriate ways;

(D) explain how to accept successes and performance limitations of self and others by exhibiting appropriate behavior and response; and

(E) evaluate the impact of the use of technology on social and emotional health.

(5) Lifetime wellness. The physically literate student comprehends practices that will impact daily performance, physical activity, and health throughout the lifespan. The student is expected to:

(A) describe how sleep is essential to optimal performance and recovery;

(B) identify myths associated with physical activity and nutritional practices;

(C) explain the relationship between nutritional practices and physical activity;

(D) explain the risks of over training;

(E) evaluate consumer issues and trends related to physical fitness such as marketing claims promoting fitness and nutritional products, services, and supplements; and

(F) analyze how nutrition, exercise, and other factors impact body composition.

§116.63. Lifetime Recreation and Outdoor Pursuits (One Credit), Adopted 2020.

(a) General requirements. Students shall be awarded one credit for successful completion of this course.

(1) Physical education is the foundation of a well-balanced curriculum. "It is an academic subject with a planned and sequential K-12 curriculum based on the national standards for physical education. Physical education provides cognitive content and instruction designed to develop motor skills, knowledge, and behaviors for physical activity and physical fitness. Supporting schools to establish daily physical education can provide students with the ability and confidence to be physically active for a lifetime" (Centers for Disease Control and Prevention (CDC), CDC Healthy Schools, May 2019).

(A) Physical education is designed to develop motor skills, knowledge, and behaviors for active living, physical fitness, sportsmanship, self-efficacy, and emotional intelligence. Physical education addresses the three domains of learning: cognitive skills related to the knowledge of movement, affective skills related to feelings and attitudes about movement, and psychomotor skills related to the manual or physical skills in movement literacy (SHAPE America, 2014, p. 4).

(B) Physically literate students have the ability to develop a lifetime of wellness. Physical literacy can be described as the ability to move with competence and confidence, to acquire knowledge and understanding, and to value and take responsibility for engagement in a wide variety of physical activities in multiple environments that benefit the healthy development of the whole person (Mandigo, Francis, Lodewyk & Lopez, 2012, and Whitehead, 2016).

(C) Research shows physical education is important to the development of the whole child and increases a lifetime of wellness. The Association for Supervision and Curriculum Development and the National Academy of Medicine support the belief that physical education, taught at a developmentally appropriate level, improves

physical fitness and skill development, supports and improves academic achievement, reinforces self-discipline and teacher goal setting, reduces stress and increases blood flow to the brain, strengthens peer relationships, and improves self-confidence and self-esteem.

(2) The physical education standards are categorized into five strands that are of equal importance and value. The movement patterns and movement skills strand guides the physically literate student in the development of fundamental movement patterns, spatial and body awareness, and rhythmic activities. The performance strategies strand guides the physically literate student in using strategies in fundamental components of games, activities, and outdoor and recreational pursuits. The health, physical activity, and fitness strand encompasses health-related fitness, environmental awareness, and safety practices that guide students to a health-enhancing, physically active lifestyle. The physically literate student demonstrates skills and mechanics used during physical activity and analyzes data used during fitness performance. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The social and emotional health strand incorporates working with others, responding to class expectations, and applying self-management skills. The lifetime wellness strand engages students in physical activity for the purposes of self-expression, enjoyment, and challenge.

(3) Quality physical education programs include a comprehensive curriculum, physical activity, safety policies, safe environments, qualified physical education specialists instructing the class, and student assessment and do not use physical activity as a form of punishment. Texas state law outlines state requirements that support these essential components. In accordance with state law, physical education curriculum and instruction must be sequential, developmentally appropriate, and designed to meet the needs of all students, including students with disabilities, and of all physical ability levels. At least 50% of the physical education class must be used for actual student physical activity at a moderate or vigorous intensity level, which aligns with additional state requirements for a minimum number of minutes for moderate or vigorous physical activity in Kindergarten-Grade 8. Required student-to-teacher ratios of 45-to-1 ensure the proper supervision and safety of students in physical education classes, and school districts must identify how student safety will be maintained if that ratio is exceeded. State law also requires that school districts and charter schools annually assess the physical fitness of students in Grade 3 or higher who are enrolled in a physical education course.

(4) Access to course-appropriate physical education equipment is essential to quality instruction. Course-appropriate equipment for all students is imperative for the development of motor skills, manipulative skills, and eventually becoming a physically literate, lifelong learner. Equipment should include a variety of sizes, weights, and textures to provide differentiated experiences for students of various ability levels.

(5) The Lifetime Recreation and Outdoor Pursuits course provides opportunities for students to develop competency in five or more lifelong recreational and outdoor pursuits for enjoyment and challenge. Students in Lifetime Recreation and Outdoor Pursuits participate in activities that promote physical literacy, respect for and connection to nature and the environment, and opportunities for enjoyment for a lifetime. Students will experience opportunities that enhance self-worth and support community engagement.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(c) Knowledge and skills.

(1) Movement patterns and movement skills. The student demonstrates competency in five or more lifetime recreational and outdoor pursuits such as backpacking, camping, hiking, navigation, water sports, paddle sports, boater education, water safety education, angler education, hunter education, archery, outdoor survival and safety, climbing, adventure activities, challenge course or team building, lawn games, skating, skiing, cycling, and disc sports. The student is expected to:

(A) demonstrate execution of basic skills in lifetime recreation and outdoor pursuits;

(B) apply the rules and strategies of the selected lifetime recreation and outdoor pursuits; and

(C) design a conditioning program for the selected lifetime recreation and outdoor pursuits.

(2) Performance strategies. The physically literate student applies movement concepts and principles to the learning, development, and execution of motor skills applicable to the selected lifetime recreational and outdoor pursuits. The student is expected to:

(A) modify movement during performance using appropriate internal and external feedback; and

(B) identify critical elements for a successful performance during a specific activity.

(3) Health, physical activity, and fitness. The physically literate student exhibits a physically active lifestyle that improves health and provides opportunities for enjoyment and challenge. The student is expected to:

(A) participate in lifetime recreational and outdoor pursuits that provide for enjoyment and challenge;

(B) describe training principles for enhancing flexibility, muscular strength and endurance, and cardiorespiratory endurance;

(C) establish realistic and challenging health-related fitness goals;

(D) select and use appropriate technology tools to evaluate, monitor, and improve health-related fitness;

(E) analyze health and fitness benefits derived from participation in lifetime recreational and outdoor pursuits; and

(F) design and participate in a personal health-related fitness program that has the potential to meet identified activity goals.

(4) Social and emotional health. The physically literate student articulates the benefit of time spent in recreation or outdoor pursuits to promote mental, social, and emotional health. The student is expected to:

(A) demonstrate teamwork such as leadership, problem solving, trust, creativity, cooperation, conflict resolution, and communication while engaging in selected lifetime recreation and outdoor pursuits;

(B) demonstrate etiquette appropriate for selected lifetime recreation and outdoor activities;

(C) evaluate the impact of the use of technology on social and emotional health;

(D) analyze and summarize critical information on the mental, social, and emotional health benefits of engagement in outdoor pursuits; and

(E) design a personal wellness plan that includes time engaging in outdoor pursuits.

(5) Lifetime wellness. The physically literate student recognizes the relationship between lifetime recreation or outdoor pursuits and health. The student is expected to:

(A) list and describe safety equipment used in selected lifetime recreation and outdoor pursuits;

(B) explain and follow safety procedures during selected lifetime recreation and outdoor pursuits;

(C) identify and apply the health-related fitness principles to selected lifetime recreation and outdoor pursuits;

(D) describe how sleep is essential to optimal performance and recovery;

(E) analyze the advantages and disadvantages of lifetime recreation and outdoor pursuits and their effects on personal fitness;

(F) provide evidence of developing and maintaining health-related fitness; and

(G) design safe practices and procedures to improve skill during an activity.

§116.64. Skill-Based Lifetime Activities (One Credit), Adopted 2020.

(a) General requirements. Students shall be awarded one credit for completion of this course.

(b) Introduction.

(1) Physical education is the foundation of a well-balanced curriculum. "It is an academic subject with a planned and sequential K-12 curriculum based on the national standards for physical education. Physical education provides cognitive content and instruction designed to develop motor skills, knowledge, and behaviors for physical activity and physical fitness. Supporting schools to establish daily physical education can provide students with the ability and confidence to be physically active for a lifetime" (Centers for Disease Control and Prevention (CDC), CDC Healthy Schools, May 2019).

(A) Physical education is designed to develop motor skills, knowledge, and behaviors for active living, physical fitness, sportsmanship, self-efficacy, and emotional intelligence. Physical education addresses the three domains of learning: cognitive skills related to the knowledge of movement, affective skills related to feelings and attitudes about movement, and psychomotor skills related to the manual or physical skills in movement literacy (SHAPE America, 2014, p. 4).

(B) Physically literate students have the ability to develop a lifetime of wellness. Physical literacy can be described as the ability to move with competence and confidence, to acquire knowledge and understanding, and to value and take responsibility for engagement in a wide variety of physical activities in multiple environments that benefit the healthy development of the whole person (Mandigo, Francis, Lodewyk & Lopez, 2012, and Whitehead, 2016).

(C) Research shows physical education is important to the development of the whole child and increases a lifetime of wellness. The Association for Supervision and Curriculum Development and the National Academy of Medicine support the belief that physical education, taught at a developmentally appropriate level, improves physical fitness and skill development, supports and improves academic achievement, reinforces self-discipline and teacher goal setting, reduces stress and increases blood flow to the brain, strengthens peer relationships, and improves self-confidence and self-esteem.

(2) The physical education standards are categorized into five strands that are of equal importance and value. The movement

patterns and movement skills strand guides the physically literate student in the development of fundamental movement patterns, spatial and body awareness, and rhythmic activities. The performance strategies strand guides the physically literate student in using strategies in fundamental components of games, activities, and outdoor and recreational pursuits. The health, physical activity, and fitness strand encompasses health-related fitness, environmental awareness, and safety practices that guide students to a health-enhancing, physically active lifestyle. The physically literate student demonstrates skills and mechanics used during physical activity and analyzes data used during fitness performance. The physically literate student recognizes the correlation between nutrition, hydration, and physical activity. The social and emotional health strand incorporates working with others, responding to class expectations, and applying self-management skills. The lifetime wellness strand engages students in physical activity for the purposes of self-expression, enjoyment, and challenge.

(3) Quality physical education programs include a comprehensive curriculum, physical activity, safety policies, safe environments, qualified physical education specialists instructing the class, and student assessment and do not use physical activity as a form of punishment. Texas state law outlines state requirements that support these essential components. In accordance with state law, physical education curriculum and instruction must be sequential, developmentally appropriate, and designed to meet the needs of all students, including students with disabilities, and of all physical ability levels. At least 50% of the physical education class must be used for actual student physical activity at a moderate or vigorous intensity level, which aligns with additional state requirements for a minimum number of minutes for moderate or vigorous physical activity in Kindergarten-Grade 8. Required student-to-teacher ratios of 45-to-1 ensure the proper supervision and safety of students in physical education classes, and school districts must identify how student safety will be maintained if that ratio is exceeded. State law also requires that school districts and charter schools annually assess the physical fitness of students in Grade 3 or higher who are enrolled in a physical education course.

(4) Access to course-appropriate physical education equipment is essential to quality instruction. Course-appropriate equipment for all students is imperative for the development of motor skills, manipulative skills, and eventually becoming a physically literate, lifelong learner. Equipment should include a variety of sizes, weights, and textures to provide differentiated experiences for students of various ability levels.

(5) The Skill-Based Lifetime Activities course offers students the opportunity to demonstrate mastery in basic sport skills, basic sport knowledge, and health and fitness principles. Students experience opportunities that promote physical literacy and lifetime wellness. Students in Skill-Based Lifetime Activities participate in a minimum of one lifelong activity from each of the following five categories during the course.

(A) Target games are activities in which students send an object toward a target.

(B) Striking and fielding games are activities in which students strike an object in order to score points within a game.

(C) Fitness activities provide opportunities for students to apply fitness principles to accomplish an objective.

(D) Rhythmic activities provide opportunities for students to demonstrate or create movement sequences with rhythm.

(E) Innovative games and activities with international significance are those games and activities that use new or innovative equipment, have been created by students, or are played internationally.

(c) Knowledge and skills.

(1) Movement patterns and movement skills. The physically literate student applies movement skills while participating in a minimum of five lifelong activities, including one from each of the following categories: target, striking and fielding, fitness, rhythmic, and innovative games and activities with international significance. The student is expected to:

(A) exhibit a level of competency in one or more target activities such as archery, disc golf, backyard target games, bowling, and golf;

(B) exhibit a level of competency in one or more striking and fielding activities such as kickball, softball, baseball, and racquet sports;

(C) exhibit a level of competency in one or more fitness activities that promote cardiorespiratory endurance, muscular strength, muscular endurance, and flexibility;

(D) exhibit a level of competency in one or more rhythmic activities; and

(E) exhibit a level of competency in one or more innovative games and activities with international significance such as cricket, futsal, speed ball, and team handball.

(2) Performance strategies. The physically literate student applies tactics and strategies to be successful in skill-based lifetime activities. The student is expected to:

(A) perform skills and strategies consistently;

(B) modify movement during performance using appropriate internal and external feedback;

(C) describe appropriate practice procedures to improve skill and strategy in a sport;

(D) identify the critical elements for successful performance;

(E) demonstrate proper officiating techniques, including hand signals, verbal communication, and application of rules, to ensure safe participation in activities; and

(F) keep score accurately during games or activities.

(3) Health, physical activity, and fitness. The physically literate student applies knowledge of health and fitness principles to participation in skill-based lifetime activities. The student is expected to:

(A) establish realistic and challenging health-related fitness goals for selected skill-based lifetime activities;

(B) apply appropriate safety procedures to prevent or reduce injuries in skill-based lifetime activities; and

(C) analyze health and fitness benefits derived from participating in skill-based lifetime activities.

(4) Social and emotional health. The physically literate student applies principles for social and emotional health to participation in selected skill-based lifetime activities. The student is expected to:

(A) acknowledge good play from an opponent during competition;

(B) explain the importance of accepting the roles and decisions of officials;

(C) explain the importance of accepting successes and performance limitations of self and others;

(D) discuss the importance of accepting personal responsibility to create and maintain a physically and emotionally safe and nonthreatening environment while officiating; and

(E) discuss and apply ways to respond to challenges, successes, and failures in physical activities in socially appropriate ways.

(5) Lifetime wellness. The physically literate student applies wellness principles to participation in selected skill-based lifetime activities. The student is expected to

(A) select and participate in at least one skill-based lifetime activity that provides for enjoyment and challenge from each category, including target, striking and fielding, fitness, rhythmic, and innovative games and activities with international significance; and

(B) describe how sleep is essential to optimal performance and recovery.

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

Filed with the Office of the Secretary of State on September 28, 2020.

TRD-202004029

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 78. SCOPE OF PRACTICE

22 TAC §78.5

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §78.5 (Delegation of Radiologic Procedures). The Board proposes this rule to comply with Texas Occupations Code §601.252. Section 601.252 requires the Board to adopt rules to regulate how a chiropractor may delegate the performance of radiologic procedures to an unlicensed individual.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to

clarify the delegation authority of a chiropractor who uses an unlicensed individual to perform radiologic procedures.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §78.5. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

- (1) The proposed rule does not create or eliminate a government program.
- (2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed rule does not require a decrease or increase in fees paid to the Board.
- (5) The proposed rule does create a new regulation.
- (6) The proposal does not repeal existing Board rules for an administrative process.
- (7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code 601.252, which requires the Board to adopt rules to regulate how a chiropractor may delegate the performance of radiologic procedures to an unlicensed individual.

No other statutes or rules are affected by this proposed rule.

§78.5. Delegation of Radiologic Procedures.

(a) A licensee may delegate a radiologic procedure within the chiropractic scope of practice to an individual who has appropriate training and experience.

(b) A licensee shall be responsible for any delegated radiologic procedure.

(c) A licensee shall document the education, experience, or any other qualifications of an individual to whom a licensee delegates the authority to perform any radiologic procedure.

(d) A licensee, or other licensed individual with delegation authority, shall be on the premises of any place of business where a delegated radiologic procedure is performed.

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

Filed with the Office of the Secretary of State on September 22, 2020.

TRD-202003902

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: November 8, 2020

For further information, please call: (512) 799-5489



CHAPTER 80. COMPLAINTS

22 TAC §80.12

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §80.12 (Retention of Complaint Records). The Board proposes this rule to comply with Texas Occupations Code §201.156. Section 201.156 requires the Board to adopt procedures by rule relating to retaining investigative information about licensees.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to clarify the length of time the Board may maintain investigative material concerning licensees.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §80.12. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

- (1) The proposed rule does not create or eliminate a government program.
- (2) Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
- (3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Board.
- (4) The proposed rule does not require a decrease or increase in fees paid to the Board.
- (5) The proposed rule does create a new regulation.
- (6) The proposal does not repeal existing Board rules for an administrative process.
- (7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.
- (8) The proposed rule does not positively or adversely affect the state economy.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 333 Guadalupe, Suite 3-825, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register*. Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152, which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic, and Texas Occupations Code 201.156, which requires the Board to adopt procedures by rule relating to retaining investigative information about licensees.

No other statutes or rules are affected by this proposed rule.

§80.12. Retention of Complaint Records.

The Board shall maintain all information concerning complaints in accordance with the agency's current records retention schedule as approved by the Texas State Library and Archives Commission.

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

Filed with the Office of the Secretary of State on September 22, 2020.

TRD-202003903

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 799-5489



PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

CHAPTER 138. COMPLIANCE AND PROFESSIONALISM FOR SURVEYORS

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes new rules in 22 Texas Administrative Code, Chapter 138, specifically §§138.31, 138.33, 138.35, 138.37, 138.51, 138.53, 138.55, 138.57, 138.59, 138.61, 138.63, 138.65, 138.73, 138.75, 138.77, 138.79, 138.81, 138.83, 138.85, 138.87, 138.89, 138.91, 138.93, 138.95, and 138.97, regarding professional practice requirements for professional land surveyors in Texas. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 22 Texas Administrative Code Chapter 138 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act, and Occupations Code, Chapter 1071, the Professional Land Surveying Practices Act.

The proposed rules implement necessary changes as required by House Bill (HB) 1523, 86th Legislature, Regular Session (2019), related to the merger of operations of the Texas Board of Professional Engineers and the Texas Board of Professional

Land Surveying into the Texas Board of Professional Engineers and Land Surveyors (TBPELS).

As required by HB 1523, the operations of the two agencies have been merged into one, including compliance and enforcement and professional practice requirements for Registered Professional Land Surveyors (RPLS) and Licensed State Land Surveyors (LSLS). The Texas Board of Professional Land Surveying's rules (22 Texas Administrative Code, Chapter 663), relating to standards of professional responsibility and rules of conduct for land surveyors, have been merged into Chapter 138 per the guidance of the Secretary of State. These rules have been formatted to be similar to the compliance and professionalism rules for engineers (Chapter 137), and edited for formatting and clarity.

SECTION-BY-SECTION SUMMARY

The proposed rules create a new §138.31, concerning seal specifications for professional land surveyors. This section describes the specifications of the seal required to be obtained upon issuance of a license or registration per §134.97.

The proposed rules create a new §138.33, concerning the requirements and conditions for sealing professional land surveying work. This section consolidates and clarifies various rules from Chapter 663 concerning sealing requirements.

The proposed rules create a new §138.35, concerning the use of electronic seals and signatures, in lieu of physical or ink seals and signatures, on professional land surveying work.

The proposed rules create a new §138.37, concerning sealing misconduct. This section clarifies certain violations of sealing requirements, including prohibitions against sealing if the work can endanger the public, or if a surveyor's registration is inactive, suspended, or revoked. It also states that a non-registrant may not sign or seal professional land surveying work.

The proposed rules create a new §138.51, concerning general ethical practice requirements. This section consolidates and clarifies various rules from Chapter 663 concerning general practice, including reporting alleged violations, responding to board inquiries, and aiding and abetting unregistered land surveying firms.

The proposed rules create a new §138.53, concerning requirements for a professional land surveyor to comply with the Professional Services Procurement Act, Texas Government Code, Chapter 2254.

The proposed rules create a new §138.55, concerning requirements for a professional land surveyor to protect the public. This section consolidates and clarifies various rules from Chapter 663, including requirements to follow generally accepted surveying standards and procedures, not commit acts which may constitute incompetence or gross negligence, and report potential violations of the Act and board rules.

The proposed rules create a new §138.57, concerning requirements for professional land surveyors to be objective and truthful. This section consolidates and clarifies various rules from Chapter 663, including prohibiting fraudulent, deceitful, or misleading assertions; communicating professional concerns regarding surveying work; and disclosing potential conflicts of interest.

The proposed rules create a new §138.59, concerning requirements for surveyors to only practice in their area of expertise

and competence. This section consolidates and clarifies various rules from Chapter 663 concerning competent practice.

The proposed rules create a new §138.61, concerning requirements to maintain the confidentiality of clients. This section consolidates and clarifies various rules from Chapter 663.

The proposed rules create a new §138.63, concerning the surveyor's responsibility to the profession. This section consolidates and clarifies various rules from Chapter 663, including that a surveyor must: (1) follow codes and ordinances; (2) exercise care and diligence in their practice; (3) act as a faithful agent to their client and employer; (4) and not aid or abet an unlicensed or unregistered individual from practicing professional land surveying. It also prohibits retaliating against someone who files a complaint; accepting gifts or favors for work; or accepting payment from two or more parties for the same work.

The proposed rules create a new §138.65, concerning actions in another jurisdiction. This section clarifies that the board can consider and take action on a finding of violations of land surveying laws or rules in another jurisdiction.

The proposed rules create a new §138.73, concerning surveying firm record modifications. It sets out reporting requirements for updates to surveying firm records, such as contact information and registered land surveyors associated with the firm.

The proposed rules create a new §138.75, concerning surveying firm renewals and expiration. This section sets out renewal dates for surveying firms and the process to renew late registrations.

The proposed rules create a new §138.77, concerning surveying firm compliance. This section consolidates and clarifies various rules from Chapter 663, including requirements that a surveying firm must have at least one registered land surveyor on staff to offer professional surveying services and that a firm must include their firm name and number on work released by the firm.

The proposed rules create a new §138.79, concerning requirements for a governmental entity to comply with the Professional Services Procurement Act, Texas Government Code, Chapter 2254, when procuring professional land surveying services.

The proposed rules create a new §138.81, concerning professional and technical standards for the practice of professional land surveying and is based on rule §663.13 from the Texas Board of Professional Land Surveying.

The proposed rules create a new §138.83, concerning precision and accuracy of surveying measurements and is based on rule §663.15 from the Texas Board of Professional Land Surveying.

The proposed rules create a new §138.85, concerning technical aspects and requirements of boundary construction and is based on rule §663.16 from the Texas Board of Professional Land Surveying.

The proposed rules create a new §138.87, concerning technical aspects and requirements for monumentation and is based on rule §663.17 from the Texas Board of Professional Land Surveying.

The proposed rules create a new §138.89, concerning requirements for certification of standards of practice and is based on rule §663.18 from the Texas Board of Professional Land Surveying.

The proposed rules create a new §138.91, concerning requirements for and development of surveying work including draw-

ings and written descriptions and reports. This section is based on rule §663.19 from the previous land surveying board.

The proposed rules create a new §138.93, concerning subdivision plats and is based on rule §663.20 from the Texas Board of Professional Land Surveying.

The proposed rules create a new §138.95, concerning technical aspects and requirements for descriptions prepared for political subdivisions and is based on rule §663.21 from the Texas Board of Professional Land Surveying.

The proposed rules create a new §138.97, concerning technical aspects and requirements for easement depictions and is based on rule §661.33 from the Texas Board of Professional Land Surveying.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Dr. Lance Kinney, Ph.D., P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. The rules impose no additional costs. HB 1523 transferred regulatory authority from TBPLS to TBPELS, and these rules merely reflect that transfer of authority.

Dr. Kinney has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Dr. Kinney has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be the clear requirements for the efficient and effective practice by professional land surveyors in accordance with HB 1523 and Texas Occupations Code chapters 1001 and 1071.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the rules related to professional practice do not make substantive changes to the previous practice rules and have no additional costs for registrants or the agency.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

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

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules.

HB 1532 transferred the regulation of land surveying to the TBPELS, and these rules reflect a transfer of that regulatory authority from the Texas Board of Professional Land Surveying to the TBPELS without any growth in government. Therefore, for each year of the first five years the proposed rules are in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules do not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules do not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules do not expand, limit, or repeal a regulation except as provided by HB 1532 which transferred the regulation of land surveying to the TBPELS, and these rules reflect a transfer of that regulatory authority from the former Board of Professional Land Surveying to the TBPELS.
7. The proposed rules do not increase the number of individuals subject to the rule's applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Board has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board

of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to rules@pels.texas.gov.

SUBCHAPTER B. SEALING REQUIREMENTS

22 TAC §§138.31, 138.33, 138.35, 138.37

STATUTORY AUTHORITY

The rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act and Texas Occupations Code §1071, as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. In addition to the foregoing statutory bases, §138.65 is proposed pursuant to Texas Occupations Code §1071.401, which authorizes TBPELS to take disciplinary action against licensees and registrants for statute and rule violations. Section 138.53 is proposed pursuant to Texas Occupations Code §§1001.201, 1001.202, and 1001.203.

No other codes, articles, or statutes are affected by this proposal.

§138.31. Seal Specifications.

(a) Upon issuance of a registration as a registered professional land surveyor, each registration holder is required to obtain a seal under the requirements of §134.97 of this title (relating to Issuance of Registration) and submit an impression of the seal or an electronic seal, and an original or an electronic signature to the board for board records.

(b) Physical and electronic seals shall be of the design illustrated in this section and shall be no larger than two inches. Regardless of seal size the surveyor's name and number must be clearly legible.

(c) All physical seals obtained and used by registration holders must leave a permanent ink image or permanent impression of the seal attached to the surveying work.

(d) All seals obtained and used by registration holders shall contain any legal name, commonly accepted variation of the legal name, or initial combination with the surname as currently listed with the board and in the usual written signature. Nicknames shall not be permitted on a seal in lieu of a legal name or initial combination. The name can be displayed on the seal using all uppercase letters such as "LESLIE H. DOE" or using the standard combination of upper and lowercase letters, such as "Leslie H. Doe". If after registration, a registration holder legally changes his/her name, the registration holder must have a new seal or seals made showing the new legal name and submit an imprint or imprints of the new seal(s) to the board for review, approval, and processing within 60 days of name change.
Figure: 22 TAC §138.31(d)

(e) Preprinting of blank forms with an surveyor's seal, or the use of decal or other seal replicas is prohibited.

(f) When signing a surveying work, the surveyor may utilize the designation "R.P.L.S." or other terms as described in §138.1 of this chapter (relating to Registration Holder Designations).

(g) This section does not prevent the reproduction of sealed and signed, original works for distribution.

(h) Upon issuance of a license as a licensed state land surveyor, each license holder is required to obtain an additional seal.

Figure: 22 TAC §138.31(h)

§138.33. Sealing Procedures.

(a) The purpose of the registered professional land surveyors and licensed state land surveyor seal is to assure the user of the surveying product that the work has been performed or directly supervised by the professional surveyor named and to delineate the scope of the surveyor's work.

(b) Registration and licensed holders shall only seal work done by them, performed under their direct supervision as defined in §131.2 of this title (relating to Definitions). Upon sealing, surveyors take full professional responsibility for that work.

(c) When a license or registration holder reviews and elects to incorporate the work products of others into a signed and sealed survey document, those items shall be clearly labeled as such and shall clearly indicate the identity of the originator.

(d) Registration holders shall take reasonable steps to ensure the security of their physical or electronic seals and electronic signatures. For electronic seals and electronic signatures, the surveyor must have reasonable security measures in place to protect these files. In the event of loss of a seal or electronic signature, the surveyor will, as soon as possible, but no later than 30 days of discovery, give written notification of the facts concerning the loss to board.

(e) Preliminary documents released from a land surveyor's control shall identify the purpose of the document, the land surveyor of record and the land surveyor's registration number, and the release date. Such preliminary documents shall not be signed or sealed and shall bear the following statement in the signature space or upon the face of the document: "Preliminary, this document shall not be recorded for any purpose and shall not be used or viewed or relied upon as a final survey document". Preliminary documents released from the land surveyor's control which include this text in place of the land surveyor's signature need not comply with the other minimum standards promulgated in this chapter.

(f) License and registration holders shall affix their seal and original signature or electronic seal and signature with the date on the final version of their professional surveying work before such work is released from their control. The signature and date shall not obscure the surveyor's name or registration number in the seal.

(g) Work performed by more than one registration holder shall be sealed in a manner such that all surveying work can be clearly attributed to the responsible registration holder or registration holders. When surveying work on which two or more registration holders have worked, the seal and signature of each registration holder shall be placed on the surveying work with a notation describing the work done under each registration holder's responsible charge.

(h) Registered employees of the state, its political subdivisions, or other public entities are responsible for sealing their original surveying work; however, such registered employees engaged in review and evaluation for compliance with applicable law or regulation of surveying work submitted by others, or in the preparation of general planning documents, a proposal for decision in a contested case or any similar position statement resulting from a compliance review, need not seal the review reports, planning documents, proposals for decision, or position statements.

(i) A local authority may require an original seal and/or signature on reproduced documents.

(j) Any surveying work issued by a registration holder for land or property in this state must include the registration holder's seal placed on the document. A registration holder is not required to use a Texas seal if the surveying work is located in another state or country.

(k) A surveyor may securely transmit his or her final version of surveying work electronically provided that work bears the surveyor's seal and uses one of the techniques described in §138.35(a) of this chapter (relating to Electronic Seals and Electronic Signatures) and must employ reasonable security measures to make the documents unalterable. Electronic correspondence of this type may be followed by a hard copy containing the surveyor's printed name, date, signature and the designation "R.P.L.S." or other terms described in §138.1 of this chapter (relating to Registration Holder Designations).

(l) A registration holder is not required to use a seal for a project for which the registration holder is not required to hold a registration under the Surveying Act.

(m) All surveying documents released, issued, or submitted by a registration holder, including preliminary documents, shall clearly indicate the firm name and registration number of the surveying firm by which the professional surveyor is employed.

(1) If the surveyor is employed by a local, State, or Federal Government agency, then only the name of the agency shall be required.

(2) If the surveyor is exempt from sealing a document under subsection (1) of this section, but elects to seal a document, then only the name of the employer shall be required.

(n) Licensed state land surveyors must sign and seal surveying documents and surveying work submitted to the General Land Office, including field notes, plats, and reports, with both their registered professional land surveyor seal and the licensed state land surveyor seal.

§138.35. Electronic Seals and Electronic Signatures.

(a) Registered professional surveyors shall maintain the security of their electronic seals and electronic signatures. The following methods are allowed:

(1) Registered professional surveyors may electronically copy their original hard copy work that bears their seal, original signature, and date and transmit this work in a secure electronic format.

(2) An surveyor may create an electronic seal and electronic signature for use in transmitting electronically formatted surveying work, regardless of whether the work was originally in hard copy or electronic format.

(b) As an alternative to electronic sealing and electronic signatures, surveyors shall affix their original seals and signatures and date to their surveying work as specified in §138.33(f) of this chapter (relating to Sealing Procedures).

§138.37. Sealing Misconduct.

(a) A registration holder is guilty of misconduct and subject to disciplinary action if the registration holder:

(1) knowingly signs or seals any surveying document or product if its use or implementation may endanger the health, safety, property or welfare of the public.

(2) signs or affixes a seal on any document or product when the registration is inactive or has been revoked, suspended, or has expired.

(3) allows others access to his or her electronic files containing his or her seal and/or electronic signature, unless access is explicitly authorized for particular surveying work.

(b) A person not registered by the board shall not use, cause to be used, affix, or cause to be affixed or in any other manner, regardless

of the means, attach or in any way depict an surveying seal or a representation of an surveying seal without the express permission of the currently active registration holder.

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

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SUBCHAPTER C. PROFESSIONAL CONDUCT AND ETHICS

22 TAC §§138.51, 138.53, 138.55, 138.57, 138.59, 138.61, 138.63, 138.65

STATUTORY AUTHORITY

The rules are proposed pursuant to Texas Occupations Code §§ 1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act and Texas Occupations Code §1071, as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. Section §138.53 is proposed pursuant to Texas Occupations Code §§ 1001.201, 1001.202, and 1001.203. In addition to the foregoing statutory bases, §138.65 is proposed pursuant to Texas Occupations Code §1071.401, which authorizes TBPELS to take disciplinary action against licensees and registrants for statute and rule violations.

No other codes, articles, or statutes are affected by this proposal.

§138.51. General Practice.

(a) The practice of the land surveying profession is essential to the orderly use of our physical environment, and the technical work resultant thereof has important effects on the welfare, property, economy, and security of the public; therefore, the practice of professional land surveying shall be conducted with the highest degree of ethical standards.

(b) Registration holders having knowledge of any alleged violation of the Act and/or board rules shall cooperate with the board in furnishing such information or assistance as may be required.

(c) A registration holder shall respond to the board in writing to all written requests for information regarding all inquiries under the jurisdiction of the board no later than 21 days of receipt or by the date specified in board correspondence. A registration holder shall fully comply with final decisions and orders of the board. Failure to comply with these matters will constitute a separate offense of misconduct and will subject the registration holder to any of the penalties provided under §1001.451(2), (3), or (4) and §1001.501.

(d) Any registration holder who directly or indirectly enters into any contract, arrangement, plan, or scheme with any person, firm, partnership, association, or corporation or other business entity

which in any manner results in a violation of §138.77 of this title (relating to Firm Registration Compliance) shall be subject to legal and disciplinary actions provided under §1001.451(2), (3), or (4) and §1001.501. Professional surveyors shall perform or directly supervise the surveying work of any subordinates as characterized in §131.2 of this title (relating to Definitions). Under no circumstances shall surveyors work in a part-time arrangement with a firm not otherwise in full compliance with §138.77 of this chapter (relating to Firm Registration Compliance) in a manner that could enable such firm to offer or perform professional surveying services.

(e) A registered professional land surveyor may offer or perform surveying services on a full or part-time basis as a firm or other business entity if registered pursuant to the requirements of Chapter 136 of this title (Relating to Firm Registration).

§138.53. Surveyor Standards of Compliance with Professional Services Procurement Act.

(a) A registered professional surveyor shall not submit or request, orally or in writing, a competitive bid to perform professional surveying services for a governmental entity unless specifically authorized by state law and shall report to the board any requests from governmental entities and/or their representatives that request a bid or cost and/or pricing information or any other information from which pricing or cost can be derived prior to selection based on demonstrated competence and qualifications to perform the services.

(b) For the purposes of this section, competitive bidding to perform surveying services includes, but is not limited to, the submission of any monetary cost information in the initial step of selecting qualified surveyors. Cost information or other information from which cost can be derived must not be submitted until the second step of negotiating a contract at a fair and reasonable cost.

(c) This section does not prohibit competitive bidding in the private sector.

§138.55. Surveyors Shall Protect the Public.

(a) Surveyors shall be entrusted to protect the health, safety, property, and welfare of the public in the practice of their profession. The public as used in this section and other rules is defined as any individual(s), client(s), business or public entities, or any member of the general population whose normal course of life might reasonably include an interaction of any sort with the surveying work of the registration holder.

(b) Surveyors shall not perform any surveying function which, when measured by generally accepted surveying standards or procedures, is reasonably likely to result in the endangerment of lives, health, safety, property, or welfare of the public. Any act or conduct which constitutes incompetence or gross negligence, or a criminal violation of law, constitutes misconduct and shall be subject to disciplinary action by the board.

(c) Surveyors shall first notify involved parties of any land surveying decisions or practices that might endanger the health, safety, property or welfare of the public. When, in an surveyors's judgment, any risk to the public remains unresolved, that surveyor shall report any fraud, gross negligence, incompetence, misconduct, unethical or illegal conduct to the board or to proper civil or criminal authorities.

§138.57. Surveyors Shall Be Objective and Truthful.

(a) Surveyors shall issue statements only in an objective and truthful manner. The issuance of oral or written assertions in the practice of surveying shall not be:

- (1) fraudulent;
- (2) deceitful; or

(3) misleading or shall not in any manner whatsoever tend to create a misleading impression.

(b) Surveyors should strive to make affected parties aware of the surveyors' professional concerns regarding particular actions or projects, and of the consequences of surveying decisions or judgments that are overruled or disregarded.

(c) The surveyor shall disclose a potential conflict of interest to a potential or current client or employer upon discovery of the possible conflict.

(d) A potential conflict of interest exists when a surveyor accepts employment when a reasonable probability exists that the surveyor's own financial, business, property, or personal interests may affect any professional judgment, decisions, or practices exercised on behalf of the client or employer. A surveyor may accept such an employment only if all parties involved in the potential conflict of interest are fully informed in writing and the client or employer confirms the knowledge of the potential conflict in writing. A surveyor in a potential conflict of interest employment shall maintain the interests of the client and other parties as provided by §138.61 of this title (relating to Surveyors Shall Maintain Confidentiality of Clients) and other rules and statutes.

§138.59. Surveyors' Actions Shall Be Competent.

(a) Surveyors shall practice only in their areas of competence.

(b) The surveyor shall not perform any surveying assignment for which the surveyor is not qualified by education or experience to perform adequately and competently. However, a surveyor may accept an assignment which includes phases outside of the surveyor's area of competence if those other phases are performed by qualified registered professionals, consultants, associates, or employees.

(c) The surveyor shall not express a surveying opinion which is contrary to generally accepted surveying principles without fully disclosing the basis and rationale for such an opinion.

§138.61. Surveyors Shall Maintain Confidentiality of Clients.

(a) The surveyor may reveal confidences and private information only with a fully informed client's or employer's consent, or when required by law or court order; or when those confidences, if left undisclosed, would constitute a threat to the health, safety, or welfare of the public.

(b) The surveyor shall not use a confidence or private information regarding a client or employer to the disadvantage of such client or employer or for the advantage of a third party.

(c) The surveyor shall exercise reasonable care to prevent unauthorized disclosure or use of private information or confidences concerning a client or employer by the engineer's employees and associates.

§138.63. Surveyors' Responsibility To The Profession.

(a) Surveyors shall engage in professional and business activities related to the practice of surveying in an honest and ethical manner.

(b) The surveyor must:

(1) meet all of the applicable professional practice requirements of federal, state and local statutes, codes, regulations, rules, ordinances or standards in the performance of surveying services;

(2) exercise reasonable care or diligence to prevent the surveyor's partners, associates, and employees from engaging in conduct which, if done by the surveyor, would violate any provision of the Surveying Act, board rule, or any of the professional practice requirements of federal, state and local statutes, codes, regulations, rules or ordinances in the performance of surveying services;

(3) exercise reasonable care to prevent the association of the surveyor's name, professional identification, seal, firm or business name in connection with any venture or enterprise which the surveyor knows, or should have known, is engaging in trade, business or professional practices of a fraudulent, deceitful, or dishonest nature, or any action which violates any provision of the Surveying Act or board rules;

(4) act as faithful agent for their employers or clients;

(5) conduct surveying and related business affairs in a professional manner in interactions with involved parties and employees. Unprofessional conduct may include, but is not limited to, misrepresentation in billing; sale and/or performance of unnecessary work; or conduct that harasses or intimidates another party; and

(6) practice surveying in a careful and diligent manner.

(c) The surveyor shall not:

(1) aid or abet, directly or indirectly, any unlicensed person or business entity in the unlawful practice of surveying;

(2) retaliate against a person who provides reference material for an application for a license or who in good faith attempts to bring forward an allegation of wrongdoing;

(3) give, offer, or promise to pay or deliver, directly or indirectly, any commission, gift, favor, gratuity, benefit, or reward as an inducement to secure any specific surveying work or assignment;

(4) accept compensation or benefits from more than one party for services pertaining to the same project or assignment; or

(5) solicit professional employment in any false or misleading advertising.

(d) Surveyors should strive to promote responsibility, commitment, and ethics both in the education and practice phases of surveying. They should attempt to enhance society's awareness of surveyors' responsibilities to the public and encourage the communication of these principles of ethical conduct among surveyors.

§138.65. Action in Another Jurisdiction.

(a) The surveyor shall not practice or offer to practice surveying in any other jurisdiction in violation of the laws regulating the practice of professional surveying in that jurisdiction. A finding by such jurisdiction of illegal practice or offer to practice is misconduct and will subject the surveyor to disciplinary action in Texas.

(b) Any disciplinary actions taken by another jurisdiction on a matter which would constitute a violation of the Surveying Act or board rules shall be sufficient cause for disciplinary action by this board. A certified copy of the board Order or Final Action from another jurisdiction shall be sufficient evidence to take disciplinary action in this state.

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

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SUBCHAPTER D. FIRM AND GOVERNMENT ENTITY COMPLIANCE

22 TAC §§138.73, 138.75, 138.77, 138.79

STATUTORY AUTHORITY

The rules are proposed pursuant to Texas Occupations Code §1001.201 and §1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act and Texas Occupations Code §1071, as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

No other codes, articles, or statutes are affected by this proposal.

§138.73. Firm Record Modifications.

(a) Each registered surveying firm shall notify the board in writing not later than 30 days after a change in the business entity's:

- (1) physical or mailing address, electronic mail address, telephone or facsimile number or other contact information;
- (2) officers or directors;
- (3) employment status of the professional surveyors of the firm;
- (4) operation including dissolution of the firm or if the firm no longer offers to provide or is not providing surveying services to the public in Texas; or
- (5) operation including addition or dissolution of branch and/or subsidiary offices.

(b) Notice shall include, as applicable, the:

- (1) full legal trade or business name of the entity;
- (2) the firm registration number;
- (3) telephone number of the business office;
- (4) name and license number of the license holder employed or leaving the entity;
- (5) description of the change; and
- (6) effective date of this change.

§138.75. Registration Renewal And Expiration.

(a) The certificate of registration shall be valid until December 31 of the year registered. The board shall notify each firm holding a certificate of registration of the date of the expiration and the amount of the fee that shall be required for its renewal for one year, at least one month in advance of the date of the expiration. The renewal notice shall be mailed to the last address provided by the firm to the board. The certificate of registration may be renewed by completing the renewal application and paying the annual registration renewal fee set by the board. It is the sole responsibility of the firm to pay the required renewal fee prior to the expiration date, regardless of whether the renewal notice is received.

(b) A certificate of registration which has been expired for less than one year may be renewed by completing the renewal statement sent by the board and payment of two (2) times the normal renewal fee. When renewing an expired certificate of registration, the authorized official of the firm shall submit a written statement of whether surveying services were offered, pending, or performed for the public in Texas during the time the certificate of registration was expired.

(c) If a certificate of registration has been expired for more than one year, the firm must re-apply for certification under the laws and rules in effect at the time of the new application and shall be issued a new certificate of registration serial number if the new application is approved.

(d) The renewal fee will not be refunded.

§138.77. Firm Registration Compliance.

(a) Any firm or other business entity shall not offer or perform surveying services to the public unless registered with the board, pursuant to the requirements of Chapter 136 of this title (relating to Firm Registration).

(b) A firm shall provide that at least one full-time active registration holder is employed with the entity and that the active registration holder performs or directly supervises all surveying work and activities that require a registration that is performed in the primary, branch, remote, or project office(s).

(c) An active registration holder who is a sole practitioner shall satisfy the requirement of the regular, full-time employee.

(d) No surveying services are to be offered to or performed for the public in Texas by a firm while that firm does not have a current certificate of registration.

(e) A business entity that offers or is engaged in the practice of surveying in Texas and is not registered with the board or has previously been registered with the board and whose registration has expired shall be considered to be in violation of the Act and board rules and will be subject to administrative penalties as set forth in the Act and board rules.

(f) The board may revoke a certificate of registration that was obtained in violation of the Act and/or board rules including, but not limited to, fraudulent or misleading information submitted in the application or lack of employee relationship with the designated professional surveyor for the firm.

(g) If a firm has notified the board that it is no longer offering or performing surveying services to the public, including the absence of a regular, full-time employee who is an active professional surveyor registered in Texas, the certificate of registration record will be placed in inactive status until the board is notified of resumed offering and performing of services. If the firm certificate of registration is inactive, the certificate of registration will expire under the same requirements of subsection (e) of this section unless renewed.

(h) All surveying documents released, issued, or submitted by or for a registered surveying firm, including preliminary documents, must clearly indicate the firm name and registration number.

(i) A firm registered under Chapter 136 of this title may voluntarily surrender the registration by submitting a request in writing provided that the firm:

- (1) is in good standing; and
- (2) does not have an enforcement case pending before the board.

(j) A firm registration that has been voluntarily surrendered may not be renewed. A firm which has voluntarily surrendered a registration may apply for a new registration.

(k) Each firm offering surveying services to the public shall notify consumers and service recipients of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. This can be accomplished by:

(1) A sign prominently displayed in the place of business of each registrant offering professional land surveying services;

(2) On a bill for professional land surveying service;

(3) On each written contract for services; or

(4) On a firm's website.

§138.79. Standards For Compliance With Professional Services Procurement Act.

When procuring professional surveying services, a governmental entity and/or its representative(s) shall comply with the requirements of Subchapter A, Chapter 2254, Texas Government Code and shall select and award on the basis of demonstrated competence and qualifications to perform the services for a fair and reasonable price and shall not select services or award contracts on the basis of competitive bidding.

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

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SUBCHAPTER E. PROFESSIONAL AND TECHNICAL STANDARDS

22 TAC §§138.81, 138.83, 138.85, 138.87, 138.89, 138.91, 138.93, 138.95, 138.97

STATUTORY AUTHORITY

The rules are proposed pursuant to Texas Occupations Code §§ 1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act and Texas Occupations Code §1071, as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state.

No other codes, articles, or statutes are affected by this proposal.

§138.81. Introduction.

Professional land surveying performed in Texas, unless otherwise specifically exempted herein, shall meet or exceed the requirements of these standards. The Board considers any survey, the purpose of which is to delineate, segregate, separate, or partition any interest in real property of any kind, under these standards except when prepared pursuant to §138.93 of this title (relating to Subdivision Plat).

§138.83. Precision and Accuracy.

Survey measurements shall be made with equipment and methods of practice capable of attaining the accuracy and tolerances required by the professional land surveying services being performed. Areas, if reported, shall be produced, recited, and/or shown only to the least significant number compatible with the precision of closure.

§138.85. Boundary Construction.

When delineating a boundary line as an integral portion of a survey, the land surveyor shall:

(1) Respect junior/senior rights for boundary retracement;

(2) Follow the footsteps of the original land surveyor;

(3) Follow the documented records of the land title affecting the boundaries being surveyed;

(A) Rely on the appropriate deeds and/or other documents including those for adjoining parcels for the location of the boundaries of the subject parcel(s).

(B) A land surveyor assuming the responsibility of performing a land survey also assumes the responsibility for such research of adequate thoroughness to support the determination of the location of the boundaries of the land being surveyed. The land surveyor may rely on record data related to the determination of boundaries furnished for the registrants' use by a qualified provider, provided the registrant reasonably believes such data to be sufficient and notes, references, or credits the documentation by which it is furnished.

(C) All boundaries shall be connected to identifiable physical monuments related to corners of record dignity. In the absence of such monumentation the land surveyor's opinion of the boundary location shall be supported by other appropriate physical evidence, which shall be explained in a land surveyor's sketch or written report.

(D) Shall review the record instruments that identify the adjacent properties researched to prepare the boundary and cite the record instruments on the drawing.

(4) Follow the intent of the boundary location as evidenced by the record;

(5) Respect the proper application of the rules of dignity (priority) of calls, and applicable statutory and case law of Texas.

§138.87. Monumentation.

(a) All monuments set by registered professional land surveyors shall be set at sufficient depth to retain a stable and distinctive location and be of sufficient size to withstand the deteriorating forces of nature and shall be of such material that in the land surveyor's judgment will best achieve this goal.

(b) When delineating a property or boundary line as an integral portion of a survey, the land surveyor must set, or leave as found, an adequate quantity of monuments of a stable and reasonably permanent nature to represent or reference the property or boundary corners. All survey markers shall be shown and described with sufficient evidence of the location of such markers on the land surveyors' drawing, written description or report.

(c) All metes and bounds descriptions prepared as an exhibit to be used in easements shall be tied to corners of record related to the boundary of the affected tract in accordance with subsection (b) of this section.

(d) Where practical, all monuments set by a Professional Land Surveyor to delineate or witness a boundary corner shall be marked in a way that is traceable to the responsible registrant or associated employer.

§138.89. Certification.

(a) If the land surveyor certifies, or otherwise indicates, that his/her product or service meets a standard of practice in addition to that promulgated by the board, then the failure to so meet both standards may be considered by the board, for disciplinary purposes, to be misleading the public.

(b) A land surveyor shall certify only to factual information that the land surveyor has knowledge of or to information within his professional expertise as a land surveyor unless otherwise qualified.

(c) Registered professional land surveyors may certify, using the registrant's signature and official seal, services which are not within the definition of professional land surveying as defined in the Act, provided that such certification does not violate any Texas or federal law.

§138.91. Survey Drawing/Written /Description/Report.

(a) All reports shall delineate the relationship between record monuments and the location of the boundaries surveyed; such relationship shall be shown on the survey drawing, if a drawing is prepared, and/or separate report and recited in the description with the appropriate record references recited thereon and therein.

(b) Every description prepared for the purpose of defining boundaries shall provide a definite and unambiguous identification of the location of such boundaries and shall describe all monuments found or placed.

(c) Courses shall be referenced by notation upon the survey drawing to an identifiable and monumented line or an established geodetic system for directional control.

(d) The survey drawing shall bear the firm name and firm registration number, the land surveyor's name, address, and phone number who is responsible for the land survey, his/her official seal, his/her original signature per Subchapter B of this chapter (Sealing Requirements), and date surveyed.

(e) Boundary monuments found or placed by the land surveyor shall be described upon the survey drawing. The land surveyor shall note upon the survey drawing, which monuments were found, which monuments were placed as a result of his/her survey, and other monuments of record dignity relied upon to establish the corners of the property surveyed.

(f) If any report consists of more than one part, each part shall note the existence of the other part or parts.

(g) If a land surveyor provides a written narrative in lieu of a drawing/sketch to report the results of a survey, the written narrative shall contain sufficient information to demonstrate the survey was conducted in compliance with the Act and rules of the board.

§138.93. Subdivision Plat.

When submitting a subdivision plat to a political subdivision of this state for review and recording, the surveyor shall apply and adhere to the Surveying Act and board rules when establishing or delineating the perimeter boundary of the purposed subdivision. The surveyor shall abide by and conform to the provisions of the state code and any local codes and ordinances as to any other platting requirements.

§138.95. Descriptions Prepared for Political Subdivisions.

A registrant or licensee may prepare, sign, and seal a metes and bounds description from public land title records upon satisfying all of the following minimum conditions:

(1) The description is prepared for a political subdivision of the state (which is defined as a county, city, district, or other body politic of the state having a jurisdiction over only a portion of the state) for the sole purpose of defining or modifying the boundaries of the political subdivision.

(2) The description must be unambiguous and locatable on the ground by ordinary surveying procedures;

(3) Any record monument or physical monumentation called for in the description must be in place at the time the surveyor

prepares the description and the surveyor must have personal knowledge of such monument sufficient to give a proper current description for the monument and its accessories;

(4) The surveyor signing the work must have performed an on the ground survey to support any course and distance recited in the description, except that the description may quote courses and distances from recorded documents (such as deeds) as long as the recording reference for any recited document is also quoted in the description; and

(5) Any survey document prepared under this rule shall bear a note as follows: "This document was prepared under 22 Texas Administrative Code §138.95, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared."

§138.97. Easement Depiction.

(a) An easement depiction prepared by any person registered or licensed under the Surveying Act shall adhere to all rules promulgated by the board except where:

(1) the easement area can be clearly ascertained without reference to a metes and bounds description of the easement; and

(2) the easement does not bisect or protrude into the tract (leaving non-easement areas on opposite sides of the easement strip).

(b) An easement's legal description or plat depiction meets the requirements of the exception to this rule when the easement:

(1) is a blanket easement; or

(2) the easement:

(A) is within a tract of land or lot depicted in a recorded subdivision plat;

(B) can be clearly defined and located without a metes and bounds description; and

(C) is adjoining to a platted boundary line.

(c) A "construction estimate", as used in §1071.004 of the Surveying Act, means a depiction of a possible easement route for planning purposes.

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

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CHAPTER 139. ENFORCEMENT
SUBCHAPTER C. ENFORCEMENT
PROCEEDINGS

22 TAC §139.35, §139.37

The Texas Board of Professional Engineers and Land Surveyors (Board) proposes new rules to 22 Texas Administrative Code, Chapter 139, specifically §139.35 and §139.37, regarding suggested sanction tables for violations of the engineering and surveying practice Acts and rules. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 22 Texas Administrative Code Chapter 139 implement Texas Occupations Code, Chapter 1001, the Texas Engineering Practice Act, and Occupations Code, Chapter 1071, the Professional Land Surveying Practices Act.

The proposed rules implement necessary changes as required by House Bill (HB) 1523, 86th Legislature, Regular Session (2019), related to the merger of operations of the Texas Board of Professional Engineers and the Texas Board of Professional Land Surveying (TBPLS) into the Texas Board of Professional Engineers and Land Surveyors (TBPELS).

As required by HB 1523, the operations of the two agencies have been merged into one, including compliance and enforcement and professional practice requirements for Registered Professional Land Surveyors (RPLS) and Licensed State Land Surveyors (LSLS). The TBPLS's rules (22 Texas Administrative Code, Chapter 661), included a table of suggested sanctions for violations of rules of professional responsibility and conduct for land surveyors. This table has been clarified and merged into Chapter 139 per the guidance of the Secretary of State. These rules have been formatted to be similar to the compliance and professionalism rules for engineers (Chapter 139) and edits made for format and clarity.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §139.35 concerning sanctions and penalties for professional engineers. Language has been added to clarify that the sanctions in this section relate to professional engineering and violations of the Professional Engineering Act and board rules.

The proposed rules create a new §139.37 concerning sanctions and penalties for professional land surveyors. This section consolidates and clarifies the TBPLS's previous surveyor sanction table from §661.99 related to violations of the Professional Land Surveying Act and board rules.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Dr. Lance Kinney, Ph.D., P.E., Executive Director for the Board, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules. The rules impose no additional costs. HB 1523 transferred regulatory authority from TBPLS to TBPELS, and these rules merely reflect that transfer of authority.

Dr. Kinney has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Dr. Kinney has determined that the proposed rules will not affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be the clarification of sanctions for violations of the Land Surveying Act and board rules and facilitate the efficient and effective practice by professional land surveyors in accordance with HB 1523 and Texas Occupations Code chapters 1001 and 1071.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Dr. Kinney has determined that for each year of the first five-year period the proposed rules are in effect, the rules related to professional practice do not make substantive changes to the previous practice rules and have no additional costs for registrants or the agency.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

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

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules.

HB 1532 transferred the regulation of land surveying to the TBPELS, and these rules reflect a transfer of that regulatory authority from the former TBPLS to the TBPELS without any growth in government. Therefore, for each year of the first five years the proposed rules are in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules do not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules do not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules do not expand, limit, or repeal a regulation except as provided by HB 1532 which transferred the regulation of land surveying to the TBPELS, and these rules reflect a transfer of that regulatory authority from the former Board of Professional Land Surveying to the TBPELS.

7. The proposed rules do not increase the number of individuals subject to the rule's applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Board has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that the proposed rules are not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts the proposed rules are not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by §2001.0225, is not required.

PUBLIC COMMENTS

Any comments or request for a public hearing may be submitted, no later than 30 days after the publication of this notice, to Lance Kinney, Ph.D., P.E., Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to rules@pels.texas.gov.

STATUTORY AUTHORITY

The rules are proposed pursuant to Texas Occupations Code §§1001.201 and 1001.202, which authorize the Board to regulate engineering and land surveying and make and enforce all rules and regulations and bylaws consistent with the Act and Texas Occupations Code chapter 1071 as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practices of engineering and land surveying in this state. They are also proposed pursuant to Texas Occupations Code §§1001.451, 1001.452, 1001.501, 1001.502, 1001.551, 1001.5511, 1001.552, 1071.401, 1071.404, and 1071.504, which authorize the Board to take disciplinary action, assess administrative and criminal penalties, issue cease and desist orders, and seek injunctive relief for statute and rule violations.

No other codes, articles, or statutes are affected by this proposal.

§139.35. Sanctions and Penalties - Engineering.

(a) The board, the executive director, an administrative law judge, and the participants in an informal settlement conference may arrive at a greater or lesser sanction than suggested in these rules. The minimum administrative penalty shall be \$100 per violation. Pursuant to §1001.502(a) of the Act, the [The] maximum administrative penalty shall be \$5,000.00 per violation of Chapter 1001 or a rule adopted or order issued under that chapter. [Pursuant to §1001.502(a) of the Act,] Each [each] day a violation continues or occurs is considered a separate violation for the purpose of assessing an administrative penalty. Allegations and disciplinary actions will be set forth in the final board order and the severity of the disciplinary action will be based on the following factors:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard

or potential hazard created to the health, safety, or economic welfare of the public;

- (2) the history of prior violations of the respondent;
 - (3) the severity of penalty necessary to deter future violations;
 - (4) efforts or resistance to efforts to correct the violations;
 - (5) the economic harm to property or the environment caused by the violation; and
 - (6) any other matters impacting justice and public welfare, including any economic benefit gained through the violations.
- (b) - (e) (No change.)

§139.37. Sanctions and Penalties - Surveying.

(a) The board, the executive director, an administrative law judge, and the participants in an informal settlement conference may arrive at a greater or lesser sanction than suggested in these rules. The minimum administrative penalty shall be \$100 per violation. Pursuant to §1001.502(a) of the Act, the maximum administrative penalty shall be \$1,500.00 per violation of Chapter 1071 or a rule adopted or order issued under that chapter. Each day a violation continues or occurs is considered a separate violation for the purpose of assessing an administrative penalty. Allegations and disciplinary actions will be set forth in the final board order and the severity of the disciplinary action will be based on the following factors:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created to the health, safety, or economic welfare of the public;
- (2) the history of prior violations of the respondent;
- (3) the severity of penalty necessary to deter future violations;
- (4) efforts or resistance to efforts to correct the violations;
- (5) the economic harm to property or the environment caused by the violation; and
- (6) any other matters impacting justice and public welfare, including any economic benefit gained through the violations.

(b) The following is a table of suggested sanctions the board may impose against license holders for specific violations of the Act or board rules. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table. Also, for those suggested sanctions that list "suspension", all or any portion of the sanction could be probated depending on the severity of each violation and the specific case evidence.

Figure: 22 TAC §139.37(b)

(c) The following is a table of suggested sanctions that may be imposed against a person or business entity for specific violations of the Act or board rules. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table.

Figure: 22 TAC §139.37(c)

(d) The following is a table of suggested sanctions that may be imposed against a person or business entity for violations of the Act or board rules involving firm registration. NOTE: In consideration of subsection (a)(1) - (6) of this section, the sanction issued could be less than or greater than the suggested sanctions shown in the following table.

Figure: 22 TAC §139.37(d)

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

Filed with the Office of the Secretary of State on September 28, 2020.

TRD-202004015

Lance Kinney

Executive Director

Texas Board of Professional Engineers and Land Surveyors

Earliest possible date of adoption: November 8, 2020

For further information, please call: (512) 440-3080



TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 133. GENERAL MEDICAL PROVISIONS

SUBCHAPTER D. DISPUTE OF MEDICAL BILLS

28 TAC §133.307

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC or division) proposes to amend 28 TAC §133.307 (concerning MDR of Fee Disputes) to allow health care providers and pharmacy processing agents to electronically submit requests for medical fee dispute resolution (MFDR).

EXPLANATION. Section 133.307 applies to a request to DWC for MFDR as authorized by the Texas Workers' Compensation Act. It was last amended in 2012. Currently, requestors can submit MFDR requests by mail and hand-delivery. Injured employees may also submit requests by fax. DWC proposes to amend §133.307 to allow electronic transmission in the form and manner described in 28 TAC §102.5 (concerning General Rules for Written Communications to and from the Commission) to increase convenience and reduce costs associated with fee disputes. As provided by §102.5(h), "Electronic transmission is defined as transmission of information by facsimile, electronic mail, electronic data interchange or any other similar method and does not include telephonic communication."

Under these amendments, electronic filing will be accepted through fax, secure file transfer protocol (SFTP), or encrypted email. About 70 percent of the requests DWC receives by mail for MFDR are submitted by 15 entities. Moving those requests to SFTP should significantly reduce the time and costs spent managing paper mail.

Under the federal Health Insurance Portability and Accountability Act (HIPAA), health care providers are required to maintain the confidentiality of protected health information. 45 CFR §§160.103, 164.102-164.318, 164.500-164.534; see, e.g., 22 TAC §165.2 and §322.4. Health care providers are required to follow requirements or guidance from their licensing boards

regarding protected health information. Health care providers can protect the security and privacy of injured employee's confidential information by using secure or encrypted email when submitting requests.

The proposed amendments to subsection (a) update the description of the rule's applicability and provide that these amendments will go into effect on February 1, 2021. This is a nonsubstantive change. The amendments retain the general rule that a dispute resolution request must be resolved in accordance with the statutes and rules in effect at the time the request was filed. The proposed amendments also delete specific reference to filings before the last amendment of this rule in 2012. This deletion does not change the effect that a dispute resolution request filed before June 1, 2012, will be resolved in accordance with the statutes and rules in effect at the time the request was filed. Similarly, requests filed between June 1, 2012, and February 1, 2021, will be resolved in accordance with the statutes and rules in effect at the time the request was filed. A proposed subsection (a)(4) provides that these amendments will go into effect on February 1, 2021.

Proposed amendments to subsection (c)(1) provide that a request will be filed on the date DWC receives the request. Currently, a request is determined to have been received when the MFDR Section receives the request. This change will remove potential uncertainties and delays if a request received by mail is not promptly forwarded from DWC's mailroom to the MFDR Section. This change also will establish a uniform filing date, regardless of whether a request is submitted electronically or by mail or personal delivery.

Proposed amendments to subsections (c), (c)(2)(J) - (K), (d)(2)(B) - (D), and (d)(2)(H) - (I) delete requirements for filing paper copies. Proposed amendments to subsections (c)(2) and (4) and (d)(1) provide for electronic transmission of medical bills in a form and manner as described in 28 TAC §133.10(b) (concerning Required Billing Forms/Formats) or 28 TAC §133.500 (concerning Electronic Formats for Electronic Medical Bill Processing).

Proposed amendments to subsection (c)(2)(K) clarify that an MFDR request filed by a health care provider or pharmacy processing agent must include each explanation of benefits or e-remittance related to a dispute and that these are collectively referred to in this rule as "EOBs."

Proposed amendments to subsection (c)(3) remove repetitive language and divide the existing language into subparagraphs.

In addition, the proposed amendments to §133.307 include nonsubstantive editorial and formatting changes to conform to DWC's current style and to improve the rule's clarity.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Matt Zurek, deputy commissioner of Health & Safety, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments, as self-insurers, will benefit from the ease and reduced cost provided by the proposed amendments.

Mr. Zurek does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Zurek expects that administering the proposed amendments will have the public benefit of providing a more efficient filing process and will take maximum advantage of technological advances to provide the highest levels of service possible to system participants.

Mr. Zurek expects that the proposed amendments will not increase the cost to comply with the Texas Workers' Compensation Act because it does not impose requirements beyond those in the statute. Electronic filing is offered as an additional alternative and will not be required. Also, electronic filing should result in reduced costs to system participants.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro-businesses or on rural communities as the proposed amendments should reduce costs for system participants. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that the proposed amendments do not impose a possible cost on regulated persons. In addition, the proposed amendments will reduce the burden or responsibilities imposed on system participants.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on Monday, November 9, 2020. Send your comments to RuleComments@tdi.texas.gov or to Cynthia Guillen, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, Legal Services, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

To request a public hearing on the proposal, submit a request before the end of the comment period and separate from any comments, to RuleComments@tdi.texas.gov; or to Cynthia Guillen,

MS-4D, Texas Department of Insurance, Division of Workers' Compensation, Legal Services, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. The request for public hearing must be separate from any comments and received by DWC no later than 5:00 p.m. Central time, on Monday, October 2, 2020. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. DWC proposes these amendments to §133.307 under Labor Code §§402.00128, 402.021, 402.061, and 413.031.

Section 402.00128 describes the general powers and duties of the commissioner, including to hold hearings, take testimony directly or by deposition or interrogatory, and prescribe the form, manner, and procedure for the transmission of information to the division.

Section 402.021 provides that it is a basic goal of the Texas workers' compensation system that each injured employee shall have access to a fair and accessible dispute resolution process and that it is the Legislature's intent that DWC take maximum advantage of technological advances to provide the highest levels of service possible to system participants.

Section 402.061 provides that the commissioner shall adopt rules as necessary to implement the Labor Code Title 5, Subtitle A.

Section 413.031 provides for medical dispute resolution and mandates that the commissioner adopt rules to notify claimants of their rights and to specify the appropriate dispute resolution process for disputes in which a claimant has paid for medical services and seeks reimbursement. This section also authorizes the commissioner to prescribe by rule an alternative dispute resolution process to resolve disputes regarding medical services costing less than the cost of a review of the medical necessity of a health care service by an independent review organization.

CROSS-REFERENCE TO STATUTE. Section 133.307 implements the Texas Workers' Compensation Act, Labor Code Title 5, Subtitle A.

§133.307. *Medical [MDR of] Fee Dispute Resolution [Disputes]* .

(a) Applicability. [The applicability of this section is as follows.]

[(+)] This section applies to a request to the division for medical fee dispute resolution (MFDR) as authorized by the Texas Workers' Compensation Act [that is filed on or after June 1, 2012].

(1) Dispute resolution requests must [filed prior to June 1, 2012, shall] be resolved in accordance with the statutes and rules in effect at the time the request was filed.

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

(4) The 2020 amendments regarding electronic submission of dispute requests are effective February 1, 2021.

(b) (No change.)

(c) Requests. Requests for MFDR must [shall] be legible and filed in the form and manner prescribed by the division. [Requestors shall file two legible copies of the request with the division.]

(1) Timeliness. A requestor must [shall] timely file the request with the division [division's MFDR Section] or waive the right to MFDR. The division will [shall] deem a request to be filed on the date the division [MFDR Section] receives the request. A decision by the division [MFDR Section] that a request was not timely filed is not

a dismissal and may be appealed pursuant to subsection (g) of this section.

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

(2) Health Care Provider or Pharmacy Processing Agent Request. ~~The requestor shall provide the following information and records with the request for MFDR in the form and manner prescribed by the division. The requestor must send [provider shall file] the request to [with] the division in the form and manner prescribed by the division [MFDR Section] by any mail service, [or] personal delivery, or electronic transmission as described in §102.5 of this title (relating to General Rules for Written Communications to and from the Commission).~~ The request must [shall] include:

(A) - (I) (No change.)

(J) a [paper] copy of all medical bills [bill(s)] related to the dispute, as described in §133.10 of this chapter (concerning Required Billing Forms/Formats) or §133.500 (concerning Electronic Formats for Electronic Medical Bill Processing) as originally submitted to the insurance carrier in accordance with this chapter, and a [paper] copy of all medical bills [bill(s)] submitted to the insurance carrier for an appeal in accordance with §133.250 of this chapter (concerning Reconsideration for Payment of ~~[relating to General]~~ Medical Bills ~~[Provisions]~~);

(K) [a paper copy of] each explanation of benefits or e-remittance (collectively "EOB") related to the dispute as originally submitted to the health care provider in accordance with this chapter or, if no EOB was received, convincing documentation providing evidence of insurance carrier receipt of the request for an EOB;

(L) - (Q) (No change.)

(3) Subclaimant Dispute Request. ~~The requestor shall provide the appropriate information with the request that is consistent with the provisions of §140.6 or §140.8 of this title.~~

(A) A request made by a subclaimant under Labor Code §409.009 (relating to Subclaims) must [shall] comply with §140.6 of this title (concerning Subclaimant Status: Establishment, Rights, and Procedures) and submit the required documents to the division [Division required thereunder].

(B) A request made by a subclaimant under Labor Code §409.0091 (relating to Reimbursement Procedures for Certain Entities) must [shall] comply with the document requirements of §140.8 of this title (concerning Procedures for Health Care Insurers to Pursue Reimbursement of Medical Benefits under Labor Code §409.0091) and submit the required documents to the division [Division required thereunder].

(4) Injured Employee Dispute Request. An injured employee who has paid for health care may request MFDR of a refund or reimbursement request that has been denied. The injured employee must send the request [employee's dispute request shall be sent] to the division [MFDR Section] in the form and manner prescribed by the division by mail service, personal delivery, or electronic transmission as described in §102.5 of this title [faesimile] and must [shall] include:

(A) - (I) (No change.)

(5) Division Response to Request. The division will forward a copy of the request and the documentation submitted in accordance with paragraph (2), (3), or (4) of this subsection to the respondent. The respondent shall be deemed to have received the request on the acknowledgment date as defined in §102.5 of this title ~~[(relating to General Rules for Written Communications to and from the Commission)]~~.

(d) Responses. Responses to a request for MFDR must [shall] be legible and submitted to the division and to the requestor in the form and manner prescribed by the division.

(1) Timeliness. The response will be deemed timely if received by the division through [via] mail service, personal delivery, or electronic transmission as described in §102.5 of this title, [faesimile] within 14 calendar days after the date the respondent received the copy of the requestor's dispute. If the division does not receive the response information within 14 calendar days of the dispute notification, then the division may base its decision on the available information.

(2) Response. On [Upon] receipt of the request, the respondent must [shall] provide any missing information not provided by the requestor and known to the respondent. The respondent must [shall] also provide the following information and records:

(A) the name, address, and contact information of the respondent;

(B) [a paper copy of] all initial and appeal EOBs related to the dispute, as originally submitted to the health care provider in accordance with this chapter, related to the health care in dispute not submitted by the requestor or a statement certifying that the respondent did not receive the health care provider's disputed billing before [prior to] the dispute request;

(C) [a paper copy of] all medical bill(s) related to the dispute, submitted in accordance with this chapter if different from that originally submitted to the insurance carrier for reimbursement;

(D) [a copy of] any pertinent medical records or other documents relevant to the fee dispute not already provided by the requestor;

(E) - (G) (No change.)

(H) If the medical fee dispute involves compensability, extent of injury, or liability, the insurance carrier must [shall] attach [a copy of] any related Plain Language Notice in accordance with §124.2 of this title (concerning Insurance ~~[relating to]~~ Carrier Reporting and Notification Requirements).

(I) If the medical fee dispute involves medical necessity issues, the insurance carrier must [shall] attach [a copy of] documentation that supports an adverse determination in accordance with §19.2005 of this title (concerning ~~[relating to]~~ General Standards of Utilization Review).

(e) - (h) (No change.)

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

Filed with the Office of the Secretary of State on September 22, 2020.

TRD-202003900

Kara Mace

Deputy Commissioner of Legal Services

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: November 8, 2020

For further information, please call: (512) 804-4703



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM

SUBCHAPTER J. LOCAL WORKFORCE DEVELOPMENT AREA APPEALS

40 TAC §802.170

The Texas Workforce Commission (TWC) proposes the following new subchapter to Chapter 802, relating to the Integrity of the Texas Workforce System:

Subchapter J. Local Workforce Development Area Appeals, §802.170

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 802 rule amendment is to add Subchapter J, relating to appeals of denial of local workforce development area (workforce area) certifications. Subchapter J has been added to this chapter to retain the rule related to workforce area appeals from repealed Chapter 841, Subchapter E. This new subchapter is consistent with and implements Workforce Innovation and Opportunity Act (WIOA) §106(b)(5).

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER J. LOCAL WORKFORCE DEVELOPMENT AREA APPEALS

Consistent with WIOA §106(b)(5), TWC proposes new Subchapter J as follows:

§802.170. Appeal of Denial of Local Workforce Development Area Certification

New §802.170 states that all appeals of denial of workforce area certification shall be referred to the Texas Workforce Investment Council.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rule will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rule.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rule.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rule.

There are no anticipated economic costs to individuals required to comply with the rule.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rule.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to add Subchapter J, relating to appeals of denial of workforce area certification, which is consistent with and implements WIOA §106(b)(5).

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rule will be in effect:

- the rule will not create or eliminate a government program;
- implementation of the rule will not require the creation or elimination of employee positions;
- implementation of the rule will not require an increase or decrease in future legislative appropriations to TWC;
- the rule will not require an increase or decrease in fees paid to TWC;
- the rule will not create a new regulation;
- the rule will not expand, limit, or eliminate an existing regulation;
- the rule will not change the number of individuals subject to the rules; and
- the rule will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rule will not have an adverse economic impact on small businesses or rural communities, as the proposed rule places no requirements on small businesses or rural communities.

Mariana Vega, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rule.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the proposed rule will be to retain in rule provisions workforce area appeals from repealed Chapter 841 and update the rule consistent with WIOA §106(b)(5).

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of this rule for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the concept paper regarding this rule to the Boards for consideration and review on March 17, 2020. TWC also conducted a conference call with Board executive directors and Board staff on March 27, 2020, to discuss the concept paper. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rule may be submitted to TWCPolicyComments@twc.state.tx.us. Comments must be received no later than 30 days from the date this proposal is published in the *Texas Register*.

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§802.170. Appeal of Denial of Local Workforce Development Area Certification.

All appeals of denial of local workforce development area certifications shall be referred to the Texas Workforce Investment Council as described in the Agency's WIOA Combined State Plan.

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

Filed with the Office of the Secretary of State on September 23, 2020.

TRD-202003948

Dawn Cronin

Director, Workforce Program Policy

Texas Workforce Commission

Earliest possible date of adoption: November 8, 2020

For further information, please call: (512) 689-9855



CHAPTER 840. WIOA ELIGIBLE TRAINING PROVIDERS

The Texas Workforce Commission (TWC) proposes new Chapter 840, relating to Workforce Innovation and Opportunity Act (WIOA) Eligible Training Providers, comprising the following subchapters:

Subchapter A. General Provisions, §840.1 and §840.2

Subchapter B. Training Provider Eligibility, §840.10 and §840.11

Subchapter C. Training Program Eligibility, §§840.20 - 840.23

Subchapter D. Annual Reporting, §840.30 and §840.31

Subchapter E. Statewide Eligible Training Provider List, §§840.40 - 840.42

Subchapter F. Adverse Actions, §§840.50 - 840.55

Subchapter G. State and Local Flexibility, §§840.60 - 840.64

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the new Chapter 840 rules is to develop rules to establish the Eligible Training Provider (ETP) system, statewide ETP List (ETPL), and WIOA training services delivered by TWC and its 28 Local Workforce Development Board (Board) partners. Current TWC rules in Chapter 841, Subchapter C, regarding Training Provider Certification, support a previous training delivery model authorized by the Workforce Investment Act (WIA), which was repealed by Congress with the passage of WIOA. Therefore, new Chapter 840 is proposed to reflect this updated service delivery model. New Chapter 840 will contain all rules for the ETP system, authorized under WIOA. The rules in Chapter 841, Subchapter C are concurrently proposed for repeal.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes new Subchapter A, General Provisions, as follows:

§840.1. Short Title and Purpose

New §840.1 identifies statutes and regulations that determine the ETP system provisions.

§840.2. Definitions

New §840.2 relates to the definitions needed to make administration of the ETP system consistent with federal regulations at 20 CFR Part 677, Subpart E and Part 680. The rule also includes references to definitions in Texas Labor Code Chapter 301 and Texas Government Code Chapter 2308.

SUBCHAPTER B. TRAINING PROVIDER ELIGIBILITY

TWC proposes new Subchapter B, Training Provider Eligibility, as follows:

§840.10. Appropriate Licensure

New §840.10 identifies general licensure requirements for eligible training providers in the state. The section also references Texas Education Code Chapter 61, which governs higher education institutions in Texas and Texas Education Code Chapter 132, which governs proprietary schools. US Department of Labor (DOL)--approved Registered Apprenticeship Programs (RAPs) are exempt from licensure under §840.10.

§840.11. Eligibility of Training Providers

New §840.11 identifies the requirement that training providers must provide training services. Training services defined by

Chapter 840 are consistent with the nonexhaustive list provided in 20 CFR §680.200. The section also identifies that providers must submit information required by TWC. The section identifies that such information shall be reviewed by Boards and TWC to determine provider eligibility.

SUBCHAPTER C. TRAINING PROGRAM ELIGIBILITY

TWC proposes new Subchapter C, Training Program Eligibility, as follows:

§840.20. Initial Eligibility Consideration

New §840.20 relates to the process of eligibility for programs that have not previously been included on the statewide ETPL. The section identifies the requirement to submit eligibility criteria and performance information as determined by TWC. The section specifies that initial eligibility criteria for programs include connections to statewide target occupations and local business partnerships. The section reserves the right of TWC to develop additional criteria for such determination. The section also identifies that TWC's three-member Commission (Commission) may set minimum performance targets for programs related to initial eligibility determination. The section specifies that initial eligibility shall last no longer than 12 months and be followed by continued eligibility determination for programs.

§840.21. Continued Eligibility Consideration

New §840.21 relates to the process of eligibility determination for programs following the period of initial eligibility. The section identifies that the continued eligibility determination process follows initial eligibility and previous continued eligibility determinations. The section specifies that continued eligibility criteria include those elements used for initial eligibility and such additional criteria listed in 20 CFR §680.460. The section reserves the right of TWC to develop additional criteria for such determination.

§840.22. Registered Apprenticeship Programs

New §840.22 specifies information that RAPs are required to provide in order to be included on the statewide ETPL. The section identifies the exemption of RAPs from eligibility determinations described by Chapter 840, Subchapter C.

§840.23. Additional Eligibility Requirements

New §840.23 identifies the right of TWC to develop additional requirements for inclusion on the statewide ETPL. The section identifies that such additional requirements shall be applied to programs during the eligibility determination following their development.

SUBCHAPTER D. ANNUAL REPORTING

TWC proposes new Subchapter D, Annual Reporting, as follows:

§840.30. Annual Performance Reporting Requirement

New §840.30 identifies the requirement of training programs to report performance information to TWC annually. The section specifies student-level information required of programs. The section also identifies how TWC will use such information to reduce the reporting burden on programs by using existing connections between TWC systems to calculate employment-related performance indicators required by WIOA §116(d)(4). The section retains the right of TWC to develop additional requirements for annual reporting.

§840.31. Notification of Annual Reporting Requirement

New §840.31 identifies the responsibilities of TWC related to the methodology and timeline of annual reporting for providers. The section describes provisions under which providers may request an exemption from, or extension of, the annual reporting deadline from TWC. The section includes information on the removal of programs for failure to meet annual reporting timeline.

SUBCHAPTER E. STATEWIDE ELIGIBLE TRAINING PROVIDER LIST

TWC proposes new Subchapter E, Statewide Eligible Training Provider List, as follows:

§840.40. Statewide ETPL

New §840.40 clarifies which programs are included on the statewide ETPL. The section relates to the inclusion of available general and performance information for programs on the statewide ETPL. The section clarifies that information that may reveal personally identifiable information (PII) for individual students shall not be included.

§840.41. Distribution of the Statewide ETPL

New §840.41 identifies TWC's responsibility to ensure that the public and workforce partners have access to the statewide ETPL. The statewide ETPL will be maintained on TWC's website and will be updated not less than monthly to ensure that recent information is available to Texans.

§840.42. Removal from the Statewide ETPL

New §840.42 relates generally to voluntary and involuntary removal of programs from the statewide ETPL. The section identifies that providers may at any time request that TWC remove programs from the statewide ETPL. The section identifies that providers may at any time request that TWC reintroduce such previously and voluntarily removed programs on the statewide ETPL. Additionally, the section identifies that programs may be removed involuntarily, or for cause, for reasons described in Chapter 840, Subchapter F. This section identifies that previously removed programs must meet continued eligibility requirements in order to be reintroduced on the statewide ETPL.

SUBCHAPTER F. ADVERSE ACTIONS

TWC proposes new Subchapter F, Adverse Actions, as follows:

§840.50. Eligibility Actions

New §840.50 identifies eligibility-related removal of programs from the statewide ETPL. The section reserves the ability of TWC or Boards to consider new information provided and accordingly alter eligibility determinations. The section also clarifies that RAPs may be removed under §840.50 only when such programs are deregistered by DOL's apprenticeship office.

§840.51. Reporting Actions

New §840.51 clarifies that programs that do not submit required annual performance reports to TWC shall be removed from the statewide ETPL for not less than two years. The section identifies that removal of programs for failure to report shall occur immediately following the conclusion of the reporting period. The section does not apply to RAPs.

§840.52. Performance Actions

New §840.52 identifies the right of TWC to remove or place on a temporary performance improvement plan (PIP) a program that fails to meet performance targets set by the Commission. The section clarifies that program removal will immediately follow the

conclusion of the reporting period or unsuccessful completion of the PIP. The section does not apply to RAPs.

§840.53. WIOA Violations

New §840.53 identifies the requirement that eligible training providers must comply with all nondiscrimination requirements of WIOA §188. TWC shall require all providers to acknowledge compliance with these nondiscrimination protections before approval of initial eligibility and during annual reporting. Additionally, the section requires that providers must comply with all requirements of Chapter 840. TWC or the Board may determine whether a provider has violated provisions of WIOA or of Chapter 840. Such violation shall be considered a substantial violation of the rules in Chapter 840. Removal under §840.53 shall occur for not less than two years. TWC may require repayment of funds received by a provider under Chapter 840 during such period of substantial violation.

§840.54. Continuation of Students in Removed Programs

New §840.54 identifies the allowance of Boards to continue students enrolled in programs before removal from the statewide ETPL in cases not including WIOA violations.

§840.55. Right of Appeal

New §840.55 clarifies that ETPs have the right to appeal adverse actions, up to and including removal from the statewide ETPL, in accordance with TWC's Chapter 823 Integrated Complaint, Hearings, and Appeals rules.

SUBCHAPTER G. STATE AND LOCAL FLEXIBILITY

TWC proposes new Subchapter G, State and Local Flexibility, as follows:

§840.60. Determining Target Occupations

New §840.60 identifies the process used by Boards to develop local target occupation lists. Also known as Board target occupation lists, these lists must be developed with local labor market information and may be informed by businesses and individuals in the Board's local workforce development area (workforce area).

§840.61. Individual Training Accounts

New §840.61 identifies the process used by Boards to pay for training programs included on the ETPL, or locally approved out-of-state programs through Individual Training Accounts (ITAs). The section clarifies that ITA funds, which are defined by §840.2, are limited to required training costs paid directly to the ETP. Boards may apply limitations to ITAs.

§840.62. Training Contracts

New §840.62 identifies training programs that may be funded for WIOA Adult and Dislocated Worker Program participants through contracts rather than ITAs. WIA allowed for a limited set of such exceptions to the ITA system for these participants, including on-the-job training, customized training, insufficient number of providers, and program of demonstrated effectiveness serving individuals with barriers. The section identifies the additional ITA exceptions allowed under WIOA, including incumbent worker training, cohort training, pay-for-performance contracts, and all exceptions allowed by WIA.

§840.63. Local Training Program Information

New §840.63 states that Boards may supplement information on the statewide ETPL for local programs. The section clarifies

that such additional information shall not supplant the statewide ETPL for participants. Both this information and the statewide ETPL must be provided to the public. The local information shall not limit consumer choice nor shall it restrict participant access to RAPs.

§840.64. Out-of-State Training Programs

New §840.64 states that TWC will not include on the statewide ETPL any training program for which the provider does not have a physical location in Texas. Additionally, the section clarifies that Boards may develop local policies to allow ITA funding of such out-of-state programs under limited circumstances. Limitations require that out-of-state programs align with local Board target occupations, or those of another Texas location allowable by the Board, and such programs must be included on another state's or US territory's ETPL at the time of student enrollment and must be approved for ITA eligibility by the Agency's executive director.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect to the market value of the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as dis-

cussed elsewhere in this preamble, is to develop rules governing Texas' ETP system, including the statewide ETPL, in accordance with WIOA requirements.

The proposed rulemaking action will not create an additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years in which the proposed new rules will be in effect:

- the proposed new rules will not create or eliminate a government program;
- implementation of the proposed new rules will not require the creation or elimination of employee positions;
- implementation of the proposed new rules will not require an increase or decrease in future legislative appropriations to TWC;
- the proposed new rules will not require an increase or decrease in fees paid to TWC;
- the proposed new rules will not create a new regulation;
- the proposed new rules will not expand, limit, or eliminate an existing regulation;
- the proposed new rules will not change the number of individuals subject to the new rules; and
- the proposed new rules will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed new rules will not have an adverse economic impact on small businesses or rural communities, as these proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years in which the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to ensure compliance with the federal WIOA as it pertains to the state's ETP system, ETPL, and training services.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

While developing these rules for publication and public comment, TWC sought the involvement of the 28 Boards. TWC provided the concept paper regarding these rule amendments to the Boards for consideration and review on March 17, 2020. TWC also conducted a conference call with Board executive directors and Board staff on March 27, 2020, to discuss the concept paper.

During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.state.tx.us. Comments must be received no later than 30 days from the date that this proposal is published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §840.1, §840.2

The new rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The new rules implement the requirements set out in WIOA Sections 116, 122, and 134; 20 CFR Part 680, Subpart D; and 20 CFR 681.550.

§840.1. Short Title and Purpose.

(a) The rules contained in this chapter may be cited as the WIOA Eligible Training Provider (ETP) Rules.

(b) The purpose of this chapter governing the provision of training services funded through the Agency is to interpret and implement the requirements of federal statutes and regulations to include:

(1) the following sections of the Workforce Innovation and Opportunity Act (WIOA), PL 113-128:

(A) Eligible Training Providers as described in WIOA §122;

(B) contents of ETP performance reports as described in WIOA §116(d)(4);

(C) data validation as described in WIOA §116(d)(5);

(D) publication of performance reports as described in WIOA §116(d)(6)(B); and

(E) training services for adults and dislocated workers as described in WIOA §134(c)(3);

(2) 20 CFR Part 680, Subparts B - D, which describe training services, training providers, and individual training accounts;

(3) 20 CFR §681.550, which allows the provision of training services to out-of-school youth, ages 16 to 24, through Individual Training Accounts (ITA); and

(4) the Family Educational Rights and Privacy Act (described in 20 CFR 99) audit or evaluation exception to disclose Personally Identifiable Information (PII) from education records for WIOA performance accountability purposes. This authority is further clarified in joint guidance released by the US Department of Labor (DOL) and the US Department of Education (ED).

(c) The rules contained in this chapter shall apply to the Agency, Local Workforce Development Boards (Boards), and providers of training services for WIOA Adults and Dislocated Workers. At the discretion of the Board, the Eligible Training Provider System (ETPS) may be applied to the delivery of training services funded through the Commission, including WIOA Youth Program out-of-school youth and in-school youth, Choices, Supplemental Nutrition Assistance Program - Employment and Training (SNAP E&T), and Trade Adjustment Assistance (TAA).

§840.2. Definitions.

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

(1) Address of record--In addition to the mailing address contained in the application for approval, each provider shall establish an email address of record, with the format of the address to be "ProviderName.Director@xdomain." This email address of record must consistently include a minimum of two current recipients. Providers currently licensed with TWC's Career Schools and Colleges (CSC) program must use their CSC-approved email of record.

(2) Agency--The unit of state government established under Texas Labor Code, Chapter 301, that is presided over by the Commission and administered by the executive director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of Agency shall apply to all uses of the term in rules contained in this chapter.

(3) Community--Based Organization--As defined in WIOA §3(10), a private nonprofit organization (which may include a faith-based organization), that is representative of a community or a significant segment of a community and that has demonstrated expertise and effectiveness in the field of workforce development.

(4) Customized Training--As defined in WIOA §3(14), means training:

(A) that is designed to meet the specific requirements of an employer (including a group of employers);

(B) that is conducted with a commitment by the employer to employ an individual upon successful completion of the training; and

(C) for which the employer pays:

(i) a significant portion of the cost of training, as determined by the local Board, taking into account the size of the employer and such other factors that the local Board determines to be appropriate, which may include the number of employees participating in training, wage, and benefit levels of those employees (at present and anticipated upon completion of the training), relation of the training to the competitiveness of a participant, and other employer-provided training and advancement opportunities; and

(ii) in the case of customized training (as defined in subparagraphs (A) and (B) of this paragraph) involving an employer located in multiple local areas in the state, a significant portion of the cost of the training, as determined by the Commission, taking into account the size of the employer and such other factors that the Commission determines to be appropriate.

(5) Eligible Training Provider (ETP)--A training provider as defined by this chapter with one or more programs included on the statewide ETPL.

(6) Individual Training Account (ITA)--Payment agreement established by a local Board on behalf of a participant with a training provider. ITAs may be used only to pay for a training program included on the statewide ETPL, except where an out-of-state program is approved by the Board in accordance with §840.53 of this chapter (relating to WIOA Violations).

(7) LWDA--Local Workforce Development Area (workforce area) designated by the governor as provided in Texas Government Code, §2308.252.

(8) LWDB--Local Workforce Development Board (Board) created pursuant to Texas Government Code, §2308.253, and certified by the governor pursuant to Texas Government Code, §2308.261.

(9) On-the-Job Training (OJT)--As defined by WIOA §3(44), a training by an employer that is provided to a paid participant while engaged in productive work in a job that:

(A) provides knowledge or skills essential to the full and adequate performance of the job;

(B) is made available through a program that provides the employer with partial reimbursement of the wage rate of the participant for the extraordinary costs of providing the training and additional supervision related to the training; and

(C) is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate.

(10) Target Occupations--As determined by LWDA, include:

(A) occupations that:

(i) are in-demand, as defined by WIOA §3(23);

(ii) have a dedicated training component; and

(iii) provide wages that meet self-sufficiency requirements in the LWDA; or

(B) occupations that are included in career pathway leading to an occupation described in subparagraph (A) of this paragraph.

(11) Training Provider--As set out in WIOA §122(a)(2), provides a program containing one or more training services, as defined by this chapter, and must be one of the following entities:

(A) an institution of higher education that provides a program that leads to a recognized postsecondary credential;

(B) an entity that carries out programs registered under the Act of August 16, 1937 (commonly known as the "National Apprenticeship Act"; 50 Stat. 664, chapter 663; 29 USC 50 et seq.); or

(C) another public or private provider of a program of training services, which may include:

(i) community-based organizations;

(ii) joint labor-management organizations; and

(iii) eligible providers of adult education and literacy activities under WIOA Title II, if such activities are provided in combination with occupational skills training.

(12) Training Services--As provided in WIOA §134(c)(3)(D), may include:

(A) occupational skills training, including training for nontraditional employment;

(B) OJT;

(C) incumbent worker training;

(D) programs that combine workplace training with related instruction, which may include cooperative education programs;

(E) training programs operated by the private sector;

(F) skill upgrading and retraining;

(G) entrepreneurial training;

(H) transitional jobs;

(I) job readiness training provided in combination with any services described in subparagraphs (A) - (H) of this paragraph;

(J) adult education and literacy activities, including activities of English language acquisition and integrated education and training programs, provided concurrently or in combination with any services described in subparagraphs (A) - (H) of this paragraph;

(K) customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training.

(13) WIOA--Workforce Innovation and Opportunity Act, PL 113 - 128, 29 USCA §3101, et seq., enacted July 22, 2014.

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

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Texas Workforce Commission

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For further information, please call: (512) 689-9855



SUBCHAPTER B. TRAINING PROVIDER ELIGIBILITY

40 TAC §840.10, §840.11

The new rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The new rules implement the requirements set out in WIOA Sections 116, 122, and 134; 20 CFR Part 680, Subpart D; and 20 CFR 681.550.

§840.10. Appropriate Licensure.

(a) Training providers, as defined by this chapter, shall provide evidence of appropriate licensure or exemption from licensure or regulation in a manner determined by the Commission.

(b) Institutions and agencies included in Texas Education Code, §61.003 shall be considered appropriately licensed for the purposes of this section.

(c) Proprietary Schools in compliance with the requirements of Texas Education Code Chapter 132 shall be considered appropriately licensed for the purposes of this section.

(d) Registered Apprenticeship Programs (RAPs) approved by the DOL are exempt from all requirements of this section. Industry Recognized Apprenticeship Programs (IRAPs) must comply with licensure and eligibility requirements described in this section.

§840.11. Eligibility of Training Providers.

(a) Training providers shall provide one or more training services, as defined in this chapter, to be considered eligible for the statewide ETPL.

(b) Training providers shall submit information required by the Agency for determination of eligibility. This information shall be submitted in a manner determined by the Agency.

(c) Boards and the Agency shall review information submitted by training providers in order to determine eligibility.

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

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SUBCHAPTER C. TRAINING PROGRAM ELIGIBILITY

40 TAC §§840.20 - 840.23

The new rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The new rules implement the requirements set out in WIOA Sections 116, 122, and 134; 20 CFR Part 680, Subpart D; and 20 CFR 681.550.

§840.20. Initial Eligibility Consideration.

(a) All training programs that have not previously been determined eligible for the statewide ETPL shall submit such eligibility criteria and performance information required by the Agency. This information shall be submitted in a manner determined by the Agency.

(b) Eligibility criteria shall include:

(1) a connection to statewide targeted occupations;

(2) a partnership with businesses in the workforce area, in accordance with Agency guidance; and

(3) other criteria required by the Commission.

(c) Performance information shall include such requirements as determined necessary by the Agency.

(d) The Agency may exempt a program from the performance information requirement for initial eligibility determination. Such exemption may be applied when a program has not been connected to any students or when such connection is of insufficient duration to calculate performance.

(e) The Commission may determine minimum performance targets for initial eligibility for the statewide ETPL.

(f) Boards and the Agency shall review program eligibility criteria and aggregated performance information submitted by training programs in order to determine eligibility.

(g) Training programs determined eligible under this subchapter shall be approved for inclusion on the statewide ETPL for up to 12 months following approval by the Agency.

(h) Following the initial eligibility period, training programs shall be subject to continued eligibility determination.

§840.21. Continued Eligibility Consideration.

(a) Training programs shall be subject to continued eligibility determination within 12 to 24 months following previous eligibility determination, as determined by the Agency.

(b) The Agency shall use such information provided during the most recent annual performance reporting period, including provider and program eligibility and student performance outcomes, for continued eligibility consideration.

(c) Eligibility criteria shall include:

(1) such information required for Initial Eligibility determination;

(2) such additional criteria included in 20 CFR §680.460; and

(3) other criteria required by the Agency deemed necessary to determine a provider's eligibility.

(d) Training programs shall submit, through annual reporting, required performance information, which shall include, but may not be limited to, the following:

(1) Information on recognized postsecondary credentials received by participants; and

(2) Such information required by and developed from annual reporting.

(e) The Commission shall determine minimum performance targets for continued eligibility for the statewide ETPL. The Commission may review and adjust established minimum performance targets as determined necessary for the efficient operation of the program.

(f) Boards and the Agency shall review aggregated performance information submitted by training programs to determine whether the information meets or exceeds the program eligibility criteria and shall notify providers of any adverse determination in accordance with Subchapter F of this chapter (relating to Adverse Actions).

(g) Training programs determined eligible under this subchapter shall be approved for inclusion on the statewide ETPL for up to 24 months following approval by the Agency.

§840.22. Registered Apprenticeship Programs.

(a) DOL-approved RAPs shall submit the following information to the Agency for program inclusion on the statewide ETPL:

(1) Name and address of the RAP sponsor;

(2) Name and address of related technical instruction provider, if different from sponsor;

(3) Cost of instruction, where instruction is not provided directly by sponsor;

(4) Related occupations;

(5) Method and length of instruction;

(6) Number of active apprentices; and

(7) Other information required by the Agency not expressly prohibited by DOL.

(b) RAPs are exempt from all other requirements of this subchapter.

(c) RAPs may voluntarily provide performance and other information to the Agency. Such information will be included on the statewide ETPL as appropriate.

§840.23. Additional Eligibility Requirements.

(a) The Commission may apply additional requirements to training programs for inclusion on the statewide ETPL.

(b) Additional requirements developed under this subsection shall be applied to ETP programs during Initial or Continued Eligibility determinations.

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

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SUBCHAPTER D. ANNUAL REPORTING

40 TAC §840.30, §840.31

The new rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The new rules implement the requirements set out in WIOA Sections 116, 122, and 134; 20 CFR Part 680, Subpart D; and 20 CFR 681.550.

§840.30. Annual Performance Reporting Requirement.

(a) Each year, all training providers and programs included on the statewide ETPL shall submit all information determined necessary by the Agency. Such information shall include, at a minimum, student-level data for each program.

(b) Required student-level data may include the following:

(1) First name of student;

(2) Last name of student;

(3) Student's Social Security number (SSN), except where unavailable;

(4) Student's first date of attendance;

(5) Student's last date of attendance, when applicable;

(6) Type of recognized credential earned and the date on which it was received, when applicable; and

(7) Other information as determined by the Agency.

(c) The Agency shall use student-level data submitted by providers to determine performance outcomes for provider programs. The student SSN shall be used to verify employment-related outcomes.

Such performance outcomes shall include for WIOA participants and students in general:

- (1) Program completion rate;
- (2) Percentage in unsubsidized employment during the second quarter after exit from the program;
- (3) Percentage in unsubsidized employment during the fourth quarter after exit from the program;
- (4) Median earnings of those in unsubsidized employment during the second quarter after exit from the program;
- (5) Percentage obtaining a recognized postsecondary credential or high school equivalency during participation in or within one year after exit from the program; and
- (6) Other performance outcomes required by the Agency.

§840.31. Notification of Annual Reporting Requirement.

- (a) The Agency shall determine the date and method of reporting.
- (b) Boards and training providers shall be notified of the annual reporting requirements not less than 30 days prior to the deadline set by the Agency.
- (c) The Agency shall determine the method of notification, which may include public release, formal guidance, address of record email notification, or other methods.
- (d) Providers are responsible for maintaining accurate contact information for locations and programs in order that the Agency may provide such notifications. This includes, but may not be limited to, email address of record.
- (e) Providers of training programs unable to report prior to the annual reporting deadline set by the Agency may request an extension or exemption from reporting caused by circumstances beyond the provider's control, which may include:

- (1) natural disaster or other state emergency;
- (2) unexpected personnel transitions;
- (3) unexpected technology-related issues; or
- (4) other circumstances determined acceptable by the

Agency.

(f) Providers shall request an extension for, or exemption from, annual performance reporting within 30 days of the occurrence reason--but no later than the required reporting date--for consideration by the Agency.

(g) Failure to submit required information in accordance within Agency-determined time lines shall result in removal of affected training programs from the statewide ETPL for not less than two years (24 months).

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

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SUBCHAPTER E. STATEWIDE ELIGIBLE TRAINING PROVIDER LIST

40 TAC §§840.40 - 840.42

The new rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The new rules implement the requirements set out in WIOA Sections 116, 122, and 134; 20 CFR Part 680, Subpart D; and 20 CFR 681.550.

§840.40. Statewide ETPL.

- (a) The statewide ETPL shall contain all eligible programs submitted by training providers, once approved, to provide services through ITAs to WIOA participants.
- (b) In order to provide usable information for WIOA participants, and students in general, the statewide ETPL shall contain such program information required by the Agency.
- (c) Performance information provided to the Agency on an eligible provider's programs shall be included with the statewide ETPL provided that such information does not reveal personally identifiable information of students.
- (d) The statewide ETPL shall include such RAPs approved by the Agency in accordance with this chapter.

§840.41. Distribution of the Statewide ETPL.

- (a) The Agency shall make the statewide ETPL available to the public, secondary, and postsecondary educational systems and its other partners through the Agency's website.
- (b) Updates to the statewide ETPL will be published at a frequency determined by the Agency, but not less than monthly.
- (c) The Agency shall provide the statewide ETPL in a format accessible to individuals with disabilities.
- (d) Boards shall ensure that the statewide ETPL is locally available in a current and accessible format.
- (e) Boards shall make the statewide ETPL available to the following:
 - (1) Local Workforce Solutions Offices and staff;
 - (2) Local partners, including those providing training or related services;
 - (3) Program participants; and
 - (4) The public.

(f) Boards shall ensure that the statewide ETPL is made available to WIOA program participants eligible for training even when local information is developed, in accordance with §840.61 of this chapter (relating to Individual Training Accounts).

§840.42. Removal from the Statewide ETPL.

(a) Voluntary Removal. Providers may request that a program be removed from the statewide ETPL. Such requests shall:

(1) be submitted by a provider in a manner determined by the Agency; and

(2) be processed in a manner determined by the Agency.

(b) Programs voluntarily removed from the statewide ETPL may be redetermined for inclusion following such request from an eligible provider.

(c) Removal for Cause. Providers and programs may be removed from the statewide ETPL in accordance with Subchapter F of this chapter (relating to Adverse Actions).

(d) Programs involuntarily removed from the statewide ETPL may be redetermined for inclusion following the removal period included in Subchapter F of this chapter. At such time, programs shall submit such information required by the Commission to determine current eligibility for reentry on the statewide ETPL.

(e) Removed programs that are provided reentry to the statewide ETPL will need to meet the continued eligibility requirements for purposes of eligibility determination and performance reporting.

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SUBCHAPTER F. ADVERSE ACTIONS

40 TAC §§840.50 - 840.55

The new rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The new rules implement the requirements set out in WIOA Sections 116, 122, and 134; 20 CFR Part 680, Subpart D; and 20 CFR 681.550.

§840.50. Eligibility Actions.

(a) Removal of a program for failure to meet eligibility criteria shall occur following the end of the initial or continued eligibility period for such program, except where otherwise described in this subchapter.

(b) The Board or Agency may review or reverse previous decisions if the provider submits new information that may affect the eligibility of such programs.

(c) RAPs shall be removed under this section only if such programs become deregistered under the National Apprenticeship Act.

§840.51. Reporting Actions.

(a) Failure to submit required annual reporting information, including performance outcomes, in accordance with Agency-determined time lines shall result in removal of affected programs from the statewide ETPL for not less than two years.

(b) Failure to submit information for any individual program shall result in the removal of such program.

(c) Removal shall occur following the end of the reporting period, as determined by the Agency.

(d) RAPs shall be exempt from actions taken under this section.

§840.52. Performance Actions.

(a) Failure to meet or exceed any performance requirements set by the Commission may result in:

(1) removal of a program from the statewide ETPL, for a period of time determined by the Agency; or

(2) placement in a temporary performance improvement plan at the Agency's discretion.

(b) Removal shall occur following the end of the reporting period or performance improvement plan, as determined by the Agency.

(c) RAPs, including those voluntarily providing performance information to the Commission, shall be exempt from actions taken under this section.

§840.53. WIOA Violations.

(a) Training providers shall comply with all nondiscrimination protections included in WIOA §188.

(b) The Agency shall require providers to submit an acknowledgment of compliance requirements, addressed in subsection (a) of this section, at initial eligibility determination in electronic format, or by such other means determined by the Agency.

(c) The Agency shall require providers to submit an acknowledgment of compliance requirements, addressed in subsection (a) of this section, during annual report submission in electronic format or by such other means determined by the Agency.

(d) A local Board or the Agency may determine if a provider has violated any protection provided by WIOA. If such determination is made, the provider will be considered to have substantially violated the rules of this chapter.

(e) Providers determined to have substantially violated the rules of this chapter shall have their programs removed from the statewide ETPL immediately. Removal for such violation shall be for not less than two years.

(f) The Agency may require providers that have been determined to have violated the rules of this chapter repay any funds provided under this chapter during the period of such violation.

§840.54. Continuation of Students in Removed Programs.

(a) Students enrolled in a program removed under this subchapter, except §840.53 of this subchapter (relating to WIOA Violations), shall be allowed to continue in training when the ITA was encumbered before such removal.

(b) For programs removed under §840.53 of this subchapter, the Agency may require that students be discontinued following removal. Boards may place a student affected by program removal into a similar program, in accordance with local policies, when available.

§840.55. Right of Appeal.

(a) Providers or programs, as defined by this chapter, shall have the right to appeal adverse actions included in this subchapter, in

accordance with Chapter 823 of this title (relating to Integrated Complaints, Hearing, and Appeals).

(b) Providers subject to removal as a result of any adverse action described in this chapter shall receive notice by the Agency of pending action and their rights to appeal such decision.

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

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SUBCHAPTER G. STATE AND LOCAL FLEXIBILITY

40 TAC §§840.60 - 840.64

The new rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The new rules implement the requirements set out in WIOA Sections 116, 122, and 134; 20 CFR Part 680, Subpart D; and 20 CFR 681.550.

§840.60. *Determining Target Occupations.*

(a) Annually, each Board shall adopt a list of target occupations in the LWDA.

(b) In adopting the list of target occupations, the Board:

(1) shall consider labor market information provided by the Agency; and

(2) may consider additional local information which may include, but is not limited to:

(A) information provided by businesses and business organizations;

(B) information provided by workers and worker organizations; or

(C) information provided by economic development or occupational organization partners.

(c) The Agency shall maintain the target occupation lists for each LWDA, including any updates provided by Boards. The target occupation list from each Board shall be compiled into a single statewide target occupation list.

§840.61. *Individual Training Accounts.*

(a) A participant determined eligible for training may use an ITA to pay for the cost of training programs that are:

(1) included on the statewide ETPL; or

(2) locally approved out-of-state programs.

(b) ITAs shall include only those costs required for successful completion of training programs, which are paid directly to providers of programs on the statewide ETPL or locally approved out-of-state programs.

(c) Boards shall ensure that ITA allowance does not exceed training costs listed for programs at the time of student enrollment.

(d) Additional costs related to training programs may be paid using support services funds, in accordance with existing guidance.

(e) Boards may apply additional criteria to training programs beyond those included in this chapter. Such additional criteria may include limitations on the:

(1) cost of training programs; and

(2) length of training programs.

§840.62. *Training Contracts.*

(a) Training contracts may be used to fund training programs, listed in this section, for participants instead of ITAs.

(b) Boards shall provide participants with access to the statewide ETPL and training contracts as applicable to ensure consumer choice.

(c) When the Local Plan describes the process to be used in selecting providers under such contract, a Board may contract with training programs under the following circumstances:

(1) The training program is an OJT, customized training, incumbent worker training, or transitional jobs training; or

(2) The Board determines that:

(A) there is an insufficient number of ETPs in the workforce area to accomplish the purposes of a system of ITAs;

(B) there is a training program with demonstrated effectiveness offered in Board area by a community-based organization or other private organization to serve individuals with barriers to employment;

(C) it would be most appropriate to award a contract to an institution of higher education or other provider of training services to facilitate the training of multiple individuals in one or more in-demand industry sectors or occupations; or

(D) the Board enters into a pay-for-performance contract for training services.

(3) When funded through contracts, training programs listed in subsection (b) of this section shall be considered exempt from the information and performance requirements required by this chapter.

(4) Training programs listed in this subchapter that request access to the statewide ETPL must comply with licensure and eligibility requirements described in this chapter for such inclusion.

§840.63. *Local Training Program Information.*

(a) Boards may develop and maintain supplementary information for local programs eligible for Board ITA funds.

(b) The following programs may be included:

(1) Any programs included on the statewide ETPL; and

(2) Out-of-state programs, in accordance with §840.64 of this subchapter (relating to Out-of-State Training Programs).

(c) Such local information shall:

(1) not limit consumer choice;

(2) not restrict participant access to RAPs included on the statewide ETPL; and

(3) be provided to participants and the public in addition to the statewide ETPL, in accordance with §840.41 of this chapter (relating to Distribution of the Statewide ETPL).

§840.64. Out-of-State Training Programs.

(a) The Agency shall not include out-of-state providers without any physical training locations in Texas on the statewide ETPL.

(b) The Agency may allow Boards to fund out-of-state programs through ITAs when the following conditions are met:

(1) The training program is included on an ETPL in another state or US territory at the time of student enrollment;

(2) The training program is aligned with a local target occupation, or target occupation in an area to which the participant is willing to commute or relocate, provided that such location is in Texas;

(3) The Board has submitted such required information for the out-of-state program in such manner determined by the Agency;

(4) The Agency executive director has reviewed and approved the out-of-state program for ITA eligibility;

(5) The out-of-state provider and related programs meet ETP eligibility requirements in accordance with Subchapters B and C of this chapter (relating to Training Provider Eligibility and Training Program Eligibility);

(6) Other conditions as required by the Agency; and

(7) Board policy exists that sufficiently addresses such requirements described in this section.

(c) A Board may fund out-of-state training programs through training contracts in accordance with §840.61 of this subchapter (relating to Individual Training Accounts).

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

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CHAPTER 841. WORKFORCE INVESTMENT ACT

The Texas Workforce Commission (TWC) proposes the repeal of Chapter 841 in its entirety, relating to the Workforce Investment Act:

Subchapter A. General Provisions, §841.1 and §841.2

Subchapter B. One-Stop Service Delivery Network, §841.11

Subchapter C. Eligible Training Provider Certification System, §§841.31 - 841.47

Subchapter E. State Level Hearing, §841.94

Subchapter F. WIA Nondiscrimination and Equal Opportunity, §§841.201 - 841.215

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed repeal of Chapter 841 is to eliminate rules that are specific to implementation of the Workforce Investment Act (WIA) and to update and maintain, in new and existing chapters, elements of Chapter 841 that remain relevant to agency operations.

In 2014, Congress repealed WIA and replaced it with the Workforce Innovation and Opportunity Act (WIOA). WIOA eliminated and significantly modified many of WIA's statutory and regulatory provisions, thereby rendering Chapter 841 obsolete.

However, three subchapters remain relevant under WIOA, and will be updated and retained in agency rule as follows:

--Subchapter C will become new Chapter 840, WIOA Eligible Training Providers;

--Subchapter E will be incorporated into Chapter 802, Integrity of the Texas Workforce System, as new Subchapter J, Local Workforce Development Area Appeals; and

--Subchapter F will become new Chapter 842, WIOA Nondiscrimination and Equal Opportunity.

PART II. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the repeal is in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of the repeal.

There are no estimated cost reductions to the state and to local governments as a result of the repeal.

There are no estimated losses or increases in revenue to the state or to local governments as a result of the repeal.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of the repeal.

There are no anticipated economic costs to individuals required to comply with the repeal of these rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the repeal of these rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value

of the property determined as if the governmental action is in effect. The Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to eliminate rules that are specific to implementation of WIA and to update and maintain in new and existing chapters elements of Chapter 841 that remain relevant to agency operations.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the repeal will be in effect:

- the repeal will not create or eliminate a government program;
- implementation of the repeal will not require the creation or elimination of employee positions;
- implementation of the repeal will not require an increase or decrease in future legislative appropriations to TWC;
- the repeal will not require an increase or decrease in fees paid to TWC;
- the repeal will not create a new regulation;
- the repeal will not expand, limit, or eliminate an existing regulation;
- the repeal will not change the number of individuals subject to the rules; and
- the repeal will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed repeal will not have an adverse economic impact on small businesses or rural communities, as the proposed repeal places no requirements on small businesses or rural communities.

Mariana Vega, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the repeal of these rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the repeal is in effect, the public benefit will be to update and streamline TWC rules.

TWC hereby certifies that the proposed repeal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART III. COORDINATION ACTIVITIES

In the development of the proposed rulemaking for publication and public comment, TWC sought the involvement of Texas'

28 Local Workforce Development Boards (Boards). TWC provided the concept paper regarding this rule repeal to the Boards for consideration and review on March 12, 2020. TWC also conducted a conference call with Board executive directors and Board staff on March 27, 2020, to discuss the concept paper. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed repeal may be submitted to TWCPolicyComments@twc.state.tx.us. Comments must be received no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §841.1, §841.2

The repeals are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The repeals affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§841.1. *Goal.*

§841.2. *Definitions.*

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

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SUBCHAPTER B. ONE-STOP SERVICE DELIVERY NETWORK

40 TAC §841.11

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§841.11. *Requirement to Maintain a One-Stop Service Delivery Network.*

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

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SUBCHAPTER C. ELIGIBLE TRAINING PROVIDER CERTIFICATION SYSTEM

40 TAC §§841.31 - 841.47

The repeals are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The repeals affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

- §841.31. *Scope and Coverage.*
- §841.32. *Training Services.*
- §841.33. *Determining Occupations in Demand.*
- §841.34. *Individual Training Accounts.*
- §841.35. *Training Services Which are Not Provided Through Individual Training Accounts.*
- §841.36. *Priority of Access to Services.*
- §841.37. *Coordination of Services.*
- §841.38. *Initial Certification Process for Exempt Providers.*
- §841.39. *Initial Certification Process for Non-Exempt Providers.*
- §841.40. *Application Submission.*
- §841.41. *Initial Eligibility Determination.*
- §841.42. *Exceptions to Provider Certification Requirements.*
- §841.43. *Application for Subsequent Eligibility Determination.*
- §841.44. *Determination of Subsequent Eligibility.*
- §841.45. *Standards of Performance.*
- §841.46. *Verifiable Program-Specific Performance Information.*
- §841.47. *Eligible Training Provider Lists.*

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

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SUBCHAPTER E. STATE LEVEL HEARING

40 TAC §841.94

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§841.94. *Appeal of Denial of LWDA Certification.*
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER F. WIA NONDISCRIMINATION AND EQUAL OPPORTUNITY

40 TAC §§841.201 - 841.215

The repeals are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The repeals affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

- §841.201. *Scope and Purpose.*
- §841.202. *Definitions.*
- §841.203. *Assurances.*
- §841.204. *EO Officers.*
- §841.205. *Notice and Communication.*
- §841.206. *Data and Information Collection and Maintenance.*
- §841.207. *Universal Access.*
- §841.208. *Filing Complaints of Discrimination.*
- §841.209. *Notice of Receipt of Complaint of Discrimination.*
- §841.210. *Jurisdiction of Complaints of Discrimination.*
- §841.211. *Acceptance of Complaints of Discrimination.*
- §841.212. *Alternative Dispute Resolution of Complaint of Discrimination.*
- §841.213. *Agency Processing of Accepted Complaints of Discrimination.*
- §841.214. *Corrective Actions and Remedies.*
- §841.215. *Sanctions.*

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

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CHAPTER 842. WIOA NONDISCRIMINATION AND EQUAL OPPORTUNITY

SUBCHAPTER A. WIOA NONDISCRIMINATION AND EQUAL OPPORTUNITY

40 TAC §§842.1 - 842.15

The Texas Workforce Commission (TWC) proposes new Chapter 842, relating to WIOA Nondiscrimination and Equal Opportunity, comprising the following subchapter:

Subchapter A. WIOA Nondiscrimination and Equal Opportunity, §§842.1 - 842.15

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the new Chapter 842 rules is to retain and update the nondiscrimination and equal opportunity rules contained in Chapter 841, Subchapter F concurrently proposed for repeal. Chapter 841 included multiple rules pertaining to the federal Workforce Investment Act (WIA), which was repealed and replaced by the Workforce Innovation and Opportunity Act (WIOA) in 2014. New Chapter 842 establishes nondiscrimination and equal opportunity as a distinct chapter of TWC rules and updates the repealed rules to comply with current federal statute and regulations and TWC rules.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. WIOA NONDISCRIMINATION AND EQUAL OPPORTUNITY

TWC proposes new Subchapter A, WIOA Nondiscrimination and Equal Opportunity, as follows:

§842.1. Scope and Purpose

New §842.1 replaces repealed §841.201 and updates provisions to change the term "Agency's Methods of Administration" to "Agency's Nondiscrimination Plan," and align citations with current federal statutes and regulations and TWC rules.

§842.2. Definitions

New §842.2 replaces repealed §841.202 and updates provisions to add a definition for "Babel notice," change the term "MOA" (Methods of Administration) to "NDP" (Nondiscrimination Plan), and align the remaining definitions with current federal statutes and regulations.

§842.3. Assurances

New §842.3 replaces repealed §841.203 and updates provisions to align citations with current federal regulations.

§842.4. EO Officers

New §842.4 replaces repealed §841.204 and updates provisions to change the term "Agency EO Officer" to "State-Level EO Officer" to align with language in 29 CFR §38.28(a), specify under §842.4(b)(2) that monitoring is to occur annually, add that EO Officers will provide equal opportunity and nondiscrimination education to recipients, and align citations with current federal statutes and regulations.

§842.5. Notice and Communication

New §842.5 replaces repealed §841.205 and updates provisions to add WIOA notice and communication requirements, including a "Babel notice," tagline compliance, add specific requirements for posting the notice, and update citations to align with current federal regulations.

§842.6. Data and Information Collection and Maintenance

New §842.6 replaces repealed §841.206 and updates provisions to specify that the recipient shall notify the State-Level EO Officer and align citations with current federal regulations.

§842.7. Affirmative Outreach

New §842.7 replaces repealed §841.207 and updates provisions to ensure that recipients provide "equal" access rather than "universal" access to WIOA Title I programs, expand the list of protected groups in accordance with 29 CFR §38.40, and update citations to align with current federal regulations.

§842.8. Filing Complaints of Discrimination

New §842.8 replaces repealed §841.208 and updates provisions to change the term "Agency EO Officer" to "EO Officer" in sections regarding complaint processing, because Local Workforce Development Board (Board) EO Officers may now conduct complaint investigations. The new section also updates the mailing address of the State-Level EO Officer, adds electronic and hand delivery as acceptable means to submit written complaints, and updates citations to align with current federal regulations.

§842.9. Notice of Receipt of Complaint of Discrimination

New §842.9 replaces repealed §841.209 and updates provisions to change the term "Agency EO Officer" to "EO Officer," as discussed in the explanation of new §842.4 and §842.8.

§842.10. Jurisdiction of Complaints of Discrimination

New §842.10 replaces repealed §841.210 and updates provisions to change the term "Agency EO Officer" to "EO Officer," as discussed in the explanation of new §842.4 and §842.8 and update citations to align with current federal statutes and regulations.

§842.11. Acceptance of Complaints of Discrimination

New §842.11 replaces repealed §841.211 and updates provisions to change "Agency EO Officer" to "EO Officer," as discussed in the explanation of new §842.4 and §842.8, include that Boards--not just TWC--may investigate or reject complaints, and update citations to align with current federal regulations.

§842.12. Alternative Dispute Resolution of Complaint of Discrimination

New §842.12 replaces repealed §841.212 and updates provisions to specify that the alternative dispute resolution (ADR) process shall be completed within 40 days from the date of the initial written notice, change the time that Boards must file with TWC a copy of the ADR process from 30 days of reaching the determination to 10 days, and update citations to align with current federal regulations.

§842.13. Processing of Accepted Complaints of Discrimination

New §842.13 replaces repealed §841.213 and updates provisions to change the term "Agency EO Officer" to "EO Officer," as discussed in the explanation of new §842.4 and §842.8.

§842.14. Corrective Actions and Remedies

New §842.14 replaces repealed §841.214 and updates provisions to transfer imposition of corrective and remedial action from TWC to the Boards, distinguish between State-Level and Board EO Officers, and update citations to align with current federal regulations.

§842.15. Sanctions

New §842.15 replaces repealed §841.215 and updates provisions to clarify language and update citations to align with current Texas Administrative Code.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC's three-member Commission completed a Takings Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to retain and update the nondiscrimination and equal opportunity rules contained in Chapter 841, Subchapter F concurrently proposed for repeal.

The proposed rulemaking action will not create any additional burden on private real property. The proposed rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the new rules will be in effect:

- the rules will not create or eliminate a government program;
- implementation of the rules will not require the creation or elimination of employee positions;
- implementation of the rules will not require an increase or decrease in future legislative appropriations to TWC;
- the rules will not require an increase or decrease in fees paid to TWC;
- the rules will not create a new regulation;
- the rules will not expand, limit, or eliminate an existing regulation;
- the rules will not change the number of individuals subject to the rules; and
- the rules will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the new rules will not have an adverse economic impact on small businesses or rural communities, as these new rules place no requirements on small businesses or rural communities.

Mariana Vega, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the new rules.

Paul Carmona, Director, Regulatory Integrity Division, has determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to provide to individuals who receive services through the Texas workforce system additional nondiscrimination and equal opportunity protections.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Boards. TWC provided the concept paper regarding new rules to the Boards for consideration and review on March 17, 2020. TWC also conducted a conference call with Board executive directors and Board staff on March 27, 2020, to discuss the concept paper. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed new rules may be submitted to at TWCPolicyComments@twc.state.tx.us. Comments must be received no later than 30 days from the date this proposal is published in the *Texas Register*.

The new rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The new rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§842.1. Scope and Purpose.

All recipients of Workforce Innovation and Opportunity Act (WIOA) funds received under a contract with the Agency are responsible for meeting the nondiscrimination and equal opportunity requirements included in WIOA §188 (29 USCA §3248), 29 CFR Part 38, the Agency's Nondiscrimination Plan (NDP), and this chapter. WIOA recipients are prohibited from discriminating on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and, for beneficiaries only, citizenship or participation in a WIOA Title I financially assisted activity.

§842.2. Definitions.

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

(1) Babel notice--As defined by 29 CFR §38.4(i), a short notice included in a document or electronic medium (for example, website, app, email) in multiple languages informing the reader that the communication contains vital information and explaining how to access language services to have the contents of the communication provided in other languages.

(2) Beneficiary--An individual or individuals intended by Congress to receive aid, benefits, services, or training from a recipient.

(3) Complainant--An individual alleging a violation of WIOA §188 (29 USCA §3248) or 29 CFR Part 38.

(4) CRC--The Civil Rights Center of the US Department of Labor (DOL).

(5) EO Officer--The individual responsible for coordinating a recipient's responsibilities under the nondiscrimination and equal opportunity provisions of WIOA §188 (29 USCA §3248) and 29 CFR Part 38..

(6) NDP--The Nondiscrimination Plan developed by the Agency and described in 29 CFR Part 38.

(7) Recipient--Any entity to which financial assistance under WIOA Title I is extended directly from DOL, through the governor or through another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIOA Title I-funded services or activities. The term "recipient" includes, but is not limited to, Boards; workforce area grant recipients; one-stop operators; service providers, including eligible training providers; and employers that provide on-the-job training. One-stop partners (Workforce Solutions Office partners) are also considered recipients to the extent that they participate in the one-stop delivery system. A complete definition of "recipient" can be found in 29 CFR §38.4(zz). When used in this subchapter, the term "recipient" does not include the Commission or Agency.

(8) Respondent--A grant applicant or recipient (including the governor) against which a complaint has been filed under the nondiscrimination and equal opportunity provisions of WIOA §188 (29 USCA §3248) or 29 CFR Part 38.

(9) Service provider--As defined in 29 CFR §38.4, any operator or provider of WIOA aid, benefits, services, or training when used in this subchapter, does not include one-stop operators.

(10) Small recipient--A recipient that serves a total of fewer than 15 beneficiaries during the entire grant year and employs fewer than 15 employees on any given day during the grant year.

§842.3. Assurances.

(a) Recipients shall comply with the assurances requirements of 29 CFR §§38.25 - 38.27. All applications for financial assistance under Title I of WIOA shall include the assurances required by 29 CFR

§38.25. Recipients shall ensure that all contracts, agreements, grants, cooperative agreements, or other arrangements under which WIOA Title I funds are available shall include or incorporate by reference the assurances contained in 29 CFR §38.25.

(b) Recipients shall include in any instrument effecting or recording a transfer of property acquired or improved under a WIOA Title I program the covenant required by 29 CFR §38.27 assuring nondiscrimination and equal opportunity.

§842.4. EO Officers.

(a) Each recipient, except small recipients and service providers, shall designate a senior-level employee (29 CFR §38.29) to act as EO Officer and to report directly to the recipient's administrative officer. The recipient's executive director shall not be designated as the recipient's EO Officer.

(b) Each recipient's EO Officer shall:

(1) serve as the recipient's liaison with the State-Level EO Officer; the Board EO Officer, if appropriate; and the CRC, if necessary;

(2) conduct annual monitoring and investigate the recipient's WIOA Title I-funded subrecipients to ensure that the recipient and its subrecipients are not violating nondiscrimination and equal opportunity provisions of WIOA §188 (29 USCA §3248), 29 CFR Part 38, and the state NDP;

(3) review the recipient's written policies to ensure that those policies are nondiscriminatory;

(4) coordinate the recipient's compliance activities under WIOA §188 (29 USCA §3248) and 29 CFR Part 38;

(5) assist complainants in completing complaint forms;

(6) be responsible for accepting discrimination complaints, and forwarding such complaints to the Agency or other jurisdictional entity;

(7) conduct outreach and education about equal opportunity and nondiscrimination requirements; and

(8) undergo, at the recipient's expense, nondiscrimination and equal opportunity training to maintain competency when such training is required by CRC or the Agency.

(c) Each recipient shall provide to the State-Level EO Officer the name, position title, address, and telephone number of the individual appointed as the recipient's EO Officer, as well as the job description of the position detailing the EO Officer's responsibilities and the staff and resources available.

(d) Although small recipients are not required to designate EO Officers who have the full range of responsibilities, each small recipient must designate an individual who will be responsible for developing and publishing complaint procedures and processing complaints as required by 29 CFR §§38.69 - 38.76.

§842.5. Notice and Communication.

(a) Each recipient shall comply with the notice and communication requirements of 29 CFR §§38.34 - 38.40.

(b) The notice required by 29 CFR §38.35 shall be made available to each participant and made part of each participant's file. A copy of an acknowledgment of receipt of notice, in a format determined by the State-Level Agency EO Officer and signed by the participant, must be maintained in each participant's file. This information must be communicated in appropriate languages as required by 29 CFR §38.9 and in formats accessible for individuals with disabilities as required in 29 CFR §38.15.

(c) The notice shall be posted prominently, in reasonable numbers and places, in physical locations and on the recipient's website.

(d) Each recipient shall comply with the tagline requirements of 29 CFR §38.38 for recruitment brochures and other materials as described in 29 CFR §38.38.

(e) When communicating vital information to participants, recipients must incorporate a Babel notice into the communication as required by 29 CFR §38.9(g)(3). The notice must indicate in appropriate languages that language assistance is available free of charge.

(f) For information and services accessed electronically, each recipient shall establish a procedure that ensures that the notice requirements of 29 CFR Part 38 are met.

(g) Each Board shall ensure compliance with and dissemination of information regarding the requirements of 29 CFR Part 38 by assuring that training regarding the nondiscrimination and equal opportunity requirements of WIOA is provided to the Board, the operator of the Workforce Solutions Office, other workforce area recipients, and recipients' staffs.

§842.6. Data and Information Collection and Maintenance.

(a) Each recipient shall collect such data and maintain such records, in accordance with the requirements of 29 CFR §§38.41 - 38.45 and the procedures prescribed by the Director of CRC, as the Director finds necessary to determine whether the recipient has complied or is complying with the nondiscrimination and equal opportunity provisions of WIOA and 29 CFR Part 38.

(b) Each recipient shall permit access by the Agency or its designated agent during normal business hours to its premises and to its employees and participants for the purpose of conducting complaint investigations, compliance reviews, and monitoring activities, and for inspecting and copying such books, records, accounts, and other materials as may be pertinent to ascertain compliance with and ensure enforcement of the nondiscrimination and equal opportunity provisions of WIOA.

(c) Each recipient shall notify the State-Level EO Officer within five business days of receipt of any complaint, administrative enforcement action, or lawsuit filed against the recipient alleging discrimination on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and, for WIOA beneficiaries only, citizenship or participation in a WIOA Title I financially assisted program or activity. This notification shall include:

- (1) the names of the parties to the complaint, action, or lawsuit;
- (2) the forum in which each case was filed; and
- (3) the relevant case numbers or, if applicable, other identifying information.

(d) A recipient that is also a subrecipient of a Board shall provide the Board with the same notice described in subsection (c) of this section.

(e) To enable the Agency to effectively monitor recipients' efforts to provide equal access to WIOA Title I--assisted programs as provided in 29 CFR §38.41, all recipient requests for proposals, proposals, and contracts shall contain information regarding the proposed levels of service to different sexes, various racial and ethnic groups, individuals with disabilities, and individuals in differing age groups.

§842.7. Affirmative Outreach.

As required in 29 CFR §38.40, recipients shall take appropriate steps to ensure that they are providing equal access to WIOA Title I finan-

cially assisted programs and activities. These steps must involve reasonable efforts to include the various groups protected by these regulations, including, but not limited to, different sexes, various racial and ethnic/national origin groups, various religions, individuals with limited English proficiency, individuals with disabilities, and individuals in differing age groups. Such efforts may include, but are not limited to:

(1) advertising the recipient's programs and/or activities in media, such as newspapers or radio programs, that specifically target various populations;

(2) sending notices about openings in the recipient's programs and/or activities to schools or community service groups that serve various populations; and

(3) consulting with appropriate community service groups about ways in which the recipient may improve its outreach and service to various populations.

§842.8. Filing Complaints of Discrimination.

(a) Any individual who believes that they or any specific class of individuals have been or is being subjected to discrimination prohibited by WIOA or 29 CFR Part 38 may file a written complaint, either alone or through a representative.

(b) A complainant may file a complaint with:

- (1) the local Board EO Officer;
- (2) the State-Level EO Officer at: Texas Workforce Commission, 101 E. 15th Street, Room 504, Austin, Texas 78778; or
- (3) the Director of the Civil Rights Center at: US Department of Labor, 200 Constitution Ave. NW, Room N-4123, Washington, DC 20210, or the address listed in 29 CFR Part 38.

(c) Complaints shall be filed within 180 calendar days of the alleged violation unless such time limitation is waived by the Director of CRC for good cause shown.

(d) All complaints shall be submitted in writing, either electronically or in hard copy. A complainant may file a complaint by:

- (1) completing and submitting a CRC Complaint Information and Privacy Act Consent Form;
- (2) completing and submitting a Texas Workforce Commission Discrimination Complaint form; or
- (3) submitting a written document containing the information required by 29 CFR §38.70, which includes:

(A) the complainant's name and address, or other means of contacting the complainant;

(B) the identity of the respondent;

(C) a description of the complainant's allegations with sufficient detail to allow the EO Officer to determine whether the Board or the Agency has jurisdiction, whether the complaint was filed on time, and whether the complaint has apparent merit; and

(D) the complainant's signature or the signature of the complainant's representative.

(e) Both the complainant and the respondent have the right to representation by an attorney or other individual of his or her choice. The Agency shall not be responsible for any costs incurred by either the complainant or the respondent in obtaining representation.

(f) For the purposes of this subchapter, filing with the Agency shall be deemed to have occurred on the date that the written notice is received by the Agency.

§842.9. Notice of Receipt of Complaint of Discrimination.

The receiving EO Officer shall issue a written acknowledgment of receipt of a complaint alleging discrimination by a WIOA recipient and shall include a notice of the complainant's right to representation in the complaint process.

§842.10. Jurisdiction of Complaints of Discrimination.

(a) The EO Officer shall accept and investigate only those discrimination complaints alleging a violation of WIOA §188 (29 USCA §3248) or 29 CFR Part 38 by a respondent.

(b) If a complaint filed with the Agency alleges discrimination by a recipient on a basis that is both prohibited by WIOA §188 (29 USCA §3248) and by a federal law enforced by a federal grant-making agency other than DOL, and the recipient is funded in whole or in part by that other federal agency, the State-Level EO Officer shall refer the complaint to the other federal agency for processing under the other federal agency's procedures.

(c) If the EO Officer determines that the Board or Agency does not have jurisdiction over the complaint, the EO Officer shall provide written notification to the complainant which includes:

(1) a statement of the reasons for the determination; and

(2) a notice that the complainant may file a complaint with CRC within 30 days of the receipt of the notification.

§842.11. Acceptance of Complaints of Discrimination.

(a) The EO Officer shall issue to the complainant a statement of the issues raised in the complaint and a statement regarding each issue of whether the Board or Agency will accept the issue for investigation or reject the issue with the reasons for any rejection.

(b) The statement of acceptance of issues raised in the complaint shall include a notice informing the complainant that the complainant may choose to participate in an alternative dispute resolution process rather than the customary process described in 29 CFR §38.72 and §842.13 of this subchapter (relating to Processing of Accepted Complaints of Discrimination).

§842.12. Alternative Dispute Resolution of Complaint of Discrimination.

(a) Each Board shall establish a written alternative dispute resolution (ADR) procedure. The Board EO Officer shall be responsible for implementing the ADR procedure in the case of a complaint within the workforce area.

(b) A complainant within the workforce area may choose to use the Board's ADR procedure rather than the complaint processing procedure described in 29 CFR §38.72 and §842.13 of this subchapter (relating to Processing of Accepted Complaints of Discrimination). If the complainant elects to use the Board's ADR procedure, the complainant shall file notice of this election within seven calendar days of the complainant's receipt of the Board's initial written notice. The ADR process shall be completed within 40 days from the date of the initial written notice.

(c) The Board EO Officer shall coordinate the scheduling of mediation with a qualified mediator at a location convenient to the complainant and respondent.

(d) The Board EO Officer shall file with the Agency a copy of the final agreement or the notice of failure to reach an agreement within 10 days of reaching that determination.

(e) If the parties do not reach an agreement under the ADR process, the EO Officer shall process the complaint as described in 29 CFR §38.72 and §842.13 of this subchapter.

§842.13. Processing of Accepted Complaints of Discrimination.

(a) If a complainant elects not to participate in the alternative dispute resolution (ADR) process or if an agreement is not achieved through an ADR process, the EO Officer shall investigate the circumstances underlying the complaint.

(b) The EO Officer shall attempt to resolve the complaint. At any point in the investigation of a complaint, the complainant, respondent, or the EO Officer may request that the parties attempt conciliation. The EO Officer shall act to facilitate such conciliation efforts.

(c) Within 90 days of the date of receipt of the complaint, the EO Officer shall issue a Notice of Final Action that shall include:

(1) for each issue raised, the decision on the issue and reasons for the decision, or a description of the way the parties resolved the issue; and

(2) notice that the complainant has the right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is issued, if the complainant is dissatisfied with the final action on the complaint.

(d) If the complainant is dissatisfied with the EO Officer's decision in the Notice of Final Action, the complainant or the complainant's representative may file a complaint with the Director of CRC within 30 days of the date on which the complainant received the Notice of Final Action.

§842.14. Corrective Actions and Remedies.

(a) As part of the Notice of Final Action, the Board may impose any corrective or remedial action, which may be imposed by the Director of CRC, under 29 CFR §38.90.

(b) In addition to the corrective actions and remedies described in 29 CFR §38.90, the Agency may require that the respondent complete one or more of the following:

(1) development of an appropriate equal opportunity policy;

(2) removal of any discriminatory information from the complainant's records; and

(3) delivery of equal opportunity training to all staff members.

(c) The respondent shall file a notice with the State-Level and Board EO Officers within 10 calendar days of receipt of the Notice of Final Action that it has accepted the resolution of the complaint and that it will complete the required corrective actions listed in the Notice.

(d) Monetary relief may not be paid from federal funds.

§842.15. Sanctions.

If the Agency finds a recipient to be in violation of the nondiscrimination and equal opportunity provisions of WIOA, or such entity has not accepted a suggested resolution or conciliation agreement, or has breached an established resolution or conciliation agreement, sanctions may be imposed pursuant to Chapter 802, Subchapter G of this title (relating to Sanctions).

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

Filed with the Office of the Secretary of State on September 23, 2020.

TRD-202003962



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 11. DESIGN

SUBCHAPTER G. TRANSPORTATION

ALTERNATIVES SET-ASIDE PROGRAM

43 TAC §§11.403 - 11.406, 11.411

The Texas Department of Transportation (department) proposes amendments to §§11.403 - 11.406, and §11.411, concerning Transportation Alternatives Set-Aside Program.

EXPLANATION OF PROPOSED AMENDMENTS

The department is amending its current Transportation Alternatives Set-Aside Program (TASA) rules to encourage and improve project proposals from communities with a population of 50,000 or less, reduce the department's risk of federal funds lapsing in the nonurban funding category, streamline project delivery, and improve the likelihood of successful completion of awarded projects. Changes to the rules regarding eligible activities, allowable costs, local fund matching requirements, and project selection by metropolitan planning organizations (MPO) and the department are proposed.

Under federal guidelines, the department is responsible for project oversight for preliminary engineering and construction whether TASA funds are administered by the department or an MPO. These direct state costs are federally reimbursable and are included as a part of the overall project award for the department's program and some MPO programs. However, some MPOs require the project sponsor to cover direct state costs at 100 percent.

Amendments to §11.403, Project Selection by MPOs, add a new subsection (e) to require an MPO to include the department's direct state costs for oversight of preliminary engineering and construction in TA Set-Aside project awards. This change reduces the financial exposure for communities applying for TASA funds administered by MPOs and establishes consistency among the MPOs across state. This change also provides consistency among projects administered by an MPO and projects administered by the department. Existing subsections (e) - (j) are re-designated accordingly.

The amendment to re-designated subsection (j) restricts project sponsors from submitting a project to both a department TASA program call and an MPO program call concurrently.

The department's Public Transportation Division's (PTN) Bicycle and Pedestrian Section administers TASA funds for projects located outside Census Urbanized Areas of 200,000 or greater, which are identified as Transportation Management Areas (TMAs). MPOs administer TASA funds within their entire planning area. This results in areas of overlap, where communities that fall inside an MPO but outside the TMA boundary are

eligible to apply for TASA funds from both the department and the relevant MPO. Currently, a project sponsor in an overlapping area that submits a project to an MPO's call for projects and is not awarded funds, is prohibited from submitting that same project to any department TASA program call. This prohibition reduces the pool of potential applications to the department's TASA call for projects, especially applications from smaller communities within MPO boundaries that may have a hard time competing with larger communities within their MPO. Additionally, smaller MPOs receive limited TASA funding, which may result in their funding only a few projects in each program call.

The amendment to re-designated subsection (j) also removes the restriction that prohibits a project sponsor from submitting a project to a future department TASA program call or future MPO program call.

Under federal guidelines, TASA funds are available for obligation for a period ending three years after the last day of the federal fiscal year for which the funds are authorized. TASA funds are allocated based on population, with approximately half of the department's TASA funds being eligible to communities with a population of 5,000 or less (nonurban) and the other half being eligible to communities with a population of 5,001 - 200,000 (small urban). In large urbanized areas with populations over 200,000, FHWA requires that the state suballocate TASA funding directly to MPOs, based on their relative share of population, to administer according to the MPO's needs. The department is responsible for preliminary engineering and construction oversight on both state-selected and MPO-selected projects. Communities with populations of 50,000 or less are ideal candidates for the program because they have a significant need to construct basic infrastructure for safer walking and bicycling but have limited financial resources. However, these communities face challenges in developing TASA projects because they are more likely to request the use of in-kind contributions to reduce their cash local match, more likely to lack financial resources and technical expertise to oversee project development and construction, and more likely to withdraw projects from the program, resulting in funds being returned to the program and the project sponsor reimbursing the department for federal expenditures without the project being constructed. These factors result in smaller communities being less likely to apply for TASA funds and therefore limiting competition for and use of funds, especially in the nonurban category. The following rule additions and revisions address these factors.

Amendments to §11.404, Eligible Activities, add new subsection (b) and re-designate the existing subsections accordingly. New subsection (b) allows planning and design activities for the construction of bicycle and pedestrian facilities to be eligible for reimbursement but only for projects located in communities with a population of 50,000 or less.

Amendments to §11.405, Allowable Costs, make various changes to the section, add new subsections (b) and (e), and re-designate the existing subsections accordingly. Subsection (a) is amended to clarify which costs are allowable. New subsection (b) transfers and revises existing §11.406(b) to provide that costs incurred before the execution of the local agreement or before federal and state authorization to proceed are not eligible for reimbursement. Re-designated subsection (c) is changed to provide that the costs of preliminary engineering, including environmental studies and documentation, design, and plans, specifications, and estimates (PS&E), are allowable only for projects located in communities with a population of

50,000 or less. This change reduces the financial burden of plan development for smaller communities. New subsection (e) and the change to re-designated subsection (d) clarify that pre-construction costs are the responsibility of the project sponsor unless the section provides otherwise.

Currently, the department's TASA program only funds construction. Allowing project sponsors to use expenses that were incurred in the plans, specifications, and estimate development phase of a project as in-kind contributions was intended to alleviate the burden of the local match for construction. However, experience has shown that in-kind contributions complicate project development and billing, delay project delivery and obligation of funds, and require substantial district and division staff time for oversight.

Amendments to §11.406, Local Funding Match, eliminate in-kind contributions as an option for local match. The amendments add a new subsection (b), which expands options for local match in communities with a population of 50,000 or less to include consideration of transportation development credits, state funds, or both on an economic needs basis, subject to the availability of funds. In subsection (c), the phrase "or regulation" is deleted as an editing change because the reference to federal law includes federal regulations. In subsection (f), language is revised regarding the department's direct state cost for consistency in the subchapter.

Preliminary cost estimates used to determine funding awards can vary considerably from final engineer's estimates. Current rules require project sponsors to be responsible for all of the costs of overruns, which has led to withdrawal of projects or reductions in project scope. Meanwhile, excess funds from projects that are completed at a cost under the amount awarded are returned to the department's TASA program balance, leading to increased risk of funds lapsing due to federal guidelines' limitation on the time during which TASA funds are available for obligation.

Amendments to §11.411, Selection of Projects by the Commission, authorize available program funds to be used for certain project overruns. Subsection (d) is modified to replicate the existing language in the Safe Routes to School (SRTS) Program rules (43 TAC §25.505(d)) to allow the responsible division administering the program to consider applying program funds that remain after the awards or that are returned to the program due to cost underruns to projects with overruns, which will help minimize risk of lapsing TASA funds. Additional criteria language is added describing how the responsible division will apply these additional funds to projects with overruns on a needs basis.

The last sentence of subsection (d) is re-designated as subsection (e) and subsection (e) is re-designated accordingly.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that as a result of enforcing or administering the rules for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Eric Gleason, Director, Public Transportation Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering

the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Eric Gleason has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be more efficient and streamlined implementation of bicycle and pedestrian infrastructure in Texas communities with less than 50,000 in population.

COSTS ON REGULATED PERSONS

Eric Gleason, has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Eric Gleason has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. He expects that during the first five years that the rule would be in effect:

- (1) it would not create or eliminate a government program;
- (2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;
- (3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;
- (4) it would not require an increase or decrease in fees paid to the agency;
- (5) it would not create a new regulation;
- (6) it would not expand, limit, or repeal an existing regulation;
- (7) it would not increase or decrease the number of individuals subject to its applicability; and
- (8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Eric Gleason has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§11.403 - 11.406, and §11.411 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "*Transportation Alternatives Set-Aside Program Rule Revisions.*" The deadline for receipt of comments is 5:00 p.m. on November 9, 2020. 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.

STATUTORY AUTHORITY

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

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Title 23, United States Code, §133(h).

§11.403. *Project Selection by MPOs.*

(a) This section applies only to an MPO serving an urbanized area with a population over 200,000 and the award of TA Set-Aside funds suballocated for such an urbanized area.

(b) The MPO, in consultation with the department, shall develop a competitive process to allow project sponsors to submit project applications for funding that achieve the objectives of the TA Set-Aside Program.

(c) The MPO shall coordinate determinations regarding project eligibility, subject to audit by the FHWA.

(d) The MPO, in consultation with the department, shall conduct project selection in accordance with all applicable federal and state laws and regulations.

(e) The MPO, in consultation with the department, shall include the department's direct state costs for oversight of preliminary engineering and construction in TA Set-Aside project awards.

(f) ~~[(e)]~~ Following the conclusion of the competitive process, the MPO shall provide to the department a list of all projects submitted during the program call on which the selected projects are identified, and immediately shall begin the process required to include the selected projects in its TIP.

(g) ~~[(f)]~~ The project sponsor shall conduct project implementation in accordance with all applicable federal and state laws and regulations.

(h) ~~[(g)]~~ If a project is located on state right-of-way, the project sponsor is responsible for securing a land-use permit from the department prior to construction.

(i) ~~[(h)]~~ A project sponsor requesting an adjustment to the minimum local funding match requirements based on the county's status as an economically disadvantaged county is required to obtain written authorization from the department, in the form prescribed by the department, and must include the form with the application submitted to the MPO. If an adjustment is granted, the adjustment percentage in effect for the county at the time the application is submitted to the MPO will be used. The county must remain eligible for the adjustment until the date the project sponsor enters into the local agreement.

(j) ~~[(i)]~~ Projects, or substantially similar projects, submitted during a program call administered by the MPO are not eligible for consideration under a concurrent program call administered by the department.

(k) ~~[(j)]~~ Not later than November 15 of each year, the MPO shall submit to the department a report that describes:

(1) the number of project applications received by the MPO for the preceding federal fiscal year (the period of October 1 through

September 30), including the aggregate cost of the projects for which applications are received and the types of projects to be carried out, expressed as percentages of the MPO's total apportionment for TA Set-Asides; and

(2) the number of projects selected for funding by the MPO for the preceding federal fiscal year, including the aggregate cost and location of projects selected.

§11.404. *Eligible Activities.*

(a) During a program call administered by the department, TA Set-Aside funds may be awarded for any of the following activities:

(1) construction of on-road and off-road trail facilities for pedestrians, bicyclists, and other non-motorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other safety-related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990;

(2) construction of infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities to access daily needs;

(3) conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other non-motorized transportation users; and

(4) construction of infrastructure-related projects to improve the ability of students to walk and bicycle to school, including sidewalk improvements, traffic calming and speed reduction improvements, pedestrian and bicycle crossing improvements, on-street bicycle facilities, off-street bicycle and pedestrian facilities, secure bicycle parking facilities, and traffic diversion improvements in the vicinity of schools.

(b) Planning and design activities for the construction of bicycle and pedestrian facilities are eligible only for projects located in communities with a population of 50,000 or less.

(c) ~~[(b)]~~ A project that will require the acquisition of real property through the exercise of eminent domain or condemnation is not eligible for participation in the TA Set-Aside Program.

(d) ~~[(c)]~~ Whether proposed as an independent project or as an element of a larger transportation project, the project must be limited to a logical unit of work and be constructible as an independent project.

§11.405. *Allowable Costs.*

(a) Costs are allowable only if they are necessary expenditures for a construction-related project and ~~expenditures that~~ are eligible for reimbursement under applicable statutes and regulations.

(b) Costs incurred before the execution of the local agreement or before federal and state approval and authorization to proceed are not eligible for reimbursement.

(c) ~~[(b)]~~ The costs of preliminary engineering, including environmental studies and documentation ~~[planning]~~, design, and plans, specifications, and estimates, are ~~[not]~~ allowable costs only for projects located in communities with a population of 50,000 or less.

(d) ~~[(c)]~~ Eligible pre-construction costs incurred by the department are reimbursable. ~~[All other pre-construction costs are the responsibility of the project sponsor.]~~

(e) All pre-construction costs are the responsibility of the project sponsor except as provided by this section.

(f) ~~[(d)]~~ Expenditures for routine operation and maintenance are not allowable costs unless specifically allowed under the individual federal category for which the project qualifies.

§11.406. *Local Funding Match.*

(a) ~~Except as provided by this section, the [The] local funding match must be [is a] cash [match or a combination of cash and in-kind contribution] provided by or through the project sponsor. [An in-kind contribution may include only actual and documented costs incurred by the project sponsor for the development of project plans, specifications, and estimates that would otherwise be eligible for reimbursement under applicable statutes and regulations.]~~

(b) ~~For a community with a population of 50,000 or less, transportation development credits, state funds, or both may be available to apply to all or part of the local funding match if the community:~~

~~(1) is in an economically disadvantaged county, as defined in the Transportation Code, §222.053(a) or described by Transportation Code, §222.053(a-1); or~~

~~(2) satisfies economic need criteria specified in the program call materials.~~

~~[(b) Costs incurred prior to execution of the local agreement or prior to federal and state approval and authorization to proceed are not eligible for consideration as in-kind contributions.]~~

(c) Funds from other federal programs may be used as a local funding match only when specifically authorized by federal law [or regulation].

(d) Donated services may not be accepted as a local funding match[,] but may be used to reduce the overall cost of the project.

(e) If a project selected by the commission is implemented by the department, the project sponsor must provide the local funding match prior to the commencement of project activities for each phase of work.

(f) ~~Projects selected by the commission will include the department's direct state costs for oversight of preliminary engineering and construction in TA Set-Aside project awards [an administrative cost for the department's oversight]. [The local funding match associated with this administrative cost must be provided in cash.]~~

§11.411. *Selection of Projects by the Commission.*

(a) The commission, by written order, will select projects for funding under the TA Set-Aside Program based on:

- (1) recommendations from the director of the division responsible for administering the TA Set-Aside Program;
- (2) the potential benefit to the state of the project; and
- (3) whether the project enhances the surface transportation system.

(b) The commission is not bound by project selection recommendations provided by the department.

(c) The department will notify the project sponsor of the selection.

(d) The commission will award an [specify a fixed] amount of TA Set-Aside funds for each project. [Project costs in excess of this amount are the responsibility of the project sponsor.] If program funds remain or are returned to the program due to cost underruns, the responsible division administering the program may apply those funds to project overruns based on:

- (1) justification of overruns;
- (2) timing of request;
- (3) availability of funds;

(4) a reasonable expectation of the ability of the project sponsor to complete the project; and

(5) if overrun requests exceed available funds, the criteria applicable to the use of state funds under §11.406(b) of this subchapter.

(e) The project sponsor may seek additional funds through the TA Set-Aside Program in subsequent program calls.

(f) ~~[(e)]~~ A project that is not selected must be resubmitted to receive consideration during subsequent program calls.

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

Filed with the Office of the Secretary of State on September 24, 2020.

TRD-202003966

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 8, 2020

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



CHAPTER 27. TOLL PROJECTS SUBCHAPTER G. OPERATION OF DEPARTMENT TOLL PROJECTS

43 TAC §27.86

The Texas Department of Transportation (department) proposes new §27.86 concerning the Veteran Discount Program.

EXPLANATION OF PROPOSED NEW SECTION

Transportation Code, §372.053, provides that a toll project entity, including the department, may establish a discount program for electronic toll collection customers. Such a program must include free or discounted use of the entity's toll project by an electronic toll collection customer whose account relates to a vehicle registered under Transportation Code, §504.202 or §504.315(f) or (g). S.B. 1091, 86th Regular Session, 2019, amended §372.053 by adding new subsection (a)(2), which provides that a toll project entity may limit to no more than two the number of transponders issued to a participant in the entity's program for which free or discounted use of the entity's toll project is provided. A toll project entity that adopts a limit shall allow a participant to be issued one extra transponder on a demonstration of hardship by the participant, as determined by the entity.

New §27.86 describes the method by which the department will implement the statutory changes described above, including the number of transponders (tags) that will be issued to eligible customers and the process for issuance of an additional tag based on financial hardship.

New §27.86(a) sets forth the purpose of the rule, which is to implement Transportation Code, §372.053.

New §27.86(b) acknowledges that the Texas Transportation Commission (commission), by minute order, may adopt a policy defining the circumstances under which free or discounted passage will be granted on department toll projects, in accordance with Transportation Code, §372.053. The subsection further

specifies that subsections (c) - (f) will apply to free or discounted use of department toll projects by eligible vehicles, as defined by commission minute order. The commission has already adopted such a policy, which can be found in Minute Order 115270, dated July 26, 2018. For purposes of subsections (c) - (f), the term "owner" means a veteran who is the registered owner of the eligible vehicle according to the records of the Texas Department of Motor Vehicles.

New §27.86(c) provides that to receive free or discounted use of department toll projects, the owner of an eligible vehicle must establish an electronic toll collection customer account and register the eligible vehicle and the tag affixed to that vehicle through a process prescribed by the department. Customers who have already established an electronic toll collection customer account with the department or another toll project entity in Texas will still be required to register the eligible vehicle and tag affixed to that vehicle. This registration process will enable the department to manage the program in an efficient and effective manner.

New §27.86(d) limits free or discounted use of department toll projects to one eligible vehicle, except as provided by subsection (e). The department originally implemented the veteran discount program in December of 2012. Prior to the enactment of S.B. 1091, the department did not have authority to limit the number of vehicles per veteran and applied the waiver to tolls incurred by all eligible vehicles. Because free passage on department toll projects may only be granted as allowed under applicable trust agreements or indentures, the agency is required to reimburse the Central Texas Turnpike System (CTTS) for any difference in toll revenue resulting from a rate change applied through the program. The commission previously approved the use of payments received from the SH 130 Comprehensive Development Agreement to cover those reimbursements. However, based on the current growth of eligible vehicles using department toll projects, that funding will not be sufficient to cover the required reimbursement in future years. By limiting the number of eligible vehicles, the department seeks to reduce the annual cost by up to 30%.

New §27.86(e) provides that the department will grant free or discounted use of department toll projects to one additional eligible vehicle upon a demonstration of financial hardship. The owner of that vehicle must submit an application, on a form approved by the department, accompanied by documentation that establishes that the owner is enrolled in certain low income-based federal assistance programs. In an effort to reduce the time and effort required by the customer to demonstrate income eligibility status and need for a hardship exception, the department will use preexisting measures and standards implemented by other governmental entities. The owner of the vehicle must also register the vehicle and the tag affixed to that vehicle through a process prescribed by the department. A hardship exception will be valid for a three-year period. To extend the exception, the owner must provide proof that the hardship continues to exist not later than the third anniversary of the date the hardship exemption was last granted by the department. Failure to provide proof that the hardship continues to exist results in expiration of the hardship exception. The purpose of limiting the validity period to three years is to ensure that the owner continues to qualify for the exemption.

New §27.86(f) specifies that the department will provide the tags required by this section, including replacement tags, at no cost to the owner of an eligible vehicle that does not have an existing tag.

The effective date of new §27.86 will be January 1, 2021.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be a reduction in costs for state government as a result of enforcing or administering the rules. Currently TxDOT pays the Central Texas Turnpike System (CTTS), from a subaccount of the State Highway Fund related to the SH130 Segments 5&6 project, an amount necessary to cover the costs of discounted tolls for eligible veterans. Reimbursement of the tolls from an eligible source is required per the terms of the bonds issued for the CTTS. By limiting discount eligibility to one tag/plate and one potential hardship tag/plate, it is estimated the payment from TxDOT will be reduced by approximately \$19.3 million over five fiscal year period. There will be additional costs to the CTTS (estimated at \$1 million) for the tags issued under the proposed rules. Although currently indeterminable, there could also be increased revenues for both CTTS and the Grand Parkway Transportation Corporation (GPTC) as a result of toll road users who previously qualified for waived tolls now paying for use of the roadways. CTTS and GPTC are not considered state or local governments. There is no anticipated fiscal impact on local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Richard Nelson, Director, Toll Operations Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and, therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Richard Nelson, Director, Toll Operations Division, has also determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be consistency with similar programs offered by other tolling entities in Texas, clarity regarding program requirements, and ability to use the transponder for toll payment on non-participating toll roads (if the account is pre-funded).

COSTS ON REGULATED PERSONS

Richard Nelson, Director, Toll Operations Division, has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for regulated persons, including a state agency, special district, or local government, required to comply with the proposed rules and, therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities, as defined by Government Code, §2006.001, and, therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Richard Nelson, Director, Toll Operations Division, has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on gov-

ernment growth. He expects that during the first five years that the rule would be in effect:

- (1) it would not create or eliminate a government program;
- (2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;
- (3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;
- (4) it would not require an increase or decrease in fees paid to the agency;
- (5) it would not create a new regulation;
- (6) it would not expand, limit, or repeal an existing regulation;
- (7) it would not increase or decrease the number of individuals subject to its applicability; and
- (8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Richard Nelson, Director, Toll Operations Division, has also determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the new §27.86 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "*Veteran Discount Program rules*". The deadline for receipt of comments is 5:00 p.m. on **November 9, 2020**. 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.

STATUTORY AUTHORITY

The amendments are proposed 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, §372.053, which allows the department to establish a discount program for certain electronic toll collection customers.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code §372.053.

§27.86. *Veteran Discount Program.*

(a) Purpose. Transportation Code, §372.053 provides that the department may establish a discount program for electronic toll collection customers that must include free or discounted use of department toll projects by an electronic toll collection customer whose account relates to a vehicle registered under Transportation Code, §504.202 or §504.315(f) or (g). This section implements §372.053.

(b) General. The commission, by minute order, may adopt a policy defining the circumstances under which free or discounted pas-

sage will be granted on department toll projects, in accordance with Transportation Code, §372.053. Subsections (c) - (f) of this section will apply to free or discounted use of department toll projects by eligible vehicles, as defined by commission minute order. For purposes of subsections (c) - (f) of this section, the term "owner" means a veteran who is the registered owner of the eligible vehicle according to the records of the Texas Department of Motor Vehicles.

(c) Requirements. To receive free or discounted use of department toll projects, the owner of an eligible vehicle must establish an electronic toll collection customer account and register the eligible vehicle and the tag affixed to that vehicle through a process prescribed by the department.

(d) Limitation. Free or discounted use of department toll projects is limited to one eligible vehicle, except as provided by subsection (e) of this section.

(e) Exception for financial hardship. The department will grant free or discounted use of department toll projects for one additional eligible vehicle in accordance with this subsection. The owner of that eligible vehicle must complete and submit to the department an application, on a form approved by the department, accompanied by documentation that establishes that the owner is enrolled in Medicaid, the Qualified Medicare Beneficiary Program, the Specified Low-Income Medicare Beneficiary Program, or the Qualifying Individual Program, or is qualified for Supplemental Security Income. On receipt of an application containing all required information, the department will grant the hardship exception. To receive free or discounted use of department toll projects for the additional eligible vehicle, the owner of the vehicle must register the vehicle and the tag affixed to that vehicle through a process prescribed by the department. A hardship exception granted under this subsection is valid for a three-year period. To extend the exception, the owner must provide proof that the hardship continues to exist not later than the third anniversary of the date the hardship exemption was last granted by the department. Failure to provide proof that the hardship continues to exist by that date results in expiration of the hardship exception on that date.

(f) Tag fees. Notwithstanding any fee for standard or specialty tags established under §27.82 of this subchapter (relating to Toll Operations), the department will provide the tags required by this section, including replacement tags, at no cost to the owner of an eligible vehicle that does not have an existing tag.

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

Filed with the Office of the Secretary of State on September 24, 2020.

TRD-202003967

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 8, 2020

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



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 5. GENERAL ADMINISTRATION

SUBCHAPTER C. REGULATORY

COMPLIANCE DIVISION

1 TAC §5.211

The Office of the Governor withdraws the proposed new §5.211, which appeared in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2617).

Filed with the Office of the Secretary of State on September 29, 2020.

TRD-202004048

Erin Bennett

Director, Regulatory Compliance Division

Office of the Governor

Effective date: September 29, 2020

For further information, please call: (512) 463-8500



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.51

The Department of State Health Services withdraws the emergency adoption of the new 25 TAC §133.51, which appeared in the April 17, 2020, issue of the *Texas Register* (45 TexReg 2469).

Filed with the Office of the Secretary of State on September 25, 2020.

TRD-202004008

Karen Ray

Chief Counsel

Department of State Health Services

Effective date: September 25, 2020

For further information, please call: (512) 834-4591



TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 510. PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §510.48

The Health and Human Services Commission withdraws the emergency adoption of the new 26 TAC §510.48, which appeared in the April 17, 2020, issue of the *Texas Register* (45 TexReg 2472).

Filed with the Office of the Secretary of State on September 25, 2020.

TRD-202004009

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: September 25, 2020

For further information, please call: (512) 834-4591



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.19

The General Land Office withdraws the emergency adoption of new §15.19, which appeared in the September 11, 2020, issue of the *Texas Register* (45 TexReg 6301).

Filed with the Office of the Secretary of State on October 1, 2020.

TRD-202004078

Mark Havens
Deputy Land Commissioner and Chief Clerk
General Land Office
Effective date: October 1, 2020
For further information, please call: (512) 475-1859



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §815.1

The Texas Workforce Commission withdraws the proposed emergency amendment to §815.1, which appeared in the May 8, 2020, issue of the *Texas Register* (45 TexReg 2951).

Filed with the Office of the Secretary of State on September 22, 2020.

TRD-202003897

Dawn Cronin
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: September 24, 2020

For further information, please call: (512) 689-9855



SUBCHAPTER F. EXTENDED BENEFITS

40 TAC §§815.170 - 815.172, 815.174

The Texas Workforce Commission withdraws the proposed emergency amendments to §§815.170 - 815.172 and 815.174, which appeared in the May 8, 2020, issue of the *Texas Register* (45 TexReg 2951).

Filed with the Office of the Secretary of State on September 22, 2020.

TRD-202003898

Dawn Cronin
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: September 24, 2020

For further information, please call: (512) 689-9855



40 TAC §815.173

The Texas Workforce Commission withdraws the proposed emergency repeal of §815.173, which appeared in the May 8, 2020, issue of the *Texas Register* (45 TexReg 2951).

Filed with the Office of the Secretary of State on September 22, 2020.

TRD-202003899

Dawn Cronin
Director, Workforce Program Policy
Texas Workforce Commission
Effective date: September 24, 2020

For further information, please call: (512) 689-9855



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 1. OFFICE OF THE GOVERNOR

CHAPTER 5. GENERAL ADMINISTRATION

SUBCHAPTER C. REGULATORY

COMPLIANCE DIVISION

1 TAC §§5.201 - 5.210, 5.212, 5.213

The Regulatory Compliance Division of the Office of the Governor (Division) adopts new §§5.201 - 5.210, 5.212, and 5.213 in new Subchapter C at 1 TAC Chapter 5, concerning the functions of the Division under Subchapter C, Chapter 57 of the Texas Occupations Code. Sections 5.202, 5.204, 5.206, 5.208, 5.209, 5.210, and 5.213 are adopted with changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2617). These rules will be republished. Sections 5.201, 5.203, 5.205, 5.207, and 5.212 are adopted without changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2617). These rules will not be republished. Section 5.211, as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2617), is withdrawn elsewhere in this issue.

REASONED JUSTIFICATION

The Division is responsible for conducting an independent review of certain state agencies' proposed rules that affect market competition to assess their consistency with state policy as clearly articulated by the Legislature in state statute. The establishment of the Division and its functions are governed by Subchapter C, Chapter 57 of the Texas Occupations Code, which was added by the 86th Legislature, Regular Session, in Senate Bill 1995 (SB 1995). The primary purposes of the new subchapter are to specify the state agencies that are required by statute to submit proposed rules to the Division, to provide guidance regarding the procedures that state agencies must follow when submitting proposed rules to the Division, and to formalize the practices that the Division follows when reviewing proposed rules.

The Division's rules at 1 TAC §5.201 were created to specify the state agencies that are required by statute to submit proposed rules to the Division.

The Division's rules at 1 TAC §5.202 were created to define certain terms for use throughout the new subchapter. In addition to the definitions contained in the text of the proposed rule published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2617), the adopted rule contains a definition of "administrative records regarding a proposed rule" to clarify the non-privileged and nonconfidential documents, communications, and

other information that a state agency is required to include in a proposed rule submission to the Division.

The Division's rules at 1 TAC §5.203 were created to address the computation of time for purposes of the new subchapter.

The Division's rules at 1 TAC §5.204 were created to identify which proposed rules must be submitted to the Division and to provide guidance to state agencies regarding when and how they must submit proposed rules to the Division. The rule is adopted with changes to the text of the proposed rule in order to more closely track statute with regard to the Division's initiation of a proposed rule review, to clarify the types of information and documents that a state agency is required to submit to the Division with a proposed rule, and to ensure that the appropriate state agency staff and governing board members receive communications from the Division regarding a proposed rule review.

The Division's rules at 1 TAC §5.205 were created to establish how the Division will provide public notice of the submission of a proposed rule to the Division.

The Division's rules at 1 TAC §5.206 were created to provide guidance to state agencies regarding when and how they must supplement proposed rule submissions. The rule is adopted with changes to the text of the proposed rule in order to clarify the types of supplemental information that a state agency is required to submit to the Division while a proposed rule is under review.

The Division's rules at 1 TAC §5.207 were created to specify what the Division's review of a proposed rule encompasses and what activities the Division may undertake when reviewing a proposed rule.

The Division's rules at 1 TAC §5.208 were created to establish how and when the Division will accept public comments on a proposed rule that is under review. In order to ensure that the public always has a meaningful opportunity to comment, the amended rule contains a minimum 10-day period during which the Division will accept public comments on a proposed rule that was not included in the text of the proposed rule.

The Division's rules at 1 TAC §5.209 were created to set out how and when the Division will issue determination letters on proposed rules and to allow the Division to provide either precise or general revision instructions in a determination letter rejecting a proposed rule. Similar to §5.204, the amended rule expands the list of individuals to whom the Division will send a determination letter in order to ensure receipt by the appropriate state agency staff and governing board members.

The Division's rules at 1 TAC §5.210 were created to make clear when a state agency may finally adopt and implement a rule that was reviewed by the Division and to allow a state agency to finally adopt and implement without resubmission to the Division a rule that is revised according to the Division's precise

instructions. The rule is adopted with changes to the text of the proposed rule to better reflect statute with regard to the implementation of a reviewed rule, to allow a state agency to make technical and nonsubstantive changes to an approved rule or a rule revised according to the Division's precise instructions, and to make clear that a rule adopted according to the Division's precise instructions is considered approved by the Division.

The Division's rules at 1 TAC §5.212 were created to clarify the limitations on the information and communications that the Division may consider when reviewing a proposed rule.

The Division's rules at 1 TAC §5.213 were created to give notice of the information that the Division will make publicly available on its website. The rule is adopted with changes to the text of the proposed rule in order to require the Division to provide a means through which a person may request publicly available documents not maintained on the Division's website.

SUMMARY OF COMMENTS AND DIVISION RESPONSES

The Division accepted public comment on the proposals between April 24, 2020 and May 25, 2020.

The Division received written comments on the proposed rules from the state agencies under the oversight of the Finance Commission of Texas: the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner; the Texas Medical Association; and two individuals.

Comments: The Texas Medical Association (TMA) commented that proposed §5.204(a)(2) regarding the circumstances under which the Division, on its own initiative, may require a state agency to submit a proposed rule for review omitted language from §57.106(g) of the Texas Occupations Code, which provides that the Division "has reason to believe" that the proposed rule may affect market competition.

Response: The Division agrees that this provision could better track statute and amends §5.204(a)(2) to include this language.

Comments: The Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner (the finance agencies) commented that Division communications in proposed §§5.204(b), 5.204(e), and 5.209(c) are sent to "the state agency head and the presiding officer of the governing body of the state agency," but that such limited distribution could cause a delay in the appropriate individual receiving the information, especially in the case of the Texas Finance Commission which is not a separate state agency with its own staff. Therefore, the finance agencies recommended that these communications also be sent to the certifying official listed in the published rule proposal.

Response: The Division agrees that including the certifying official in the notification that the Division has identified a proposed rule for submission to the Division will help ensure that the appropriate agency staff is made aware of the Division's identification of a proposed rule as soon as possible. Accordingly, the Division adds that individual to the list of individuals notified in §5.204(b). However, because the certifying official may be different from the agency staff or governing body member who handles a proposed rule submission to the Division, the Division adds the individual who submitted the rule submission memorandum to the list of individuals who receive confirmation of the submission in §5.204(e) and the determination letter in §5.209(c).

Comments: TMA commented that the Division should provide for a minimum 10-day public comment period on all proposed rules under review to allow for some public participation and feedback on each proposed rule under review.

Response: The Division agrees that accepting public comments for a minimum of 10 days as part of every review will help ensure an opportunity for meaningful public input on each proposed rule under review and amends §5.208(c) accordingly.

Comments: One individual commented that proposed §5.210 omitted language from §57.106(e) of the Texas Occupations Code, which provides that a state agency may neither finally adopt nor implement a proposed rule required to be submitted to the Division without the Division's approval.

Response: The Division agrees that this provision could better track statute and amends §5.210 to specify that a state agency may implement a proposed rule that has been approved by the Division or revised according to the Division's precise instructions.

Comments: One individual commented that proposed §5.210 does not allow a state agency to make any minor changes to the Division's precise instructions for revision without re-proposing the rule in the *Texas Register* and resubmitting the rule for Division review. This could prevent state agencies, which have expertise in the subject matter of their rules, from improving upon or refining the Division's instructions without significant delay. The same commenter also expressed concern that allowing a state agency to finally adopt a rejected rule that has been revised according to the Division's precise instructions could be challenged as a violation of §57.106(e) of the Texas Occupations Code.

Response: The Division agrees with these concerns and adds subsections (b) and (c) to §5.210 addressing these concerns.

Comments: The finance agencies commented that the required withdrawal of a proposed rule rejected by the Division under proposed §5.211 is unnecessary because §2001.027 of the Texas Government Code provides for the withdrawal of a proposed rule that is not adopted within six months after the date of publication in the *Texas Register*, and §57.106(e) already states that an agency may not adopt or implement a proposed rule under Division review unless it has received Division approval.

Response: The Division agrees that this requirement is unnecessary and has withdrawn proposed §5.211.

Comments: TMA and an individual commented that more information relating to a proposed rule submission should be made available on the Division's website, including rule submission memorandum attachments, supplemental documents and communications submitted by the state agency, updated rule submission memoranda, public comments regarding the proposed rule received by the state agency, and public comments received by the Division on the proposed rule.

Response: The Division agrees with the spirit of the comments but disagrees with the suggested method of implementation. Pursuant to §5.213, the Division will make available any rule submission memoranda on its website. In lieu of posting on its website all of the above information, which could be confusing for the public and technically difficult for the Division, the Division adds to its required website content in §5.213 a means through which interested persons may request publicly available documents not maintained on the Division's website.

Comments: One individual commented that the rule submission memorandum template that a state agency must use when submitting a proposed rule to the Division under §5.204(c) should include a question as to whether the proposed rule promotes a "clearly articulated and affirmatively expressed policy as established by the legislature to displace competition with government action."

Response: The Division disagrees with the proposal. Pursuant to §57.106(a)(2) of the Texas Occupations Code, the Division's review of each proposed rule is required to include a determination of whether the proposed rule promotes a "clearly articulated and affirmatively expressed policy as established by the legislature to displace competition with government action." Thus, it is the Division's responsibility to reach that conclusion. Further, the Division declines to prescribe the content of the rule submission memorandum template in rule at this time.

Comments: One individual commented that the 90-day period during which the Division is required to conduct a review of a proposed rule should not begin until a state agency has submitted all public comments regarding the proposed rule received by the state agency, including all public comments received by the state agency during the comment period provided for the proposed rule in the *Texas Register*.

Response: The Division disagrees with the proposal and declines to change the start date of the 90-day period from the date that a state agency submits a proposed rule to the Division. This start date tracks §57.106(c) of the Texas Occupations Code, and helps ensure the timely issuance of determination letters by the Division. Section 5.206 requires a state agency to supplement a proposed rule submission with all public comments regarding the proposed rule, so any public comments submitted to the state agency will be considered as part of the Division's review, regardless of when the 90-day period begins.

Comments: The finance agencies commented that the Finance Commission's meeting schedule and the 90-day review period could pose challenges for the commission in adopting rules in accordance with the Division's instructions before a proposed rule is withdrawn by the operation of law pursuant to §2001.027 of the Texas Government Code. Thus, the commission requested that the Division communicate to the commission any concerns with a proposed rule under review as soon as possible.

Response: The Division agrees with the spirit of the proposal and endeavors to complete its proposed rule reviews and issue determination letters as efficiently as possible. No change has been made to the rules in response to this comment.

STATUTORY AUTHORITY

The new subchapter is adopted under §57.107 of the Texas Occupations Code, which provides that the Division may adopt rules to carry out its functions under that subchapter.

CROSS REFERENCE TO STATUTE

Subchapter C, Chapter 57, Texas Occupations Code, as added by Senate Bill 1995, 86th Legislature, Regular Session.

§5.202. Definitions.

In this subchapter:

(1) "Administrative records regarding a proposed rule" means any nonprivileged and nonconfidential documents, communications, or other information created, received, or consulted by a state agency that are material to the development of the proposed rule.

The term includes all information and comments that the state agency received from the public regarding the proposed rule.

(2) "Affects market competition" means:

(A) creates a barrier to market participation in this state; or

(B) results in higher prices or reduced competition for a product or service provided by or to a license holder in this state.

(3) "Division" means the Regulatory Compliance Division of the Office of the Governor established in Subchapter C, Chapter 57 of the Texas Occupations Code.

(4) "State agency" means a state agency listed in §5.201(a) of this subchapter.

§5.204. Submission of Proposed Rule to Division.

(a) A state agency must submit to the division, before final adoption or implementation, any proposed rule that has been published in the *Texas Register*; including a new rule, a rule change, a rule repeal, or a rule readoption, if:

(1) the state agency determines that the proposed rule would affect market competition in this state relating to a business, occupation, or profession for which a license is issued; or

(2) the division identifies the proposed rule as one that it has reason to believe may affect market competition in this state relating to a business, occupation, or profession for which a license is issued.

(b) A state agency acting under subsection (a)(1) of this section may submit the proposed rule to the division no earlier than the date that the proposed rule is published in the *Texas Register*. If the division identifies a proposed rule for submission to the division under subsection (a)(2) of this section, the division shall notify in writing the state agency head, the presiding officer of the governing body of the state agency, and, if different from the state agency head or presiding officer, the certifying official, as defined in 1 Texas Administrative Code §91.2(4), who certified the proposed rule for filing with the *Texas Register* not later than the last day of the public comment period provided for the proposed rule in the *Texas Register*. There is no deadline by which a state agency must submit a proposed rule to the division.

(c) A state agency submitting a proposed rule to the division must use the rule submission memorandum template prescribed by the division and available on the division's website. The state agency must include with the rule submission memorandum:

(1) a copy of the proposed rule as it appeared in the *Texas Register* in its entirety;

(2) the language of any amendments to the proposed rule that the state agency intends to adopt;

(3) copies of all of the state agency's administrative records regarding the proposed rule, including any information or comments that the state agency received from the public; and

(4) any other nonprivileged and nonconfidential information that the state agency considers relevant to the division's review of the proposed rule.

(d) A state agency submitting a proposed rule to the division must submit it by:

(1) hand delivery to "Office of the Governor, Attn: Regulatory Compliance Division, State Insurance Building, 1100 San Jacinto, Austin, Texas 78701";

(2) mail to "Office of the Governor, Attn: Regulatory Compliance Division, P.O. Box 12428, Austin, Texas 78711"; or

(3) email to "RegulatoryCompliance@gov.texas.gov".

(e) Not later than the 10th business day after the date that the division receives a proposed rule submission from a state agency, the division shall notify in writing the state agency head, the presiding officer of the governing body of the state agency, and, if different from the state agency head or presiding officer, the agency staff or governing body member who submitted the proposed rule to the division of the division's receipt of the proposed rule and the period during which the division will accept public comments on the proposed rule.

§5.206. Supplementation of Proposed Rule Submission.

(a) While a proposed rule is being reviewed by the division, the state agency must provide to the division:

(1) copies of any administrative records regarding the proposed rule created, received, or consulted by the state agency after submission of the proposed rule to the division, including any information or comments received from the public after the submission; and

(2) any amendments to the proposed rule that the state agency intends to adopt and that were not included in the proposed rule submission.

(b) If a state agency supplements a proposed rule submission under subsection (a) of this section with a substantial amount of administrative records or with an amendment that significantly changes the proposed rule in nature or scope, the division may:

(1) require the submission of an updated rule submission memorandum;

(2) re-open or extend the public comment period on the proposed rule; and

(3) deem the supplemented submission a new submission, including restarting the 90-day period for the division to issue a determination letter approving or rejecting the proposed rule.

§5.208. Public Comments on Proposed Rule.

(a) In conducting a review of a proposed rule, the division shall solicit and consider written public comments from identified persons submitted to the division before the deadline provided on the division's website.

(b) Except as provided in subsection (c) of this section, the division shall accept and consider public comments submitted to the division on or before the 30th day after the date that the rule submission memorandum for the proposed rule is made available to the public on the division's website.

(c) At the request of a state agency in a rule submission memorandum, and upon the state agency's showing of an extraordinary circumstance or a need for the state agency to meet a statutory or administrative deadline, the division may provide for a shorter public comment period of not less than 10 days on a proposed rule in order for the division to conduct an expedited review of the proposed rule.

(d) The division may, but is not required to, consider public comments regarding a proposed rule received by the division outside of the public comment period provided by the division under subsection (b) or (c) of this section.

§5.209. Determination by Division on Proposed Rule.

(a) Not later than the 90th day after the postmark date of a state agency's mailed proposed rule submission or the date on which the division receives a state agency's hand delivered or emailed proposed rule

submission, the division shall issue a determination letter approving or rejecting the proposed rule.

(b) The division shall include in the determination letter an explanation of the division's reasons for approving or rejecting the proposed rule, including a discussion of the division's determination regarding the consistency of the proposed rule with applicable state policy. If the division rejects a proposed rule, the division shall include in the determination letter instructions for revising the proposed rule to be consistent with applicable state policy. At its discretion, the division may provide either precise or general instructions for revising the proposed rule and must identify its instructions as such.

(c) The division shall send the determination letter to the state agency head, the presiding officer of the governing body of the state agency, and, if different from the state agency head or presiding officer, the agency staff or governing body member who submitted the proposed rule to the division, and shall make the determination letter available to the public on the division's website.

(d) A determination letter issued by the division is not subject to appeal.

§5.210. Final Adoption and Implementation of Proposed Rule.

(a) A state agency may finally adopt and implement a proposed rule required to be submitted to the division under §5.204 of this subchapter only if:

(1) the division issues a determination letter approving the proposed rule under §5.209 of this subchapter; or

(2) the division issues a determination letter rejecting the proposed rule under §5.209 of this subchapter with precise instructions for the revision of the proposed rule and the state agency revises the proposed rule according to the division's instructions.

(b) In adopting a proposed rule pursuant to subsection (a) of this section, a state agency may make technical and nonsubstantive changes to the language of the proposed rule and any amendments to the proposed rule reviewed by the division. For purposes of subsection (a)(2) of this section, a state agency may also make technical and nonsubstantive changes to the division's precise instructions.

(c) A rule finally adopted and implemented in accordance with subsection (a)(2) of this section is deemed to have been approved by the division for purposes of Section 57.106(e) of the Texas Occupations Code.

§5.213. Division Website.

The division shall maintain a website on which the division makes available to the public:

(1) the rule submission memorandum for each proposed rule that is currently under review by the division;

(2) the deadline and instructions for submitting public comments on each proposed rule that is currently under review by the division;

(3) all determination letters issued by the division;

(4) a means through which any person may sign up to be notified when the division receives a proposed rule submission or issues a determination letter on any proposed rule; and

(5) a means through which any person may request publicly available documents not maintained on the division's website.

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 24, 2020.

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Erin Bennett

Director, Regulatory Compliance Division

Office of the Governor

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Proposal publication date: April 24, 2020

For further information, please call: (512) 463-8500



TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER D. APPLICATION REVIEW AND PROTESTS

16 TAC §§33.50 - 33.63

The Texas Alcoholic Beverage Commission ("commission" or "TABC") adopts new 16 TAC §§33.50 - 33.63, relating to application review and protests, with changes to the proposed text as published in the August 14, 2020, issue of the *Texas Register* (45 TexReg 5573). Specifically, the proposal preamble stated that "(t)he commission proposes to create a new subchapter E, Application Review and Protests, within Chapter 33 to contain the proposed new rules." Based upon other rule projects that are currently underway and impact Chapter 33, the rules adopted in §§33.50 - 33.63 will instead be contained in a new subchapter D. There are no other changes from the text as published for proposal. The rules will be republished.

In 2019, the Texas Legislature adopted amendments to Alcoholic Beverage Code §11.43 and added new §§11.431 and 11.432 (Acts, 86th Tex. Leg. R.S. (2019)). New §11.43(j) requires the agency to adopt rules to implement the application review and protest process including establishing reasonable timelines, identifying the roles and responsibilities of all parties involved in the process, and identifying potential avenues for mediation or informal dispute resolution. Additionally, the legislation made the following changes to the agency's process for protesting an application for a license or permit: (1) Protests will only come from external parties, not from TABC staff; (2) the agency is required to either deny or approve an application (rather than the current process of pursuing an agency-initiated protest); (3) an agency denial of an application triggers due process, outlined in §11.43 of the Alcoholic Beverage Code, with appeals to be heard by the State Office of Administrative Hearings (SOAH) first with a final opportunity for appeal at district court; and (4) all protests that move forward through the contested case process will be heard by SOAH; county judges will no longer have a role in the protest process.

The legislature required TABC to adopt rules implementing these statutory provisions by December 31, 2020.

No comments were received.

The new rules are authorized by Alcoholic Beverage Code §11.43 which requires the Texas Alcoholic Beverage Commission to adopt rules implementing the application review and

protest process including reasonable timelines, identifying the roles and responsibilities of all parties involved in the process, and identifying potential avenues for mediation or informal dispute resolution.

No other rules or statutes are affected by the adopted rules.

§33.50. Purpose and Authority.

This subchapter implements and is authorized by Alcoholic Beverage Code §§11.43 through 11.432.

§33.51. Definitions.

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

(1) "Commission" - the Texas Alcoholic Beverage Commission as an agency of the State of Texas, and not to the Commissioners, either individually or as a body.

(2) "Complaint" - a written expression of concern regarding a person or business that holds or has applied for a TABC license or permit, or a person or business that the complainant believes is violating the Alcoholic Beverage Code or laws related to alcoholic beverages. Complaints are handled according to §31.11 (relating to Resolution and Information on Complaints). A complaint is not a request for a contested case hearing, does not itself initiate a legal proceeding, and does not afford any legal rights or party status to the complainant. Any person can file a complaint at any time.

(3) "Protest" - a written request for an administrative contested case hearing in which the protestant will participate as a party and present evidence to a trier of fact to prove that a license or permit should not be issued or renewed as proposed. A protest will only be granted if filed by a person with legal standing and supported by reasonable grounds.

(4) "Reasonable grounds" - allegations or concerns regarding a matter within the commission's jurisdiction that are supported by credible evidence or information, and includes the circumstances described in Alcoholic Beverage Code §§11.46 through 11.481, 61.42 through 61.46, and 61.50.

(5) "Received" - An application for a new license or permit or a renewal is considered received on the date the commission updates its public database to show the application as pending. An application is designated as pending only when the application is complete, meaning that the commission has received all required information and fees.

(6) "SOAH" - the State Office of Administrative Hearings.

(7) "Uncontested" - An application is uncontested if no valid protests have been timely filed or if all valid protests have been withdrawn.

§33.52. Computation of Time.

(a) When used in this subchapter, the word "days" refers to calendar days, unless otherwise specified.

(b) When computing periods of time prescribed or allowed in this chapter:

(1) the day of the act, event, or default from which the designated time period begins to run is not counted; and

(2) the last day of the time period is counted, unless it is a day on which the TABC's headquarters in Austin is closed, in which case the time period will end on the next day the TABC's headquarters is open.

§33.53. Applicable Rules.

Unless otherwise indicated, an application for a license or permit is subject to the rules in effect as of the date the application is received.

§33.54. *Delegation of Application Approvals.*

The commission delegates to the executive director or their designee the authority to approve an uncontested license or permit application pursuant to Alcoholic Beverage Code §11.43(d).

§33.55. *Conditional Approval.*

(a) Unless the exception in subsection (b) of this section applies, the commission shall not issue a new license or permit until 15 days have elapsed since the commission updated its public database to show the application as pending.

(b) If the executive director determines that there is a compelling reason to issue a license or permit before 15 days have elapsed since the commission updated its public database to show the application as pending, the executive director may grant conditional approval of the license or permit. If no valid protests are filed at the end of the 15-day period, the license or permit becomes approved by operation of law. If one or more valid protests are filed before the time period for filing protests has expired, the conditional approval is revoked and the executive director shall provide notice of the revocation to the applicant.

(c) An applicant who chooses to proceed with operations while subject to a conditional approval does so at its own risk of loss in the event that the conditional approval is revoked and it fails to obtain the necessary license or permit. An applicant who fails to obtain the necessary permit following conditional approval will have its applications fees refunded in full.

§33.56. *Alternative Dispute Resolution.*

(a) At any time prior to or during a contested case hearing, any party in a disciplinary matter may request referral to alternative dispute resolution (ADR).

(b) Parties may agree to mediate a dispute through a mediator employed by the State Office of Administrative Hearings or through a private mediator. Mediation through SOAH is subject to SOAH's rules for mediation (Title 1 Texas Administrative Code); the Administrative Procedure Act (Tex. Gov't Code Ch. 2001); laws relating to SOAH administrative procedure in Tex. Gov't Code Ch. 2003; and Tex. Gov't Code Ch. 2009, relating to ADR for use by governmental bodies.

(c) If the parties elect to use a private mediator:

(1) the participants must unanimously agree to use a private mediator;

(2) the participants must unanimously agree to the selection of the person to serve as the mediator; and

(3) the mediator must agree to be subject to all time limits imposed by the executive director, the administrative law judge, statute, or regulation.

(d) If a private mediator is used, the costs for the services of the mediator shall be apportioned equally among the participants, unless otherwise agreed upon in writing by the participants, and shall be paid directly to the mediator. In no event, however, shall any such costs be apportioned to a governmental subdivision or entity.

(e) All mediators in commission mediation proceedings shall subscribe to the ethical guidelines for mediators adopted by the ADR Section of the State Bar of Texas.

§33.57. *Application Withdrawn.*

(a) An applicant may withdraw its application at any time prior to issuance or renewal of the license or permit that is the subject of the application or the denial of the application.

(b) If an applicant fails to respond to requests from the TABC for additional information or for remittance of a license or permit fee

within ten (10) business days of the request, the TABC may consider the application withdrawn by the applicant.

(c) An application that is withdrawn is not considered denied and may be refiled at any time. Withdrawal of an application, whether affirmatively by the applicant or due to the applicant's failure to respond to requests for information or fees, does not trigger the right to appeal or any other due process rights.

§33.58. *Management Review.*

(a) At any time, the executive director or person to whom he or she delegates authority may place a management review on a license or permit, address, or person so that upon receipt of an application, an issue of concern within the agency's jurisdiction is addressed.

(b) An application remains pending until the management review is resolved and removed.

(c) A license or permit holder may continue to operate under its current license or permit while a management review related to its renewal application is pending.

(d) A license or permit holder may not surrender its existing license or permit while it is subject to a management review but may withdraw its renewal application.

§33.59. *Denial of Application after Referral of Protest for Hearing.*

(a) In the event that a valid protest results in referral for hearing under Alcoholic Beverage Code §11.43(f) and that the executive director subsequently identifies at least one legal ground to deny the application, the executive director shall request that the application be remanded to the commission from the State Office of Administrative Hearings and upon remand, shall recommend to the commission that the application be denied, as required by Alcoholic Beverage Code §11.43(g).

(b) Concurrent with the request for remand from SOAH, the executive director shall provide notice to each protestant that:

(1) the executive director will be recommending denial of the application to the commission;

(2) the case will be remanded to TABC for processing under §11.43(g), *et seq.*;

(3) if the applicant does not request a hearing on the denial recommendation, the application will be sent to the commission for a vote on denial; and

(4) if the applicant requests a hearing on the denial recommendation or the commission declines to deny the permit, the application shall be referred to SOAH for a hearing in which the protestant(s) are parties.

(c) If the executive director recommends to the commission that an application be denied and a valid protest has been referred for hearing and not withdrawn, the commission may only deny the application or refer it back to SOAH for a hearing on the previously referred protest(s).

§33.60. *Request for Hearing on Recommendation of Application Denial.*

(a) If the executive director recommends denial of an application for a license or permit, notice of the recommendation shall be transmitted to the applicant by the commission.

(b) An applicant may request an administrative hearing on the executive director's denial recommendation by filing a written request for hearing with the commission within thirty (30) days of the date on the notice of the denial recommendation.

(c) A request for hearing under this section must be filed by mail to Texas Alcoholic Beverage Commission, ATTN: Clerk, P.O. Box 13127, Austin, Texas, 78711 or by electronic mail to clerk@tabc.texas.gov.

(d) If the applicant files a timely request for hearing, the executive director will refer the application to SOAH for a hearing pursuant to Alcoholic Beverage Code §11.43(h).

(e) If the applicant does not file a timely request for hearing, the recommendation for denial of the application will be set for consideration by the commission at the next available regular commission meeting.

§33.61. *Commission Action on Contested Applications.*

(a) This section applies to the application review process in Alcoholic Beverage Code §§11.43(h) and 61.31(b).

(b) Except as provided by subsection (c) of this section, the executive director shall place all proposals for decision issued by an administrative law judge under Alcoholic Beverage Code §11.43(h) on a consent agenda for commission vote. If the commission votes to approve a contested application by consent, the executive director shall issue the license or permit.

(c) The executive director shall set a proposal for decision issued by an administrative law judge under Alcoholic Beverage Code §11.43(h) for individual consideration on the commission's regular agenda at the request of:

- (1) the presiding officer of the commission; or
- (2) at least two commission members.

§33.62. *Filing a Protest of a License or Permit Application.*

(a) A protest of a license or permit application must be:

(1) filed by a person or persons with legal standing to contest the issuance or renewal of the license or permit under Alcoholic Beverage Code §§11.431, 11.432, 61.313, or 61.314;

- (2) timely filed according to subsection (b) of this section;
- (3) in writing;
- (4) submitted in at least one of the following manners:
 - (A) through the TABC's online protest tool, if available;
 - (B) by mailing either a completed TABC protest form, available on the TABC website, or a letter that meets the requirements of subsection (c), below, to the Texas Alcoholic Beverage Commission, ATTN: Licensing Protest Coordinator, P.O. Box 13127, Austin, Texas, 78711; or
 - (C) by e-mailing either a completed TABC protest form, available on the TABC website, or a letter that meets the requirements of subsection (c) of this section to the protest email address for the TABC Region in which the applicant premises is located, as follows:

- (i) Protests_Reg1@tabc.texas.gov
- (ii) Protests_Reg2@tabc.texas.gov
- (iii) Protests_Reg3@tabc.texas.gov
- (iv) Protests_Reg4@tabc.texas.gov; or
- (v) Protests_Reg5@tabc.texas.gov; and

(5) complete, including all information required by this rule.

(b) A protest must be filed within the following time limits:

(1) For an application for an original license or permit or a change of location under Alcoholic Beverage Code §11.08, a protest is timely if it is filed between 60 days prior to and 15 days after the date the commission deems the application complete. When an application is deemed complete, the commission will update its public database to show the application as pending.

(2) For an application for renewal of a license or permit, a protest is timely filed if it is filed within 60 days prior to the expiration date of the license or permit, up to the expiration date.

(c) A protest filed by a member of the public must include the following elements:

- (1) the first and last name and physical address of the property of the person or persons filing the protest;
- (2) the approximate distance of the person's home from the premises or proposed premises;
- (3) contact information for the person filing; and
- (4) all reasonable grounds that are the basis for the protest.

(d) A protest filed by a government official must include the following elements:

- (1) the name of the official, the office held, and contact information;
- (2) a description of the geographic limits of the official's jurisdiction; and
- (3) the basis or bases for the protest.

(e) A protest that fails to meet any of the requirements of this rule may be rejected. A person whose protest is rejected may refile the protest with corrections to meet the rule requirements within the time period prescribed by subsection (b) of this section and/or refile the concerns as a complaint at any time, according to §31.10, Filing a Complaint. The determination of the validity of a protest is not a contested case subject to the Texas Administrative Procedure Act (Tex. Gov't Code Ch. 2001).

§33.63. *Withdrawal of Protest.*

(a) A protestant may withdraw their protest at any time prior to the commission's final decision. Withdrawal of a protest may not be subject to any conditions.

(b) A withdrawal of a protest must be submitted in writing to the Texas Alcoholic Beverage Commission, ATTN: Licensing Protest Coordinator, P.O. Box 13127, Austin, Texas, 78711, or to the protest email address for the TABC Region in which the applicant premises is located, as follows:

- (1) Protests_Reg1@tabc.texas.gov
- (2) Protests_Reg2@tabc.texas.gov
- (3) Protests_Reg3@tabc.texas.gov
- (4) Protests_Reg4@tabc.texas.gov; or
- (5) Protests_Reg5@tabc.texas.gov.

(c) The protestant should also transmit a copy of the withdrawal to the applicant.

(d) If all protests have been withdrawn, the executive director may grant the application and issue the license or permit, subject to other applicable statutes or rules.

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 25, 2020.

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Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Effective date: October 15, 2020

Proposal publication date: August 14, 2020

For further information, please call: (512) 487-9905



CHAPTER 45. MARKETING PRACTICES

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts the repeals of 16 TAC §§45.1 - 45.19, 45.41 - 45.51, 45.71 - 45.91, 45.94, and 45.96 without changes to the text as published in the August 14, 2020, issue of the *Texas Register* (45 TexReg 5578). New §§45.1 - 45.12, 45.20 - 45.27, 45.30, 45.40 - 45.43, and 45.50 are adopted concurrent with these repeals.

In 2019, the Texas Legislature adopted House Bill 1545, which amended Alcoholic Beverage Code (Code) §101.67 and §101.671 and added §101.6701. These statutes bring Texas alcoholic beverage label requirements more in line with the requirements for Certificates of Label Approval (COLAs) issued by the United States Alcohol and Tobacco Tax and Trade Bureau (TTB). The TABC must adopt rules implementing these statutory provisions by their effective date, December 31, 2020. Commission staff determined that the most efficient way to execute the required rule overhaul is to repeal the existing applicable subchapters and replace them with a new set of rules organized in a more intuitive and streamlined manner. The repeals will become effective on Dec. 31, 2020, concurrent with the effective date of the new Chapter 45 rules.

No comments were received.

SUBCHAPTER A. REGISTRATION AND ADVERTISING OF DISTILLED SPIRITS

16 TAC §§45.1 - 45.19

The repeals are authorized by Alcoholic Beverage Code §5.31, which authorizes the TABC to prescribe and publish rules necessary to carry out the provisions of the code, and Code §101.67(f) and §101.671(d), which require the agency to adopt rules establishing procedures for accepting federal COLAs for product registration, registering alcoholic beverage products that are not eligible to receive a COLA issued by the TTB, registering alcoholic beverage products during periods when the TTB has ceased processing applications for COLAs (e.g., a federal government shutdown), and accepting proof that a permittee is the primary American source of supply of a product or brand.

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

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Shana Horton

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SUBCHAPTER B. REGISTRATION AND ADVERTISING OF WINE

16 TAC §§45.41 - 45.51

The repeals are authorized by Alcoholic Beverage Code §101.67(f) and §101.671(d), which require the commission by rule to establish procedures for: (1) accepting federal certificates of label approval for registration of alcoholic beverage products; (2) registering alcoholic beverage products that are not eligible to receive a certificate of label approval issued by the United States Alcohol and Tobacco Tax and Trade Bureau; (3) registering alcoholic beverage products during periods when the United States Alcohol and Tobacco Tax and Trade Bureau has ceased processing applications for a certificate of label approval; and (4) accepting proof that a permittee is the primary American source of supply of a product or brand. The repeals are also authorized by Alcoholic Beverage Code §5.31, which provides general rulemaking authority to the commission.

The repeals implement Alcoholic Beverage Code §§5.31, 101.67(f) and 101.671(d).

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SUBCHAPTER C. STANDARDS OF IDENTITY FOR MALT BEVERAGES

16 TAC §§45.71 - 45.91, 45.94, 45.96

The repeals are authorized by Alcoholic Beverage Code §101.67(f) and §101.671(d), which require the commission by rule to establish procedures for: (1) accepting federal certificates of label approval for registration of alcoholic beverage products; (2) registering alcoholic beverage products that are not eligible to receive a certificate of label approval issued by the United States Alcohol and Tobacco Tax and Trade Bureau; (3) registering alcoholic beverage products during periods when the United States Alcohol and Tobacco Tax and Trade Bureau has ceased processing applications for a certificate of label approval; and (4) accepting proof that a permittee is the primary American source of supply of a product or brand. The repeals

are also authorized by Alcoholic Beverage Code §5.31, which provides general rulemaking authority to the commission.

The repeals implement Alcoholic Beverage Code §§5.31, 101.67(f) and 101.671(d).

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

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CHAPTER 45. MARKETING PRACTICES

The Texas Alcoholic Beverage Commission (TABC, agency, or commission) adopts new 16 TAC §§45.1 - 45.12, 45.20 - 45.27, 45.30, 45.40 - 45.43, and 45.50 with changes to the proposed text as published in the August 14, 2020, issue of the *Texas Register* (45 TexReg 5578). The changes to the text are clarifications that narrow the scope of applicability in both cases.

Rule §45.11(c) was revised in response to a comment to clarify that only products that are now required to obtain a federal Certificate of Label Approval (COLA) and had not previously been registered with the agency with a federal COLA need to reregister with the agency. Rule §45.11 is republished as revised.

Rule §45.50(c)(2)(B) was revised in response to a comment to clarify that for the products subject to that section, the producer need only provide a United States Alcohol and Tobacco Tax and Trade Bureau (TTB) formulation if the TTB requires one. Rule §45.50 is republished as revised.

No changes were made to the proposed text of rules §§45.1 - 45.10, 45.12, 45.20 - 45.27, 45.30, and 45.40 - 45.43 and they will not be republished.

The repeals of existing §§45.1 - 45.96 are adopted concurrently with these new rules.

In 2019, the Texas Legislature adopted House Bill 1545, which amended Alcoholic Beverage Code (Code) §§101.67 and 101.671 and added §101.6701. These statutes bring Texas alcoholic beverage label requirements more in line with the requirements for COLAs issued by the TTB.

Code §§101.67(f) and 101.671(d) require the agency to adopt rules establishing procedures for:

1. accepting federal COLAs for product registration;
2. registering alcoholic beverage products that are not eligible to receive a COLA issued by the TTB;
3. registering alcoholic beverage products during periods when the TTB has ceased processing applications for COLAs (e.g., a federal government shutdown); and

4. accepting proof, such as a letter of authorization, that a permittee is the primary American source of supply of the product or brand.

Commission staff determined that the most efficient way to execute the required rule overhaul is to repeal the existing applicable subchapters and replace them with a new set of rules organized in a more intuitive and streamlined manner. The TABC must adopt rules implementing these statutory provisions by their effective date, December 31, 2020. Therefore, these rules are effective on Dec. 31, 2020, concurrent with the repeal of the existing rules.

Response to Comment

Comment: Kimberly Frost of Martin Frost & Hill asked whether §45.11(c) requires that products originally registered with the TABC with a TTB COLA be reregistered.

Response: Products originally registered with the TABC with a TTB COLA do not need to be reregistered. The purpose of reregistration is to bring all previously registered products under the new TTB COLA-based registration program. Only products that are eligible for a TTB COLA and were not previously registered with a TTB COLA are required to reregister under §45.11(c). The rule has been revised to make this clarification.

Comment: Kimberly Frost also noted that §45.50(c)(2)(B), as drafted, appears to require a producer to provide a TTB formulation in all cases; however, there are some types of ciders and similar products for which the TTB does not require a formulation.

Response: It is not the commission's intention to require that a producer provide a TTB formulation if none is required by the TTB. Rule §45.50(c)(2)(B) has been revised to make this clarification.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §§45.1 - 45.12

The adopted rules are authorized by Alcoholic Beverage Code §§101.67(f) and 101.671(d), which require the agency to adopt rules establishing procedures for accepting federal COLAs for product registration, registering alcoholic beverage products that are not eligible to receive a COLA issued by the TTB, registering alcoholic beverage products during periods when the TTB has ceased processing applications for COLAs, and accepting proof that a permittee is the primary American source of supply of a product or brand.

The adopted rules do not impact any other statutes or rules.

§45.11. *When Reapplication is Required.*

(a) For products registered with the commission using a federal COLA, any change to the label or product that requires issuance of a new COLA requires reapplication for product registration with the commission.

(b) For products registered with the commission that are not eligible for a federal COLA, any change to the label or product requires reapplication for product registration with the commission, except for the following permissible label revisions:

(1) Deleting any non-mandatory label information, including text, illustrations, graphics, and ingredients;

(2) Repositioning any label information, including text, illustrations, and graphics;

(3) Changing the color of the background or text, the shape, or the proportionate size of labels;

(4) Changing the type size or font or make appropriate changes to the spelling (including punctuation marks and abbreviations) of words;

(5) Changing the type of container or net contents statement;

(6) Adding, deleting, or changing optional information referencing awards, medals or a rating or recognition provided by an organization as long as the rating or recognition reflects simply the opinion of the organization and does not make a specific substantive claim about the product or its competitors;

(7) Adding, deleting, or changing holiday or seasonal-themed graphics, artwork, or salutations;

(8) Adding, deleting, or changing promotional sponsorship-themed graphics, logos, artwork, dates, event locations or other sponsorship-related information; and

(9) Adding, deleting or changing references to a year or date.

(c) Not later than September 1, 2023, producers of products required to obtain a first federal COLA pursuant to Alcoholic Beverage Code §101.67(a) must reapply for commission registration of any such product that will be shipped or imported into the state, manufactured and offered for sale, or distributed or sold on or after Sept. 1, 2023, unless granted an exception under subsection (d) of this section.

(d) The executive director may issue a temporary Certificate of Registration containing an expiration date at the request of a producer demonstrating that the producer requires additional time beyond September 1, 2023 to use up products bearing labels approved by the commission and printed before December 31, 2020.

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

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SUBCHAPTER B. ENFORCEMENT

16 TAC §§45.20 - 45.27

The adopted rules are authorized by Alcoholic Beverage Code §§101.67(f) and 101.671(d), which require the agency to adopt rules establishing procedures for accepting federal COLAs for product registration, registering alcoholic beverage products that are not eligible to receive a COLA issued by the TTB, registering alcoholic beverage products during periods when the TTB has ceased processing applications for COLAs, and accepting proof that a permittee is the primary American source of supply of a product or brand.

The adopted rules do not impact any other statutes or rules.

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SUBCHAPTER C. SPECIFIC REQUIREMENTS FOR DISTILLED SPIRITS

16 TAC §45.30

The adopted rules are authorized by Alcoholic Beverage Code §§101.67(f) and 101.671(d), which require the agency to adopt rules establishing procedures for accepting federal COLAs for product registration, registering alcoholic beverage products that are not eligible to receive a COLA issued by the TTB, registering alcoholic beverage products during periods when the TTB has ceased processing applications for COLAs, and accepting proof that a permittee is the primary American source of supply of a product or brand.

The adopted rules do not impact any other statutes or rules.

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SUBCHAPTER D. SPECIFIC REQUIREMENTS FOR MALT BEVERAGES

16 TAC §§45.40 - 45.43

The adopted rules are authorized by Alcoholic Beverage Code §§101.67(f) and 101.671(d), which require the agency to adopt rules establishing procedures for accepting federal COLAs for product registration, registering alcoholic beverage products that are not eligible to receive a COLA issued by the TTB, registering alcoholic beverage products during periods when the TTB has ceased processing applications for COLAs, and accepting proof

that a permittee is the primary American source of supply of a product or brand.

The adopted rules do not impact any other statutes or rules.

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SUBCHAPTER E. SPECIFIC REQUIREMENTS FOR WINE

16 TAC §45.50

The adopted rules are authorized by Alcoholic Beverage Code §§101.67(f) and 101.671(d), which require the agency to adopt rules establishing procedures for accepting federal COLAs for product registration, registering alcoholic beverage products that are not eligible to receive a COLA issued by the TTB, registering alcoholic beverage products during periods when the TTB has ceased processing applications for COLAs, and accepting proof that a permittee is the primary American source of supply of a product or brand.

The adopted rules do not impact any other statutes or rules.

§45.50. Certificate of Registration for Wine.

(a) No wine may be shipped into the state or sold within the state without a Certificate of Registration issued by the commission.

(b) An applicant for a Certificate under this section must hold a Winery or a Nonresident Seller's Permit issued by the commission.

(c) An applicant must submit an Application to Register a Wine on the form prescribed by the commission along with the application fee to the commission. The application must contain the following:

(1) If the product is eligible for a COLA:

(A) a legible copy of the COLA;

(B) an actual label that is affixed to the wine as shipped or sold, or a legible exact color copy of a label; and

(C) all information required to complete the application form.

(2) If the product is not eligible for a COLA:

(A) an actual label that is affixed to the wine as shipped or sold, or a legible exact color copy of the label;

(B) the TTB formulation, if required by the TTB; and

(C) all information required to complete the application form.

(d) Wines with an alcohol content of at least 0.5% but less than 7% are ineligible for a COLA and must adhere to the labeling requirements contained in 21 C.F.R. Part 101; 27 C.F.R. Parts 16, 24, and 27; 21 U.S.C. §§341-350; 26 U.S.C. Ch. 51; and 27 U.S.C. §215.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER AA. COMMISSIONER'S RULES ON COLLEGE AND CAREER READINESS

19 TAC §74.1005

The Texas Education Agency (TEA) adopts new §74.1005, concerning college and career funding and reimbursements. The new section is adopted with changes to the proposed text as published in the May 1, 2020 issue of the *Texas Register* (45 TexReg 2807) and will be republished. The adopted new rule addresses the career and technology education allotment, the college preparation assessment reimbursement, and the industry-based certification examination reimbursement.

REASONED JUSTIFICATION: House Bill (HB) 3, 86th Texas Legislature, 2019, added Texas Education Code (TEC), §48.155 and §48.156, which establish reimbursements for school districts for college preparation assessments and certification examinations. In addition, HB 3 established in TEC, §48.106(a)(1), a weighted annual allotment for approved career and technical education (CTE) courses.

Adopted new 19 TAC §74.1005 implements HB 3 as follows.

The adopted new rule describes the eligibility of school districts and charter schools to receive career and technology education allotment funding under TEC, §48.106(a)(1) and (2)(A) and (C), for approved CTE courses, advanced CTE courses, and New Tech Network campuses.

The adopted new rule also details eligibility for certain district reimbursements. The certification examination reimbursement would apply to certifications identified on the Texas Education Agency (TEA) industry-based certification list for public school accountability for students in Grades 9-12 who pass an examination beginning in the 2019-2020 school year. The college preparation assessment reimbursement allows districts to be re-

imbursed for the amount of fees paid by the district for the state negotiated rate for the SAT®, ACT®, or Texas Success Initiative Assessment. Under the adopted new rule, a district is only reimbursed for one industry-based certification examination per student and one college preparation assessment per student.

Subsection (c)(2)(B) and (3)(B) were modified at adoption to update the term "graduation" with the phrase "August 31 of the year the student graduates."

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 1, 2020, and ended June 15, 2020. Following is a summary of the public comment received and corresponding agency response.

Comment: The Texas Public Charter Schools Association (TPCSA) commented that subsections (b) and (c) do not include language specifying eligibility for open-enrollment charter schools, which could leave room for misinterpretation on rule application. TPCSA requested that the agency include the language to minimize confusion.

Response: The agency disagrees. Subsection (a) clearly states that the provisions of the section apply to both school districts and open-enrollment charter schools.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §29.190(a)(2) and (a-1), as amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which specifies that a student is entitled to one subsidy for a certification examination if the student passes a certification examination to qualify for a license or certificate that is an industry certification for purposes of TEC, §39.053(c)(1)(B)(v); TEC, §39.0261(a)(3), as amended by HB 3, 86th Texas Legislature, 2019, which defines the time period for a student to take the college preparation assessment at state cost and includes the assessment instruments designated by the Texas Higher Education Coordinating Board under TEC, §51.334; TEC, §48.106(a)(1), as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which establishes an annual allotment for approved career and technical education courses equal to the basic allotment multiplied by a weight of 1.35; TEC, §48.155, as added by HB 3, 86th Texas Legislature, 2019, which establishes the college preparation assessment reimbursement for a school district in the amount of fees paid by the district for the administration of one assessment instrument per student under TEC, §39.0261(a)(3); and TEC, §48.156, as added by HB 3, 86th Texas Legislature, 2019, which establishes the certification examination reimbursement for school districts in the amount of a subsidy paid by the district for one certification examination per student under TEC, §29.190(a)(2) and (a-1).

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §29.190(a)(2) and (a-1) and §39.0261(a)(3), as amended by House Bill (HB) 3, 86th Texas Legislature, 2019; §48.106(a)(1), as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019; and §48.155 and §48.156, as added by HB 3, 86th Texas Legislature, 2019.

§74.1005. *College and Career Funding and Reimbursements.*

(a) **Applicability.** The provisions of this section apply to school districts and open-enrollment charter schools.

(b) **Eligibility for funding.**

(1) A district is eligible to receive funding under Texas Education Code (TEC), §48.106(a)(1), for students in Grades 7-12 who

take an approved career and technical education (CTE) course designated with an "H" in the CTE Course column of the Texas Education Data Standards, Section 4, Service-ID (CO22) code table.

(2) A district is eligible to receive funding under TEC, §48.106(a)(2)(A), for an advanced CTE course identified as Level 3 or Level 4 in a statewide CTE program of study.

(3) A district is eligible to receive funding under TEC, §48.106(a)(2)(B), for a campus that has been designated by Texas Education Agency (TEA) as a Pathways in Technology Early College High School (P-TECH) for the current school year.

(4) A district is eligible to receive funding under TEC, §48.106(a)(2)(C), for a campus that has an active agreement with the New Tech Network as defined by the New Tech Network for the current school year.

(c) **Eligibility for reimbursement.**

(1) A district is eligible to receive a certification examination reimbursement for a certification identified on the TEA list of industry-based certifications (IBCs) for public school accountability, pursuant to §74.1003 of this title (relating to Industry-Based Certifications for Public School Accountability).

(A) A district is eligible to receive the certification examination reimbursement for students in Grades 9-12 who pass an examination beginning in the 2019-2020 school year.

(B) Examinations must be taken between September 1 and August 31 of any school year.

(C) A district is eligible for reimbursement for a student's first examination reported in the Texas Student Data System Public Education Information Management System with an associated dollar amount.

(2) A district is eligible to receive a reimbursement for a college preparation assessment administered under TEC, §39.0261(a)(3)(A), for the amount of fees paid by the district for the state negotiated rate for the SAT® or ACT® for students in spring of their junior year or during their senior year.

(A) Assessment reimbursement only includes the basic SAT® and ACT® test. Other additional costs or fees such as writing tests, subject area tests, or late fees are not eligible for reimbursement.

(B) A student must take the assessment between January of Grade 11 through August 31 of the year the student graduates.

(3) A district is eligible to receive a reimbursement for a college preparation assessment administered under TEC, §39.0261(a)(3)(B), for the amount of fees paid by the district for the Texas Success Initiative Assessment for students in spring of their junior year or during their senior year.

(A) Assessment reimbursement includes both the reading and mathematics portions of the examination. Neither portion is eligible for reimbursement on its own, and additional costs and fees such as writing tests and late fees are not eligible for reimbursement.

(B) A student must take the assessment between January of Grade 11 through August 31 of the year the student graduates.

(4) A district may only be reimbursed under this subsection for one IBC examination per student and one college preparation assessment per student.

(5) A district must submit reimbursement requests and data in accordance with instructions provided by TEA within the published timeline.

(d) Final decisions. Reimbursement decisions are final and may not be appealed.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



CHAPTER 101. ASSESSMENT

SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING THE STATEWIDE TESTING CALENDAR AND UIL PARTICIPATION

19 TAC §101.5001

The Texas Education Agency (TEA) adopts an amendment to §101.5001, concerning the statewide testing calendar. The amendment is adopted without changes to the proposed text as published in the July 10, 2020 issue of the *Texas Register* (45 TexReg 4615) and will not be republished. The adopted amendment modifies the rule to provide additional flexibility for a local education agency (LEA) that chooses to test online.

REASONED JUSTIFICATION: Section 101.5001(a) allows the commissioner of education to determine the school week during the school year in which the primary administrations of assessment instruments are administered.

The adopted amendment modifies the rule to provide clarification to indicate that the primary administration is the school week in which both paper and online tests are scheduled for the state. As such, the TEA will not schedule the State of Texas Assessments of Academic Readiness (STAAR®) testing on Monday, the first instructional day of the week, in accordance with Texas Education Code (TEC), §39.023(c-3). The adopted amendment modifies the rule to provide flexibility for an LEA that chooses to test online. This flexibility is based on individual LEAs registering to test online and thereby requesting the option of testing any day during the extended online testing window, including Mondays.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began July 10, 2020, and ended August 24, 2020. Following is a summary of public comments received and corresponding agency responses.

Comment: An individual commented in support of the increased flexibility the amendment grants to districts and the benefits of testing online.

Response: The agency agrees.

Comment: The Texas State Teachers Association (TSTA) and an individual commented that state assessments should be entirely suspended due to the COVID-19 pandemic.

Response: The agency disagrees. Assessments are a valuable tool to monitor student progress and measure student understanding of the state curriculum standards. The assessment data will help educators develop appropriate instructional plans to address any gaps in student learning as a result of the disruption to classroom instruction during the COVID-19 pandemic.

Comment: TSTA commented that allowing testing on Mondays of any week contradicts TEC, §39.023(c-3).

Response: The agency disagrees. In accordance with the requirements of TEC, §39.023(c-3), the amendment does not allow for Monday testing during the primary administration week. The online testing extensions allowed for districts are optional and do not constitute any state requirement to test on Mondays. If a district registers for online testing, the district receives the flexibility associated with online testing. This flexibility includes an extension of the testing window by a few weeks and the ability to test on Mondays at the LEA's own discretion.

Comment: The Texas Public Charter Schools Association commented that the amendment adversely affects charter schools by reducing access to online testing after the initial administration week.

Response: The agency disagrees. The amendment uses the phrase "local education agencies" or LEAs, which includes public school districts, open-enrollment charter schools, and regional education service centers. The amendment extends the same flexibility to any LEA that chooses to test online whether it be a charter school or public school.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §33.0812, which provides the commissioner the authority to establish the testing calendar; and TEC, §39.023(c-3), which limits the days in which testing may be scheduled during the primary administration for assessments under TEC, §39.023(a) and (c), by prohibiting testing on the first instructional day of a week.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §33.0812 and §39.023(c-3).

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 227. PROVISIONS FOR EDUCATOR PREPARATION CANDIDATES

SUBCHAPTER A. ADMISSION TO EDUCATOR PREPARATION PROGRAMS

19 TAC §227.10, §227.15

The State Board for Educator Certification (SBEC) adopts amendments to §227.10 and §227.15, concerning admission to educator preparation programs (EPPs). The amendment to §227.10 is adopted with changes to the proposed text as published in the May 29, 2020 issue of the *Texas Register* (45 TexReg 3563) and will be republished. The amendment to §227.15 is adopted without changes to the proposed text as published in the May 29, 2020 issue of the *Texas Register* (45 TexReg 3563) and will not be republished. The adopted amendments update the subject-matter-only assessments to be used for the Pre-Admission Content Test (PACT). Figure: 19 TAC §227.10(a)(4)(C) is adopted with a technical change.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 Texas Administrative Code (TAC) Chapter 227 are organized as follows: Subchapter A, Admission to Educator Preparation Programs, and Subchapter B, Preliminary Evaluation of Certification Eligibility. These subchapters provide for rules that establish requirements for admission to an EPP and preliminary evaluation of certification eligibility.

The following is a description of the adopted amendments to 19 TAC Chapter 227, Subchapter A.

§227.10. *Admission Criteria.*

The adopted amendment in Figure §227.10(a)(4)(C) adds certification areas and the appropriate subject-matter content certification examinations for purposes of admission into an EPP. The additional certification areas that are reflected in the figure are §233.2, Early Childhood: Prekindergarten-Grade 3; §233.2, Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6; §233.2, Core Subjects with Science of Teaching Reading: Grades 4-8; §233.3, English Language Arts and Reading with Science of Teaching Reading: Grades 4-8; and §233.3, English Language Arts and Reading/Social Studies with Science of Teaching Reading: Grades 4-8.

The adopted amendment in §227.10(a)(4)(C) also strikes the phrase, "for the calendar year during which the applicant seeks admission," to remove the restriction that PACT tests only be allowed for the calendar year in which a candidate seeks admission. This change reduces the burden for candidates having to take the same test to determine subject-matter content knowledge, due to the timeline restriction that should be determined by the admission criteria of an EPP. The adopted amendment also strikes the outdated provision related to the January 27, 2020 implementation date for the content certification examination passage for admission into an EPP.

At the July 24, 2020 SBEC meeting, the SBEC made a technical change at adoption to remove a hanging "or" from §233.2, Early Childhood: Prekindergarten-Grade 3 certification area, in Figure: 19 TAC §227.10(a)(4)(C). The adopted amendment in §227.10(a)(5) updates the cross reference to 19 TAC Chapter 241 to reflect the title change.

The adopted amendment in §227.10(b) adds the word, "admission," to clarify that the additional requirements that EPPs may adopt are for admission requirements, which align with the provisions of this chapter.

The adopted amendment to §227.10(c)(2) adds the word, "intern," to clarify that the requirements for admission related to a probationary certificate also include the intern certificate.

§227.15. *Contingency Admission.*

The adopted amendment to §227.15(d) adds the word, "intern," to clarify that the requirements for recommendation of a probationary certificate also are applicable to an intern certificate.

The State Board of Education (SBOE) took no action on the review of the amendments to §227.10 and §227.15 at the September 11, 2020 SBOE meeting.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began May 29, 2020, and ended June 29, 2020. The SBEC also provided an opportunity for registered oral and written comments at its July 24, 2020 meeting in accordance with the SBEC board operating policies and procedures. No public comments were received on the proposal.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), (4), and (6), which require 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; specify the requirements for the issuance and renewal of an educator certificate; and provide for special or restricted certification of educators, including certification of instructors of American Sign Language; TEC, §21.044(a), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.044(g)(2) and (3), which require each educator preparation program (EPP) to provide certain information related to the effect of supply and demand forces on the educator workforce of the state and the performance over time of the EPP; TEC, §21.0441, which requires the SBEC to adopt rules setting certain admission requirements for EPPs, including allowing content certification examinations to substitute for required college classroom credit hours in the subject in which the candidate is seeking initial certification; TEC, §21.0489(c), as added by Senate Bill 1839 and House Bill (HB) 2039, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to adopt requirements that would establish an Early Childhood: Prekindergarten-Grade 3 certificate; TEC, §21.049(a), which authorizes the SBEC to propose rules providing for educator certification programs as an alternative to traditional EPPs; TEC, §21.050(a), which requires a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree to possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under the TEC, Chapter 28, Subchapter A; TEC, §22.083, which requires a school district, open-enrollment charter school, or shared services arrangement to obtain criminal history record information that relates to a person who is not subject to a national criminal history record information review under this subchapter and

who is an employee of the district or school; or a shared services arrangement, if the employee's duties are performed on school property or at another location where students are regularly present; TEC, §22.0835, which requires a school district, open-enrollment charter school, or shared services arrangement to obtain from the department and may obtain from any other law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), all criminal history record information that relates to a person participating in an internship consisting of student teaching to receive a teaching certificate; or a volunteer or person who has indicated, in writing, an intention to serve as a volunteer with the district, school, or shared services arrangement; Texas Occupations Code (TOC), §53.151, as added by HB 1508, 85th Texas Legislature, Regular Session, 2017, which sets the definitions of "licensing authority" and "occupational license" to have the meanings assigned to those terms by the TOC, §58.001; TOC, §53.152, as added by HB 1508, 85th Texas Legislature, Regular Session, 2017, which requires EPPs to provide applicants and enrollees certain notice regarding potential ineligibility for a certificate based on convicted offenses; the SBEC rules regarding the certificate eligibility of an individual with a criminal history; and the right of the individual to request a criminal history evaluation letter; TOC, §53.153, as added by HB 1508, 85th Texas Legislature, Regular Session, 2017, which requires an EPP to refund tuition, application fees, and examination fees paid by an individual if the EPP failed to provide the required notice under the TOC, §53.152, to an individual who was denied a certificate because the individual was convicted of an offense.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.031; 21.041(b)(1), (4), and (6); 21.044(a), (g)(2), and (g)(3); 21.0441; 21.0489(c), as added by Senate Bill 1839 and House Bill (HB) 2039, 85th Texas Legislature, Regular Session, 2017; 21.049(a); 21.050(a); 22.083; and 22.0835; and Texas Occupations Code, §§53.151-53.153, as added by HB 1508, 85th Texas Legislature, Regular Session, 2017.

§227.10. *Admission Criteria.*

(a) The educator preparation program (EPP) delivering educator preparation shall require the following minimum criteria of all applicants seeking initial certification in any class of certificate, unless specified otherwise, prior to admission to the program.

(1) For an undergraduate university program, an applicant shall be enrolled in an accredited institution of higher education (IHE).

(2) For an alternative certification program or post-baccalaureate program, an applicant shall have, at a minimum, a bachelor's degree earned from and conferred by an accredited IHE.

(3) For an undergraduate university program, alternative certification program, or post-baccalaureate program, to be eligible for admission into an EPP, an applicant shall have a grade point average (GPA) of at least 2.5 before admission.

(A) The GPA shall be calculated from an official transcript as follows:

(i) 2.5 on all coursework previously attempted by the person at an accredited IHE:

(I) at which the applicant is currently enrolled (undergraduate university program formal admission, alternative certification program contingency admission, or post-baccalaureate program contingency admission); or

(II) from which the most recent bachelor's degree or higher from an accredited IHE was conferred (alternative certification program formal admission or post-baccalaureate program formal admission); or

(ii) 2.5 in the last 60 semester credit hours on all coursework previously attempted by the person at an accredited IHE:

(I) at which the applicant is currently enrolled (undergraduate university program formal admission, alternative certification program contingency admission, or post-baccalaureate program contingency admission). If an applicant has less than 60 semester credit hours on the official transcript from the accredited IHE at which the applicant is currently enrolled, the EPP shall use grades from all coursework previously attempted by a person at the most recent accredited institution(s) of higher education, starting with the most recent coursework from the official transcript(s), to calculate a GPA for the last 60 semester credit hours; or

(II) from which the most recent bachelor's degree or higher from an accredited IHE was conferred. If an applicant has hours beyond the most recent degree, an EPP may use grades from the most recent 60 hours of coursework from an accredited IHE (alternative certification program formal admission or post-baccalaureate program formal admission).

(B) In accordance with the Texas Education Code, (TEC), §21.0441(b), an exception to the minimum GPA requirement may be granted by the program director only in extraordinary circumstances and may not be used by a program to admit more than 10% of any incoming class of candidates. An applicant is eligible for this exception if:

(i) documentation and certification from the program director that an applicant's work, business, or career experience demonstrates achievement equivalent to the academic achievement represented by the GPA requirement; and

(ii) in accordance with the TEC, §21.0441(a)(2)(B), an applicant must pass an appropriate content certification examination as specified in paragraph (4)(C) of this subsection for each subject in which the applicant seeks certification prior to admission. In accordance with the TEC, §21.0441(b), applicants who do not meet the minimum GPA requirement and have previously been admitted into an EPP may request permission to register for an appropriate content certification examination if the applicant is not seeking admission to the same EPP that previously granted test approval for a certification examination in the same certification class.

(C) An applicant who is seeking a career and technical education (CTE) certificate that does not require a degree from an accredited IHE is exempt from the minimum GPA requirement.

(D) An applicant who does not meet the minimum GPA requirement and is seeking certification in a class other than classroom teacher must perform at or above a score equivalent to a 2.5 GPA on the Verbal Reasoning, Quantitative Reasoning, and Analytic Writing sections of the GRE[®] (Graduate Record Examinations) revised General Test. The State Board for Educator Certification will use equivalency scores established by the Educational Testing Service, and the Texas Education Agency (TEA) will publish those equivalency scores annually on the TEA website.

(4) For an applicant who will be seeking an initial certificate in the classroom teacher class of certificate, the applicant shall have successfully completed, prior to admission, at least:

(A) a minimum of 12 semester credit hours in the subject-specific content area for the certification sought, unless certification sought is for mathematics or science at or above Grade 7; or

(B) 15 semester credit hours in the subject-specific content area for the certification sought if the certification sought is for mathematics or science at or above Grade 7; or

(C) a passing score on the appropriate content certification examination as specified in the figure provided in this subparagraph.

Figure: 19 TAC §227.10(a)(4)(C)

(5) For an applicant who will be seeking an initial certificate in a class other than classroom teacher, the applicant shall meet the minimum requirements for admission described in Chapter 239 of this title (relating to Student Services Certificates); Chapter 241 of this title (relating to Certification as Principal); and Chapter 242 of this title (relating to Superintendent Certificate). If an applicant has not met the minimum certification, degree, and/or experience requirement(s) for issuance of a standard certificate prior to admission, the EPP shall inform the applicant in writing of any deficiency prior to admission.

(6) An applicant must demonstrate basic skills in reading, written communication, and mathematics by meeting the requirements of the Texas Success Initiative under the rules established by the Texas Higher Education Coordinating Board (THECB) in Part 1, Chapter 4, Subchapter C, of this title (relating to Texas Success Initiative), including one of the requirements established by §4.54 of this title (relating to Exemptions, Exceptions, and Waivers).

(7) An applicant must demonstrate the English language proficiency skills as specified in §230.11 of this title (relating to General Requirements).

(A) An applicant for CTE certification that does not require a bachelor's degree from an accredited IHE may satisfy the English language proficiency requirement with an associate's degree or high school diploma or the equivalent that was earned at an accredited IHE or an accredited high school in the United States.

(B) An applicant to a university undergraduate program that leads to a bachelor's degree may satisfy the English language proficiency requirement by meeting the English language proficiency requirement of the accredited IHE at which the applicant is enrolled.

(8) An applicant must submit an application and participate in either an interview or other screening instrument to determine if the EPP applicant's knowledge, experience, skills, and aptitude are appropriate for the certification sought.

(9) An applicant must fulfill any other academic criteria for admission that are published and applied consistently to all EPP applicants.

(b) An EPP may adopt admission requirements in addition to and not in conflict with those required in this section.

(c) An EPP may not admit an applicant who:

(1) has been reported as completing all EPP requirements by another EPP in the same certification category or class, unless the applicant only needs certification examination approval; or

(2) has been employed for three years in a public school under a permit, intern, or probationary certificate as specified in Chapter 230, Subchapter D, of this title (relating to Types and Classes of Certificates Issued), unless the applicant is seeking clinical teaching that may lead to the issuance of an initial standard certificate.

(d) An EPP may admit an applicant for CTE certification who has met the experience and preparation requirements specified in Chapter 230 of this title (relating to Professional Educator Preparation and Certification) and Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates).

(e) An EPP may admit an applicant for the Trade and Industrial Workforce Training: Grades 6-12 certification who has met the following requirements:

(1) has been issued a high school diploma or a postsecondary credential, certificate, or degree;

(2) has seven years of full-time wage-earning experience within the preceding 10 years in an approved occupation for which instruction is offered;

(3) holds 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; and

(4) within the period described by paragraph (2) of this subsection, has 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.

(f) An EPP may admit an applicant who has met the minimum academic criteria through credentials from outside the United States that are determined to be equivalent to those required by this section using the procedures and standards specified in Chapter 245 of this title (relating to Certification of Educators from Other Countries). An EPP at an entity that is accredited by an accrediting organization recognized by the THECB may use its own foreign credential evaluation service to meet the requirement described in §245.10(a)(2) of this title (relating to Application Procedures), if the entity is in good standing with its accrediting organization.

(g) An applicant is eligible to enroll in an EPP for the purpose of completing the course of instruction, defined in §228.35(i)(2) of this title (relating to Preparation Program Coursework and/or Training), that is required for the issuance of an Early Childhood: Prekindergarten-Grade 3 certificate if the individual holds a valid standard, provisional, or one-year certificate specified in §230.31 of this title (relating to Types of Certificates) in one of the following certificate categories:

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

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

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

(4) Early Childhood Education;

(5) Elementary--General;

(6) Elementary--General (Grades 1-6);

(7) Elementary--General (Grades 1-8);

(8) Elementary Early Childhood Education (Prekindergarten-Grade 6);

(9) Elementary Self-Contained (Grades 1-8);

(10) English as a Second Language Generalist: Early Childhood-Grade 4;

(11) English as a Second Language Generalist: Early Childhood-Grade 6;

(12) Generalist: Early Childhood-Grade 4;

- (13) Generalist: Early Childhood-Grade 6;
- (14) Kindergarten;
- (15) Prekindergarten-Grade 5--General;
- (16) Prekindergarten-Grade 6--General; or
- (17) Teacher of Young Children--General.

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 25, 2020.

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Director, Rulemaking

Texas Board for Educator Certification

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For further information, please call: (512) 475-1475



CHAPTER 228. REQUIREMENTS FOR EDUCATOR PREPARATION PROGRAMS

19 TAC §228.1

The State Board for Educator Certification (SBEC) adopts an amendment to §228.1, concerning general provisions for educator preparation programs (EPPs). The amendment is adopted with changes to the proposed text as published in the June 26, 2020 issue of the *Texas Register* (45 TexReg 4290) and will be republished. The adopted amendment provides additional flexibility for EPPs and candidates to fulfill educator preparation requirements related to clinical teaching, internships, and practicums when those assignments occur at least partially in virtual settings due to campus and district modifications in response to COVID-19 during the 2020-2021 academic year.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 Texas Administrative Code (TAC) Chapter 228, Requirements for Educator Preparation Programs, establish the requirements for EPPs. The adopted amendment in §228.1 adds new subsection (e) to allow EPPs to provide internships, clinical teaching, practicum assignments, and related educator observations in a virtual setting for the 2020-2021 academic year to manage the impact of the public health crisis on educator candidates and EPPs. Current SBEC rules require these activities to be conducted in an actual school setting with face-to-face observations and do not permit virtual settings. If public health conditions in the upcoming academic year necessitate providing instruction through virtual platforms, educator candidates will be unable to complete the required experience in actual, face-to-face school settings. Allowing clinical assignments and observations to occur in virtual school settings will minimize disruptions to the educator production pipeline.

At the July 31, 2020 SBEC meeting, the SBEC made a change at adoption, in response to public comments and ongoing developments with the impact of the public health crisis on educator candidates and EPPs. In subsection (e), the adopted rule text provides additional flexibility in allowing the option for formal ob-

servations during clinical assignments to occur in synchronous virtual settings or asynchronous virtual settings.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began June 26, 2020, and ended July 27, 2020. The SBEC also provided an opportunity for registered oral and written comments at its July 31, 2020 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: Four individuals commented in support of virtual internships, practicums, and observations. The commenters noted that this is important for the continued training and production of teachers, and that technology has advanced to allow for these virtual internships.

Response: The SBEC agrees. The SBEC addresses this situation in the adopted rulemaking in that it allows for internships to be conducted virtually and for observations to be conducted virtually.

Comment: Four individuals, two organizations (UTeach Natural Sciences and Texas Teachers of Tomorrow), and State Representative Charles "Doc" Anderson commented in opposition to the proposed amendment, specifically the section requiring synchronous observations. The commenters stated that synchronous observations would be hindered by bandwidth and access issues, creating inequitable situations, particularly in rural districts. The commenters noted that synchronous observations may lead to additional costs and may result in observations not occurring. The commenters further highlighted that research supports the utility of high-quality video observations and that edTPA requires the use of classroom video. The commenters proposed allowing for asynchronous observations.

Response: The SBEC agrees. Based on stakeholder feedback that has identified these concerns, a change was made to §228.1(e) at adoption to allow for asynchronous observations.

Comment: One organization--Best in Class Coalition--commented in support of the proposed amendment, noting the importance of maintaining a high level of rigor to ensure that teacher candidates are prepared for the classroom. The commenter noted concerns about the impersonal nature of video observations and stated the importance of retaining structures that are as close to current rule as possible. The commenter voiced support for a waiver system that would allow for EPPs to be allowed video observations in instances where synchronous observations would not be possible on a case-by-case basis to allow for technology, timing, and privacy concerns. Additionally, the commenter voiced support that the Texas Education Agency encourage the use of Texas Teacher Evaluation and Support System (T-TESS) virtual observation guidance by EPPs.

Response: The SBEC disagrees. As noted by the commenter, there are barriers to synchronous observations. In the current setting, requiring additional actions and documentation for approval for asynchronous observations, particularly as conditions on campuses may change abruptly throughout the school year, may unnecessarily hinder EPPs in conducting observations in the forthcoming academic year.

The State Board of Education (SBOE) took no action on the review of the amendment to §228.1 at the September 11, 2020 SBOE meeting.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §§21.031, which authorizes the

SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, 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, §21.044, as amended by Senate Bills (SBs) 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017, and House Bill (HB) 18, 86th Texas Legislature, 2019, which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.0442(c), as added by HB 3349, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to ensure that an EPP requires at least 80 hours of instruction for a candidate seeking a Trade and Industrial Workforce Training certificate; TEC, §21.0443, which requires the SBEC to establish rules for the approval and renewal of EPPs; TEC, §21.0453, which states that the SBEC may propose rules as necessary to ensure that all EPPs provide the SBEC with accurate information; TEC, §21.0454, which requires the SBEC to develop a set of risk factors to assess the overall risk level of each EPP and use the set of risk factors to guide the Texas Education Agency (TEA) in conducting monitoring, inspections, and evaluations of EPPs; TEC, §21.0455, which requires the SBEC to propose rules necessary to establish a process for complaints to be directed against an EPP; TEC, §21.046(b), which states that the qualifications for certification as a principal must be sufficiently flexible so that an outstanding teacher may qualify by substituting approved experience and professional training for part of the educational requirements; TEC, §21.0485, which states the issuance requirements for certification to teach students with visual impairments; TEC, §21.0487(c), which states that because an effective principal is essential to school improvement, the SBEC shall ensure that each candidate for certification as a principal is of the highest caliber and that multi-level screening processes, validated comprehensive assessment programs, and flexible internships with successful mentors exist to determine whether a candidate for certification as a principal possesses the essential knowledge, skills, and leadership capabilities necessary for success; TEC, §21.0489(c), as added by SB 1839 and HB 2039, 85th Texas Legislature, Regular Session, 2017, which states the eligibility for an Early Childhood: Prekindergarten-Grade 3 certificate; TEC, §21.049(a), which authorizes the SBEC to adopt rules providing for educator certification programs as an alternative to traditional EPPs; 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; TEC, §21.050(b), which states that the SBEC may not require more than 18 semester credit hours of education courses at the baccalaureate level for the granting of a teaching certificate; TEC, §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate;

TEC, §21.051, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017, which provides a requirement that before a school may employ a certification candidate as a teacher of record, the candidate must have completed at least 15 hours of field-based experience in which the candidate was actively engaged at an approved school in instructional or educational activities under supervision; and Texas Occupations Code, §55.007, which provides that verified military service, training, and education be credited toward licensing requirements.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§21.031; 21.041(b)(1); 21.044, as amended by Senate Bills (SBs) 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017, and House Bill (HB) 18, 86th Texas Legislature, 2019; 21.0442(c), as added by HB 3349, 85th Texas Legislature, Regular Session, 2017; 21.0443; 21.0453; 21.0454; 21.0455; 21.046(b); 21.0485; 21.0487(c); 21.0489(c), as added by SB 1839 and HB 2039, 85th Texas Legislature, Regular Session, 2017; 21.049(a); 21.0491, as added by HB 3349, 85th Texas Legislature, Regular Session, 2017; 21.050(b) and (c); and 21.051, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017; and the Texas Occupations Code, §55.007.

§228.1. General Provisions.

(a) To ensure the highest level of educator preparation and practice, the State Board for Educator Certification (SBEC) recognizes that the preparation of educators must be the joint responsibility of educator preparation programs (EPPs) and the Early Childhood-Grade 12 public and private schools of Texas. Collaboration in the development, delivery, and evaluation of educator preparation is required.

(b) Consistent with the Texas Education Code, §21.049, the SBEC's rules governing educator preparation are designed to promote flexibility and creativity in the design of EPPs to accommodate the unique characteristics and needs of different regions of the state as well as the diverse population of potential educators.

(c) All EPPs are subject to the same standards of accountability, as required under Chapter 229 of this title (relating to Accountability System for Educator Preparation Programs).

(d) If the governor declares a state of disaster consistent with the Texas Government Code, §418.014, Texas Education Agency staff may extend deadlines in this chapter for up to 90 days and decrease clinical teaching, internship, and practicum assignment minimums by up to 20 percent as necessary to accommodate persons in the affected disaster areas.

(e) For purposes of educator preparation training under §228.35 of this title (relating to Preparation Program Coursework and/or Training) during the 2020-2021 academic year, actual school settings and authentic school settings may include campuses with a traditional, in-person setting that are temporarily functioning in a virtual setting, and face-to-face settings for formal observations may include synchronous virtual settings or asynchronous virtual settings.

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 25, 2020.

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State Board for Educator Certification
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For further information, please call: (512) 475-1475



19 TAC §§228.2, 228.10, 228.15, 228.20, 228.30, 228.35, 228.40

The State Board for Educator Certification (SBEC) adopts amendments to §§228.2, 228.10, 228.15, 228.20, 228.30, 228.35, and 228.40, concerning requirements for educator preparation programs (EPPs). The amendments are adopted without changes to the proposed text as published in the May 29, 2020 issue of the *Texas Register* (45 TexReg 3567) and will not be republished. The adopted amendments implement the statutory requirements of House Bill (HB) 18, 86th Texas Legislature, 2019; provide specification for approval of teaching sites that are not Texas Education Agency (TEA)-accredited public schools; provide guidance related to admitting and recommending candidates to programs that are closing or consolidating; provide guidance for internships and clinical teaching in the summer; add language for a dismissal policy for candidates; simplify language relating to the reasons an EPP can stop supporting a candidate in an internship and the corresponding actions that must take place when a candidate leaves an internship; provide clarification for the number of observations for practicums; and provide clarification of and reorder provisions for technical formatting purposes throughout the rules.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 Texas Administrative Code (TAC) Chapter 228, Requirements for Educator Preparation Programs, establish the requirements for EPPs. The adopted amendments (1) provide guidance related to admitting candidates to EPPs that are closing or consolidating; (2) add language for a dismissal policy for candidates; (3) include language from HB 18, 86th Texas Legislature, 2019, that allows accredited institutions of higher education (IHEs) to offer a course or component of a course to meet the requirement for mental health, substance abuse, and teen suicide; (4) clarify that the curriculum provided to candidates in both classroom teacher and principal preparation includes the standards adopted by the SBEC; (5) provide simplified rule text for the reasons an EPP can stop supporting a candidate in an internship and the corresponding actions that must take place when a candidate leaves an internship; (6) provide guidance for candidate practicums where a portion of the practicum needs to take place during summer months; (7) add language for out-of-state and out-of-country clinical teaching and practicum experiences; (8) provide reordering and clarification for the number of observations that must total at least 135 minutes; and (9) provide guidance for EPPs on granting test approval for candidates where the standards and/or test has changed or five or more years have passed since the candidate was enrolled in the EPP. The following is a description of the adopted amendments.

§228.2. Definitions.

The adopted amendment in new §228.2(5) defines *campus supervisor* as a school administrator or designee responsible for

the annual performance appraisal of an intern. This definition is necessary to ensure clarification of the role of a campus.

The adopted amendment in §228.2(5) is renumbered to paragraph (6) for technical formatting purposes.

The adopted amendment in new §228.2(7) defines *candidate coach* in §228.33(b)(1)-(3) as one who participates in a minimum of four observation/feedback coaching cycles provided by program supervisors, completes a TEA-approved observation training or has completed a minimum of 150 hours of observation/feedback training, and has current certification in the class in which supervision is provided. This definition is necessary to ensure clarification of the role of a candidate coach as it relates to an intensive pre-service preparation program.

The adopted amendment in §228.2(6)-(33) renumbers the provisions to paragraphs (8)-(35) for technical formatting purposes.

§228.10. Approval Process.

Adopted new §228.10(g) provides clarification to EPPs on how to add replacement certificates to their certification offerings due to the addition of the science of teaching reading requirement codified in HB 3, 86th Texas Legislature, 2019. EPPs interested in these replacement certificates are required to submit an attestation letter by December 1, 2020, that the EPP's curriculum will be updated by January 1, 2021, to prepare candidates for the replacement certificates that reflect the new science of teaching reading requirement. This allows EPPs that are offering existing certificates to continue offering them in their new form without having to reapply and pay the application fee. EPPs that do not request authorization to issue replacement certificates by the deadline will have to apply as prescribed in §228.10 and candidates pursuing the current certificates who are in these programs and have not completed all program requirements by January 1, 2021, will be required to seek approval in an EPP that has requested the replacement certificates. The following table depicts the current and replacement certificates.

Figure: 19 TAC Chapter 228 - Preamble

§228.15. Program Consolidation or Closure.

Adopted new §228.15(3) requires that an EPP that is closing not admit candidates or recommend candidates for intern or probationary certificates within one year of the August 31 closure date, allowing candidates the necessary one-year minimum to complete program requirements and an internship.

Adopted new §228.15(5) includes payment of the Accountability System for Educator Preparation Program (ASEP) technology fee as part of the required actions by a program that is closing or consolidating to ensure that EPPs do not use consolidation or closure as a means to evade paying the required fee.

Adopted new §228.15(e) prescribes that TEA staff will recommend the revocation of an EPP's continuing approval for violation of any of the required actions when closing or consolidating. This ensures that EPPs focus on supporting currently enrolled candidates while going through the closure process rather than enrolling and admitting new candidates who will not be able to complete the program by the time of closure or consolidation.

The adopted amendment in §228.15(a)(3)-(4) renumbers the provisions to paragraphs (4)-(5) for technical formatting purposes.

§228.20. Governance of Educator Preparation Programs.

Adopted new §228.20(h) requires an EPP to have a published exit policy that candidates review and sign upon admission. This provides clarity for the candidates and the program in the event an EPP dismisses a candidate from the program.

§228.30. Educator Preparation Curriculum.

The adopted amendment in §228.30(c)(3) complies with the statutory requirements of HB 18, 86th Texas Legislature, 2019, that allow an accredited IHE or certain alternative certification programs to offer a course or component of a course to meet the mental health, substance abuse, and youth suicide training requirement as part of a degree program.

The adopted amendment in §228.30(d)(4) clarifies that the curriculum EPPs provide to candidates for the classroom teacher class of certifications must include the skills and competencies adopted by the SBEC, which are reflected in Chapter 235, Classroom Teacher Certification Standards. This ensures alignment between EPP curriculum and the SBEC-approved standards for teachers and provides consistency between different rule chapters.

The adopted amendment in §228.30(e) clarifies that the curriculum EPPs provide to candidates for the principal class of certificates include the skills and competencies adopted by the SBEC, which are reflected in Chapter 241, Certification as Principal. This ensures alignment between the EPP curriculum and the SBEC-approved standards for principals.

The adopted amendment in §228.30(f) updates a cross reference for technical formatting purposes.

§228.35. Preparation Program Coursework and/or Training.

The adopted amendment in §228.35(b)(2) clarifies that the 150 clock-hours of coursework and/or training that are required prior to a candidate's clinical teaching or internship reflect the subject-matter curriculum prescribed in §228.30(d)(4) to ensure alignment with the SBEC-adopted classroom teacher standards.

The adopted amendment in §228.35(e)(2)(B)(vi) and (vii) provides simplified rule text with a limited set of reasons that an EPP can stop supporting a candidate during an internship and what must happen if a candidate leaves an internship assignment. The adopted amendment to §228.35(e)(2)(B)(vi)(II)-(IV) provides technical edits to remove duplicative language.

The adopted amendment in §228.35(e)(2)(B)(vii) and (viii) renumbers the provisions to clauses (ix)-(x) for technical formatting purposes.

Adopted new §228.35(e)(8)(B) specifies that a practicum may not take place exclusively during a summer recess. This ensures that candidates for certification in a class other than classroom teacher (i.e., superintendent, principal, reading specialist, school librarian, school counselor, educational diagnostician) receive experience with the standards that include students, faculty, parents, and special committees that occur during the regular academic year.

The adopted amendment in §228.35(e)(8)(D) updates a cross reference for technical formatting purposes.

The adopted amendment in §228.35(e)(9)(C) and (D) provides guidance for candidates who must complete requirements for clinical teaching or a practicum outside of the state of Texas, in subparagraph (C), and outside the United States, in subparagraph (D), as a result of specific circumstances. For clinical teaching or practicum outside of Texas, a candidate may be ap-

proved for placement at a specific site based on the military assignment of the candidate or spouse; an illness of the candidate or a family member for whom the candidate is the primary caretaker; the candidate becoming the primary caretaker of a family member residing out of state; or the candidate's or spouse's transfer of employment. This change is necessary to provide flexibility to candidates who undergo major life changes and clarity to TEA staff, candidates, and EPPs. This provides flexibility with an emphasis on Texas-based clinical teaching and practicum experiences.

The adopted amendment in §228.35(h) re-orders paragraphs (1)-(3) to provide clarity regarding the number of minutes required for observations for practicum candidates.

The adopted amendment in §228.35(i)(2) and (3) updates cross references for technical formatting purposes.

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

The adopted amendment in §228.40(d) comes at the request of EPPs and provides guidance for EPPs and candidates in instances where a candidate completed a certification program but did not take the appropriate certification examination in a timely fashion. If the candidate returns to test after the standards and/or certification examination(s) have changed or after five or more years have passed following completion of the program, both the candidate and program would be at a disadvantage in terms of preparation. This revision allows a program to determine examination readiness of the candidate and makes test approval contingent on completing additional coursework and/or training as needed for the candidate to show he or she is prepared to pass the test following time away from the preparation.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began May 29, 2020, and ended June 29, 2020. The SBEC also provided an opportunity for registered oral and written comments at its July 24, 2020 meeting in accordance with the SBEC board operating policies and procedures. No public comments were received on the proposal.

The State Board of Education (SBOE) took no action on the review of amendments to §§228.2, 228.10, 228.15, 228.20, 228.30, 228.35, and 228.40 at the September 11, 2020 SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1) and (2), which require the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.044, as amended by Senate Bills (SBs) 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017, and House Bill (HB) 18, 86th Texas Legislature, 2019, which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year

program; TEC, §21.0442(c), as added by HB 3349, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to ensure that an EPP requires at least 80 hours of instruction for a candidate seeking a Trade and Industrial Workforce Training certificate; TEC, §21.0443, which requires the SBEC to establish rules for the approval and renewal of EPPs; TEC, §21.045(a), which states that the board shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs; TEC, §21.0453, which states that the SBEC may propose rules as necessary to ensure that all EPPs provide the SBEC with accurate information; TEC, §21.0454, which requires the SBEC to develop a set of risk factors to assess the overall risk level of each EPP and use the set of risk factors to guide the Texas Education Agency in conducting monitoring, inspections, and evaluations of EPPs; TEC, §21.0455, which requires the SBEC to propose rules necessary to establish a process for complaints to be directed against an EPP; TEC, §21.046(b), which states that the qualifications for certification as a principal must be sufficiently flexible so that an outstanding teacher may qualify by substituting approved experience and professional training for part of the educational requirements; TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC. The commissioner shall determine the satisfactory level of performance required for each certification examination. For the issuance of a generalist certificate, the commissioner shall require a satisfactory level of examination performance in each core subject covered by the examination; TEC, §21.0485, which states the issuance requirements for certification to teach students with visual impairments; TEC, §21.0487(c), which states that because an effective principal is essential to school improvement, the SBEC shall ensure that each candidate for certification as a principal is of the highest caliber and that multi-level screening processes, validated comprehensive assessment programs, and flexible internships with successful mentors exist to determine whether a candidate for certification as a principal possesses the essential knowledge, skills, and leadership capabilities necessary for success; TEC, §21.0489(c), as added by SB 1839 and HB 2039, 85th Texas Legislature, Regular Session, 2017, which states the eligibility for an Early Childhood: Prekindergarten-Grade 3 certificate; TEC, §21.049(a), which authorizes the SBEC to adopt rules providing for educator certification programs as an alternative to traditional EPPs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree to possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under the TEC, Chapter 28, Subchapter A; TEC, §21.050(b), which states that the SBEC may not require more than 18 semester credit hours of education courses at the baccalaureate level for the granting of a teaching certificate; TEC, §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; TEC, §21.051, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017, which provides a requirement that before a school may employ a certification candidate as a teacher of record, the candidate must have completed at least 15 hours of field-based experience in

which the candidate was actively engaged at an approved school in instructional or educational activities under supervision; and Texas Occupations Code, §55.007, which provides that verified military service, training, and education be credited toward licensing requirements.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.031; 21.041(b)(1) and (2); 21.044, as amended by Senate Bills (SBs) 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017, and House Bill (HB) 18, 86th Texas Legislature, 2019; 21.0442(c), as added by HB 3349, 85th Texas Legislature, Regular Session, 2017; 21.0443; 21.045(a); 21.0453; 21.0454; 21.0455; 21.046(b); 21.048(a); 21.0485; 21.0487(c); 21.0489(c), as added by SB 1839 and HB 2039, 85th Texas Legislature, Regular Session, 2017; 21.049(a); 21.0491, as added by HB 3349, 85th Texas Legislature, Regular Session, 2017; 21.050(a)-(c); and 21.051, as amended by SB 1839, 85th Texas Legislature, Regular Session, 2017; and the Texas Occupations Code, §55.007.

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

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CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION SUBCHAPTER C. ASSESSMENT OF EDUCATORS

19 TAC §230.21

The State Board for Educator Certification (SBEC) adopts an amendment to §230.21, concerning educator assessment. The amendment is adopted without changes to the proposed text as published in the May 29, 2020 issue of the *Texas Register* (45 TexReg 3583) and will not be republished. The adopted amendment implements the statutory requirements in House Bill (HB) 3, 86th Texas Legislature, 2019, that require that all educators who teach any grade level from Prekindergarten-Grade 6 demonstrate proficiency in the science of teaching reading on a certification examination beginning January 1, 2021. The adopted amendment updates the examination figure in 19 Texas Administrative Code (TAC) §230.21(e) to specify the required examination(s) for issuance of the replacement certificates that reflect the science of teaching reading requirement. The adopted amendment also provides clarification on relevant implementation dates for specific certification examinations.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC rules in 19 TAC Chapter 230 specify the testing requirements for certification and the additional certificates based on

examination. These requirements ensure educators are qualified and professionally prepared to instruct the schoolchildren of Texas. The following provides a description of changes to Chapter 230, Subchapter C, §230.21.

HB 3, 86th Texas Legislature, 2019, requires that all educators who teach any grade level from Prekindergarten-Grade 6 demonstrate proficiency in the science of teaching reading on a certification examination beginning January 1, 2021. The replacement certificates that incorporate this requirement are reflected in the adopted changes to Chapter 233 published in the Adopted Rules section of this issue. To comply with the enabling legislation, the appropriate examination(s) required for each of the replacement certificates must be reflected in the testing figure in §230.21(e). Additionally, the current examinations that will change due to the addition of the new science of teaching reading examination requirements must also be updated to reflect the changes.

Subchapter C, §230.21. Assessment of Educators.

The adopted amendment to §230.21(e) updates the figure to include the four replacement certificates adopted in Chapter 233 and the associated certification examinations requirements along with the corresponding operational dates of those examinations. The current and replacement certificates with the corresponding content pedagogy examinations are:

Figure in preamble.

The content pedagogy examination, 391 Core Subjects: Early Childhood-Grade 6, reflected in the table, will be developed to remove duplicative English Language Arts content that is now reflected in 293 Science of Teaching Reading. Due to the administration structure of the 291 Core Subjects: Early Childhood-Grade 6 exam, candidates may retake specific subject sections of the examination in order to earn the overall passing score. To accommodate the transition between the two examinations, the adopted figure includes a one-year transition period during which both examinations will be operational.

A technical edit to the Educational Diagnostician: Early Childhood-Grade 12 content pedagogy examination has been made to reflect the correct test number from 251 to 253 to align with test number conventions.

The content pedagogy examination, 217 English Language Arts and Reading: Grades 4-8, reflected in the table, will be developed to replace 117 English Language Arts and Reading: Grades 4-8. Updates to the English Language Arts and Reading Texas Essential Knowledge and Skills (TEKS) provided an opportunity to update the content pedagogy examination. To signal the transition between the two examinations, the adopted figure provides the last operational date of the current 117 and the operational start date for the new 217.

The replacement certificates, as adopted in Chapter 233, provide clarity on the certification examination requirements and reflect the science of teaching reading knowledge and skills that teachers with the replacement certificates demonstrate prior to issuance.

In addition to the adopted amendment related to HB 3, the adopted figure in §230.21(e) phases out the retired 183 Braille TExES examination for the §233.8 Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certificate.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began May 29, 2020, and ended June 29, 2020. The SBEC also provided an opportunity for registered oral and written comments at its July 24, 2020 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: One individual commented neither in support nor against the proposed amendment to §230.21, stating that there should not be a limit on the number of times a candidate can take a certification exam. The commenter stated that this rule goes against the practices that teachers use to support students.

Response: The SBEC disagrees. The comment is outside the scope of the proposed rulemaking. Test limit requirements are codified in statute. TEC, §21.048(a-1), and §230.21(a) mandate that a person may not retake an examination more than four times, unless the SBEC waives the limitation for good cause as prescribed by the SBEC. The SBEC prescribes good cause in §230.21(a)(2).

Comment: One individual commented neither in support nor against the proposed §230.21, stating that educator preparation programs should be required by the SBEC to require candidates to take the Bilingual Supplemental Exam and the Bilingual Target Language Proficiency Exam (BTLPT) needed for bilingual certification prior to completing the program specialization. The commenter stated that when programs examine test scores for these exams, the results are not useful for making data-driven program decisions because they are only able to examine data for those candidates who took the exams during the course of their programs. The commenter stated that the requirement would ensure timely data that would allow for program evaluation and transparent program accountability.

Response: The SBEC disagrees. The comment is outside the scope of the proposed rulemaking. The SBEC has established rules to allow for candidates to take and pass the Bilingual supplemental exams to add Bilingual Certification to an intern, probationary, or standard certificate. The SBEC does not dictate when in a candidate's preparation the exams must be taken. The Texas Education Agency staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC.

Comment: One individual commented in opposition to the current timeline and transition plan for the implementation of the 293 Science of Teaching Reading TExES exam.

Response: The SBEC disagrees. HB 3, 86th Texas Legislature, 2019, requires that the SBEC implement rules that require candidates who teach students in prekindergarten through grade six to demonstrate proficiency in the science of teaching reading on a standalone certification exam after January 1, 2021.

The State Board of Education (SBOE) took no action on the review of amendment to §230.21 at the September 11, 2020 SBOE meeting.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.041(b)(1), (2), and (4), which require the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; which specify the classes of educator certificates to be issued, including emergency certificates; and which specify the requirements for the issuance and renewal of an educator cer-

tificate; TEC, §21.044(a), as amended by Senate Bills 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017, which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.048, as amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which states the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.050(a), which states a person who applies for a teaching certificate must possess a bachelor's degree; TEC, §21.050(b), as amended by HB 3217, 86th Texas Legislature, 2019, which states the SBEC shall provide for a minimum number of semester credit hours of field-based experience or internship; TEC, §21.050(c), which states a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; TEC, §22.082, which requires SBEC to subscribe to the criminal history clearinghouse as provided by Texas Government Code, §411.0845, and may obtain any law enforcement or criminal history records that relate to a specific applicant for or holder of a certificate issued under Chapter 21, Subchapter B; and Texas Occupations Code, §54.003, which states a licensing authority shall provide accommodations and eligibility criteria for examinees diagnosed as having dyslexia.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.041(b)(1), (2), and (4); 21.044(a), as amended by Senate Bills 7, 1839, and 1963, 85th Texas Legislature, Regular Session, 2017; 21.048, as amended by House Bill (HB) 3, 86th Texas Legislature, 2019; 21.050, as amended by HB 3217, 86th Texas Legislature, 2019; 22.082; and Texas Occupations Code, §54.003.

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

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CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §§233.1 - 223.3

The State Board for Educator Certification (SBEC) adopts amendments to §§233.1 - 223.3, concerning categories of classroom teaching certificates. The amendments are adopted without changes to the proposed text as published in the May 29,

2020 issue of the *Texas Register* (45 TexReg 3587) and will not be republished. The adopted amendments implement the statutory requirements in House Bill (HB) 3, 86th Texas Legislature, 2019, that require that all educators who teach any grade level from Prekindergarten-Grade 6 demonstrate proficiency in the science of teaching reading on a certification examination beginning January 1, 2021. The adopted amendments create four replacement certificates with corresponding requirements and deadlines for issuance: Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6; Core Subjects with Science of Teaching Reading: Grades 4-8; English Language Arts and Reading with Science of Teaching Reading: Grades 4-8; and English Language Arts and Reading/Social Studies with Science of Teaching Reading: Grades 4-8. Technical changes also provide clarification and consistent information related to the classroom teacher certificates issued by the SBEC.

BACKGROUND INFORMATION AND 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.

HB 3, 86th Texas Legislature, 2019, requires that all educators who teach any grade level from Prekindergarten-Grade 6 demonstrate proficiency in the science of teaching reading on a certification examination beginning January 1, 2021. To comply with the enabling legislation, the current certificates that cover those grades must be updated to reflect the inclusion of the science of teaching reading component on each of those certificates. The current and adopted replacement certificates are as included in the following table.

Figure: 19 TAC Chapter 233 - Preamble

Following is a description of the adopted amendments that reflect those changes.

§233.1. *General Authority.*

The adopted amendment in §233.1(a) deletes the acronym "SBEC" since there are no additional references in §233.1.

The adopted amendment in §233.1(e) clarifies that the provision is related to individuals seeking an initial certificate and updates language regarding the timeframe to use passing scores on eliminated examinations for certification purposes by clarifying the scores must be used in conjunction with completion of all other requirements for certification and includes a recommendation by the educator preparation program (EPP), as specified in SBEC rule.

The adopted amendment in §233.1(g) deletes the provision related to teaching assignment options for a Grades 4-8 certificate holder, as it is duplicative since it is addressed in 19 TAC Chapter 231, Requirements for Public School Personnel Assignments.

The adopted amendment in §233.1(h) reletters the provision to subsection (g) for technical formatting purposes.

§233.2. *Early Childhood; Core Subjects.*

The adopted amendment in §233.2(b) clarifies a December 31, 2020 deadline for issuance of the current Core Subjects: Early Childhood-Grade 6 certificate to comply with HB 3, which re-

quires, beginning January 1, 2021, that all educators who teach any grade level from Prekindergarten-Grade 6 demonstrate proficiency in the science of teaching reading.

The adopted amendment in §233.2(c) clarifies a December 31, 2020 deadline for issuance of the current Core Subjects: Grades 4-8 certificate to comply with HB 3, which requires, beginning January 1, 2021, that all educators who teach any grade level from Prekindergarten-Grade 6 demonstrate proficiency in the science of teaching reading.

Adopted new §233.2(d) adds the Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6 certificate to comply with HB 3, which requires, beginning January 1, 2021, that all educators who teach any grade level from Prekindergarten-Grade 6 demonstrate proficiency in the science of teaching reading. The adopted amendment provides clarification regarding the earliest date of issuance and last date for certificate issuances on appropriate examinations.

Adopted new §233.2(e) adds the Core Subjects with Science of Teaching Reading: Grades 4-8 certificate to comply with HB 3, which requires, beginning January 1, 2021, that all educators who teach any grade level from Prekindergarten-Grade 6 demonstrate proficiency in the science of teaching reading. The adopted amendment provides clarification regarding the earliest date of certificate issuance.

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

The adopted amendment in §233.3(a) clarifies a December 31, 2020 deadline for issuance of the current English Language Arts and Reading: Grades 4-8 certificate to comply with HB 3, which requires, beginning January 1, 2021, that all educators who teach any grade level from Prekindergarten-Grade 6 demonstrate proficiency in the science of teaching reading.

Adopted new §233.3(b) adds the English Language Arts and Reading with Science of Teaching Reading: Grades 4-8 certificate to comply with HB 3, which requires, beginning January 1, 2021, that all educators who teach any grade level from Prekindergarten-Grade 6 demonstrate proficiency in the science of teaching reading. The adopted amendment provides clarification regarding the earliest date of issuance and last date for certificate issuance on the appropriate examination.

The adopted amendment in §233.3(b) and (c) reletters the provisions to subsections (c) and (d) for technical formatting purposes.

The adopted amendment in §233.3(d) clarifies a December 31, 2020 deadline for issuance of the current English Language Arts and Reading/Social Studies: Grades 4-8 certificate to comply with HB 3, which requires, beginning January 1, 2021, that all educators who teach any grade level from Prekindergarten-Grade 6 demonstrate proficiency in the science of teaching reading.

Adopted new §233.3(e) adds the English Language Arts and Reading/Social Studies with Science of Teaching Reading: Grades 4-8 certificate to comply with HB 3, which requires, beginning January 1, 2021, that all educators who teach any grade level from Prekindergarten-Grade 6 demonstrate proficiency in the science of teaching reading. The adopted amendment provides clarification regarding the earliest date of certificate issuance on the appropriate examinations.

The adopted amendment in §233.3(d)-(h) reletters the provisions to subsections (f)-(j) for technical formatting purposes.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began May 29, 2020, and ended June 29, 2020. The SBEC also provided an opportunity for registered oral and written comments at its July 24, 2020 meeting in accordance with the SBEC board operating policies and procedures. No public comments were received on the proposal.

The State Board of Education (SBOE) took no action on the review of amendments to §§233.1, 233.2, and 223.3 at the September 11, 2020 SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under 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 which states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; 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 (EPP) 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), which 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, §21.048(a-2), as amended by HB 3, 86th Texas Legislature, 2019, which requires the SBEC to adopt rules to require individuals teaching any grade level from Prekindergarten-Grade 6 to demonstrate proficiency in the science of teaching reading; 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; 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; and TEC, §22.0831(f)(1) and (2), which state the SBEC may propose rules regarding the deadline for the national criminal history check and implement sanctions for persons failing to comply with the requirements.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§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; 21.048(a-2), as amended by HB 3, 86th Texas Legislature, 2019; 21.0489, as added by Senate Bill 1839 and HB 2039, 85th Texas Legislature, Regular Session, 2017; and 22.0831(f).

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

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CHAPTER 235. CLASSROOM TEACHER CERTIFICATION STANDARDS

The State Board for Educator Certification (SBEC) adopts the repeal of §§235.15, 235.19, 235.25, 235.59, and 235.89 and new §§235.101, 235.117, 235.131, 235.133, and 235.135, concerning classroom teacher certification standards. The revisions are adopted without changes to the proposed text as published in the May 29, 2020 issue of the *Texas Register* (45 TexReg 3590) and will not be republished. The adopted revisions specify the new standards for the specialized Special Education and Bilingual Spanish certifications, as well as the DeafBlind supplemental certification. Additional changes also implement the statutory requirements of House Bill (HB) 3, 86th Texas Legislature, 2019, regarding the science of teaching reading standards applying to classroom teachers who teach through Grade 6; provide implementation updates; and reorganize current provisions to improve readability.

BACKGROUND INFORMATION AND JUSTIFICATION: The SBEC is statutorily authorized to ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse population of this state. The SBEC is also statutorily required to appoint advisory committee members to recommend standards for each class of certificate. The standards are the basis for the certification examinations and set the requirements for educator preparation program (EPP) curriculum and delivery. The standards development committees include practicing educators, school district personnel, experts, and EPP fac-

ulty. These committee members collaborate to draft educator standards or review existing educator standards to ensure that the educator standards align with the commissioner's educator standards, reflect best practices, and where applicable, align with the current versions of the Texas Essential Knowledge and Skills (TEKS) that are adopted by the State Board of Education (SBOE).

The SBEC rules in 19 Texas Administrative Code (TAC) Chapter 235, Classroom Teacher Certification Standards, specify the educator standards for the classroom teacher class of certificates. The educator standards are the basis for EPP design to effectively prepare beginning classroom teachers and the foundation for the certification examinations.

At the July 2019 SBEC work session, the staff presented the SBEC with the standards development process and stakeholders involved with drafting the new educator standards for the Special Education and Bilingual Spanish certification examinations as well as a new DeafBlind supplemental certification.

At the December 2019 and February 2020 SBEC meetings, the staff presented the draft rule text of the educator standards.

The following is a description of the adopted revisions to 19 TAC Chapter 235 that incorporates feedback from the standards advisory committees and implements recent legislation.

Subchapter B. Elementary School Certificate Standards

Division 1. *Early Childhood: Prekindergarten-Grade 3.*

The heading, "Division 1, Early Childhood: Prekindergarten-Grade 3," is stricken to eliminate the use of divisions to reduce confusion and to provide clarity on the organization of educator standards within appropriate subchapters. This adopted change facilitates readability and easily accommodates future additions of content standards into appropriate subchapters.

§235.15. *Science of Teaching Reading Standards, Early Childhood: Prekindergarten-Grade 3.*

Section 235.15 is repealed and adopted as §235.101 to implement HB 3, 86th Texas Legislature, 2019, which requires classroom teachers who teach students through sixth grade to pass the appropriate science of teaching reading examination. This change removes the Prekindergarten-Grade 3 age-appropriateness limitation in order to require the science of teaching reading examination for all teachers who teach reading to students through sixth grade and moves these standards to adopted new Subchapter E to further emphasize the importance of reading instruction and preparation.

§235.19. *Implementation Date, Early Childhood: Prekindergarten-Grade 3.*

Section 235.19 is repealed as it contradicted provisions in §228.30 regarding the EPP curriculum required for candidates and the implementation dates for EPP requirements in §228.60. This change provides consistency and clarity to EPPs and certification candidates as it relates to expectations around the content of preparation for certification and the scope of the information to be assessed on certification examinations for licensure.

Division 2. *Early Childhood-Grade 6.*

The heading, "Division 2: Early Childhood-Grade 6," is stricken to eliminate the use of divisions to reduce confusion and provide clarity on the organization of educator standards within appropri-

ate subchapters. This adopted change facilitates readability and easily accommodates future additions of content standards into appropriate subchapters.

§235.25. Implementation Date, Early Childhood-Grade 6.

Section 235.25 is repealed, as it contradicted provisions in §228.30 regarding the EPP curriculum required for candidates and the implementation dates for EPP requirements in §228.60. This change provides consistency and clarity to EPPs and certification candidates as it relates to expectations around the content of preparation for certification and the scope of the information to be assessed on certification examinations for licensure.

Subchapter C. Middle School Certificate Standards

§235.59. Implementation Date, Grades 4-8.

Section 235.59 is repealed, as it contradicted provisions in §228.30 regarding the EPP curriculum required for candidates and implementation dates for EPP requirements in §228.60. This change provided consistency and clarity to EPPs and certification candidates as it relates to expectations around the content of preparation for certification and the scope of the information to be assessed on certification examinations for licensure.

Subchapter D. Secondary School Certificate Standards

§235.89. Implementation Date, Grades 7-12.

Section 235.89 is repealed, as it contradicted provisions in §228.30 regarding the EPP curriculum required for candidates and §228.60 implementation dates for EPP requirements. This change provides consistency and clarity to EPPs and certification candidates as it relates to expectations around the content of preparation for certification and the scope of the information to be assessed on certification examinations for licensure.

Subchapter E. Science of Teaching Reading Standards

§235.101. Science of Teaching Reading Standards.

Adopted new §235.101 maintains the current science of teaching reading standards from §235.15, now included in adopted new Subchapter E, Science of Teaching Reading Standards, that provide a specific subchapter devoted to teaching reading and its impact on all children.

In addition, adopted new §235.101(a)(1)-(5) specifies the categories of classroom teachers that will be assessed by the science of teaching reading standards.

Adopted new §235.101(b) clarifies the current components of reading descriptions as follows.

Adopted new §235.101(b)(2) adds the phrase, "and alphabet knowledge," to clarify the expectations of print awareness in reading development.

Adopted new §235.101(b)(4) adds the phrase, "(decoding and encoding)," to clarify the expectations of phonics in reading development.

Adopted new §235.101(b)(5) adds the word, "reading," to clarify the expectations of fluency in reading development.

Adopted new §235.101(b)(7) adds the phrase, "syllabication and morphemic analysis," as a component of reading to include all components of reading development.

Adopted new §235.101(c)(1) adds the phrase, "providing explicit, systematic instruction that is sequential and multimodal (e.g., sequential lessons, gradual release model, structured literacy)," to add further specificity to the foundational reading skills in reading pedagogy.

Adopted new §235.101(c)(3) adds the word, "implementing," regarding instruction to add further specificity to the component of foundational reading skills in reading pedagogy.

Subchapter F. Supplemental Certificate Standards

§235.117. Bilingual Spanish Standards.

Adopted new §235.117 provides the Bilingual Spanish educator standards. Texas Education Agency (TEA) staff have engaged in a process with stakeholders to draft educator standards for Bilingual Spanish standards. The adopted new Bilingual Spanish standards ensure a pathway of language preparedness for individuals completing educator preparation programs for certification and the classroom students receiving instruction in Spanish and English from well-prepared educators.

Subchapter G. Special Education Certificate Standards

§235.131. Special Education Standards: Early Childhood-Grade 6.

Adopted new §235.131 provides the special education standards for Early Childhood-Grade 6 certificates, now included in new Subchapter G, Special Education Certificate Standards, that provides a specific subchapter devoted to special education and the impact on all children. The adopted educator standards emphasize the knowledge and skills critical to establishing a solid foundation for students who receive special education services in classroom settings that span Early Childhood-Grade 6.

§235.133. Special Education Standards: Grades 6-12.

Adopted new §235.133 provides the special education standards for Grades 6-12 certificates, now included in new Subchapter G, Special Education Certificate Standards. The adopted educator standards emphasize the knowledge and skills critical to establishing a solid foundation for students who receive special education services in classroom settings that span Grades 6-12.

§235.135. DeafBlind Standards, Early Childhood-Grade 12.

Adopted new §235.135 provides the DeafBlind standards for Early Childhood-Grade 12 certificates, now included in new Subchapter G, Special Education Certificate Standards. The adopted educator standards emphasize the knowledge and skills crucial to establishing a solid foundation for students who are DeafBlind in classroom settings that span Early Childhood-Grade 12.

SUMMARY OF COMMENTS AND RESPONSES. The public comment period on the proposal began May 29, 2020, and ended June 29, 2020. The SBEC also provided an opportunity for registered oral and written comments at its July 24, 2020 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: Thirty-seven individuals and three associations--Deaf-Blind Multihandicapped Association of Texas, Texas Sensory Support Network, and Texas Chargers--commented in support of proposed §235.135, DeafBlind Standards: Early Childhood-Grade 12, which would include new classroom

teacher standards for teachers of students with deafblindness. The commenters cited the benefits of having teachers who are trained to serve students who are deafblind, including their ability to effectively assess, communicate, and provide instruction to students with deafblindness. The commenters also noted that current preparation for teachers of the visually impaired and teachers of the deaf and hard of hearing is primarily focused on the sensory modal needs of their students, hence the need for deafblind standards to prepare teachers to meet the multimodal needs of the students who are deafblind.

Response: The SBEC agrees. The SBEC believes the adopted DeafBlind Standards: Early Childhood-Grade 12 outline the specialized and unique knowledge and skills required of teachers of students with deafblindness. These standards will inform the preparation of teachers of students with deafblindness, with a focus on meeting the multimodal needs of students who are deafblind.

Comment: One individual commented neither in support nor against the proposed new §235.117, Bilingual Spanish Standards, stating that educator preparation programs should be required by the SBEC to require candidates to take the two exams needed for bilingual certification prior to completing the program specialization. The commenter stated that the requirement would ensure timely data that would allow for program evaluation and transparent program accountability. The commenter also cited that while standards are important, gaging how well the standards are being met by students who complete the program specialization is essential to meet the needs of bilingual learners.

Response: The SBEC disagrees. The comment is outside of the scope of the proposed rulemaking. The SBEC has established rules to allow for candidates to take and pass the bilingual supplemental exams to add Bilingual Certification to an intern, probationary, or standard certificate. The SBEC does not dictate when in a candidate's preparation the exams must be taken. The TEA staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC.

Comment: One individual commented in support of the Early Childhood: Prekindergarten-Grade 3 educator standards, stating that the standards are a good addition to teacher certification. The commenter stated that the standards allow educators to focus on the specific early childhood grade levels rather than a broader focus on grades Prekindergarten-Grade 6. The commenter also suggested that elementary certification exams should be specified by subject area. Additionally, the commenter stated that school counselor candidates should not be required to be certified teachers but should achieve certification through work with a licensed counselor.

Response: The SBEC disagrees. The comments are outside of the scope of the proposed rulemaking. The TEA staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC.

The SBOE took no action on the review of the repeal of §§235.15, 235.19, 235.25, 235.59, and 235.89 and new §§235.101, 235.117, 235.131, 235.133, and 235.135 at the September 11, 2020 SBOE meeting.

SUBCHAPTER B. ELEMENTARY SCHOOL CERTIFICATE STANDARDS

19 TAC §235.15, §235.19

STATUTORY AUTHORITY. The repeals are adopted under 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)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and TEC, §21.048(a-2), as amended by House Bill 3, 86th Texas Legislature, 2019, which states that starting January 1, 2021, all candidates teaching Prekindergarten-Grade 6 must demonstrate proficiency in the science of teaching reading on a certification examination.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code (TEC), §§21.003(a), 21.031, 21.041(b)(1), (2), and (4), and 21.048(a-2), as amended by House Bill 3, 86th Texas Legislature, 2019.

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

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Director, Rulemaking

State Board for Educator Certification

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19 TAC §235.25

STATUTORY AUTHORITY. The repeal is adopted under 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 candi-

dates 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)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and TEC, §21.048(a-2), as amended by House Bill 3, 86th Texas Legislature, 2019, which states that starting January 1, 2021, all candidates teaching Prekindergarten-Grade 6 must demonstrate proficiency in the science of teaching reading on a certification examination.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code (TEC), §§21.003(a), 21.031, 21.041(b)(1), (2), and (4), and 21.048(a-2), as amended by House Bill 3, 86th Texas Legislature, 2019.

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SUBCHAPTER C. MIDDLE SCHOOL CERTIFICATE STANDARDS

19 TAC §235.59

STATUTORY AUTHORITY. The repeal is adopted under 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 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)(4), which requires the SBEC to propose rules that specify the requirements

for the issuance and renewal of an educator certificate; and TEC, §21.048(a-2), as amended by House Bill 3, 86th Texas Legislature, 2019, which states that starting January 1, 2021, all candidates teaching Prekindergarten-Grade 6 must demonstrate proficiency in the science of teaching reading on a certification examination.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code (TEC), §§21.003(a), 21.031, 21.041(b)(1), (2), and (4), and 21.048(a-2), as amended by House Bill 3, 86th Texas Legislature, 2019.

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SUBCHAPTER D. SECONDARY SCHOOL CERTIFICATE STANDARDS

19 TAC §235.89

STATUTORY AUTHORITY. The repeal is adopted under 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 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)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and TEC, §21.048(a-2), as amended by House Bill, 86th Texas Legislature, 2019, which states that starting January 1, 2021, all candidates teaching Prekindergarten-Grade 6 must demonstrate proficiency in the science of teaching reading on a certification examination.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code (TEC), §§21.003(a), 21.031,

21.041(b)(1), (2), and (4), and 21.048(a-2), as amended by House Bill 3, 86th Texas Legislature, 2019.

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SUBCHAPTER E. SCIENCE OF TEACHING READING STANDARDS

19 TAC §235.101

STATUTORY AUTHORITY. The new section is adopted under 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 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)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and TEC, §21.048(a-2), as amended by House Bill 3, 86th Texas Legislature, 2019, which states that starting January 1, 2021, all candidates teaching Prekindergarten-Grade 6 must demonstrate proficiency in the science of teaching reading on a certification examination.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code (TEC), §§21.003(a), 21.031, 21.041(b)(1), (2), and (4), and 21.048(a-2), as amended by House Bill 3, 86th Texas Legislature, 2019.

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SUBCHAPTER F. SUPPLEMENTAL CERTIFICATE STANDARDS

19 TAC §235.117

STATUTORY AUTHORITY. The new section is adopted under 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 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)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and TEC, §21.048(a-2), as amended by House Bill 3, 86th Texas Legislature, 2019, which states that starting January 1, 2021, all candidates teaching Prekindergarten-Grade 6 must demonstrate proficiency in the science of teaching reading on a certification examination.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code (TEC), §§21.003(a), 21.031, 21.041(b)(1), (2), and (4), and 21.048(a-2), as amended by House Bill 3, 86th Texas Legislature, 2019.

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SUBCHAPTER G. SPECIAL EDUCATION CERTIFICATE STANDARDS

19 TAC §§235.131, 235.133, 235.135

STATUTORY AUTHORITY. The new sections are adopted under 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 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)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and TEC, §21.048(a-2), as amended by House Bill 3, 86th Texas Legislature, 2019, which states that starting January 1, 2021, all candidates teaching Prekindergarten-Grade 6 must demonstrate proficiency in the science of teaching reading on a certification examination.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §§21.003(a), 21.031, 21.041(b)(1), (2), and (4), and 21.048(a-2), as amended by House Bill 3, 86th Texas Legislature, 2019.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 55. LAW ENFORCEMENT

SUBCHAPTER A. PROOF OF RESIDENCY REQUIREMENTS

31 TAC §55.1

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 27, 2020, adopted an amendment to 31 TAC §55.1, concerning Proof of Residency, with changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4948). The rule will be republished. The adopted amendment makes it a criminal offense for a person who is not a resident of Texas to possess a license in the person's name, the purchase of which is limited to Texas residents. The change corrects internal references to subsections of the rule and is nonsubstantive.

Under Parks and Wildlife Code, §42.005, no nonresident in this state may hunt any bird or animal in this state without having acquired the appropriate license, while §42.006 of the code authorizes the commission to prescribe by rule the requirements relating to possession of a license issued under Chapter 42. Similarly, Parks and Wildlife Code, §46.001, provides that no person may fish in the public water of this state unless that person has obtained the appropriate fishing license and provides authority to the commission to prescribe by rule the requirements relating to the possession of licenses issued under the authority of Chapter 46.

Although current rules at 31 TAC Chapter 55, Subchapter A, provide for the various methods by which residency in Texas may be demonstrated for purposes of purchasing a resident hunting or fishing license and provide generally for the criminal prosecution of persons who obtain a resident license unlawfully, there is no provision that makes it a specific criminal offense for a nonresident to possess a resident license (i.e., to possess a license for which the person is not eligible). Texas is a member of the Interstate Wildlife Violator Compact, an interstate agreement that allows state fish and wildlife agencies to share information regarding fishing, hunting, and trapping violations for purposes of suspending or revoking license privileges of violators in member states. The department has encountered situations in which the absence of a specific violation has frustrated the department's ability to identify unscrupulous persons who claim residency in more than one state for purposes of obtaining hunting and/or fishing licenses, which reciprocally hampers investigations in other states when the residency status of a violator claiming Texas residency cannot be definitively established for purposes of enforcement actions in the state where the violation occurred. Additionally, department law enforcement personnel have encountered situations in the field in which persons hunting or fishing under a resident license that is subsequently proven to have been obtained under false pretenses cannot be prosecuted. The amendment is intended to provide a mechanism for ensuring that only bona fide Texas residents are able to possess a resident hunting or fishing license. The amendment also provides that a person who provides electronic proof of licensure is considered to be in possession of the license purported to be held.

The department received one comment opposing adoption of the rule. The commenter did not provide a reason or rationale for opposing adoption of the rule.

The department received six comments supporting adoption of the rule.

The amendment is adopted under the authority of Parks and Wildlife Code, §42.006, which authorizes the commission to prescribe by rule the requirements relating to possession of a license issued under Chapter 42, and §46.001 which authorizes the commission to prescribe by rule the requirements relating to the possession of licenses issued under the authority of Chapter 46.

§55.1. Proof of Residency.

(a) The requirements of this section are in addition to any requirements of Parks and Wildlife Code, Chapters 42 and 46.

(1) Except as provided by Parks and Wildlife Code, §12.114, no person is required to possess the documentation required by paragraphs (2) or (3) of this subsection on their person while:

(A) purchasing a license or permit; or

(B) engaging in an activity for which a license or permit issued by the department is required.

(2) Proof that a person has resided continuously in Texas for more than six months immediately before applying for a resident license or permit issued by the department shall consist of any three of the following:

(A) a current property tax statement indicating that the person is the owner of homestead property in Texas;

(B) a valid drivers license issued by the Texas Department of Public Safety not less than six months prior to the application to the department for a resident license or permit;

(C) the most recent six months of utility bills showing the person's name and a physical address in Texas;

(D) the most recent six months of paycheck receipts showing the person's name and a physical address in Texas;

(E) a current Texas voter registration certificate showing the person's name and a physical address in Texas, issued not less than six months prior to an application to the department for a license or permit;

(F) the person's most recent tax return statement from the Internal Revenue Service showing the person's name and a physical address in Texas;

(G) a current vehicle registration showing the person's name and a physical address in Texas, issued not less than six months prior to an application to the department for a license or permit; or

(H) a statement from the person's parole board or probation officer attesting to the fact that the person has continuously resided in Texas for the six months immediately preceding the application for a license or permit.

(3) For persons on active duty in the armed forces of the United States, proof of continuous residency in Texas for more than six months immediately before applying for a resident license or permit issued by the department shall consist of:

(A) military service record(s) indicating that the person's home of record is in Texas at the time of application; or

(B) military service record(s) indicating that the person has been assigned to a duty station in Texas for the six months immediately prior to the time of application.

(4) If a person is under the age of 25 and living in another state for educational purposes, proof that the person has resided continuously in Texas for more than six months immediately before applying for a license or permit issued by the department shall consist of:

(A) a notarized statement to the effect that the person is a dependent of a Texas resident; and

(B) a tuition receipt or other official evidence that the person is currently enrolled as a non-resident in an educational institution located in another state.

(5) Except for active-duty members of the armed forces of the United States and nonresidents described in paragraph (8) of this subsection, §53.3(b) of this title (relating to Combination Hunting and Fishing License Packages), and §53.4(b) of this title (relating to Lifetime Licenses), the department will not issue a resident license or permit to any person if any proof of residency presented to the department indicates residency anywhere other than Texas.

(6) Except for active-duty members of the armed forces of the United States and nonresidents described in paragraph (8) of this subsection, §53.3(b) of this title, and §53.4(b) of this title, a person who claims residency in any other state for any purpose is not a Texas resident for the purposes of obtaining a resident license or permit from the department.

(7) Upon determination by the department that a person who obtained a resident license or permit was not eligible to obtain the license or permit, the department shall notify the person that the license is void and shall be surrendered to the department. A person that the department determines has obtained a resident license or permit unlawfully is subject to criminal prosecution.

(8) The executive director may authorize the issuance of a resident hunting license to a nonresident who is terminally ill and participating in an event sponsored by a charitable organization.

(b) It is an offense for any person who does not meet the residency requirements of this section to possess a license in that person's name that is required by law for conduct governed by Parks and Wildlife Code, Chapter 42 or Chapter 46, if the acquisition and use of the license is restricted by law to Texas residents.

(c) For purposes of this section, a person who utilizes the provisions of §53.2(g) of this title (relating to License Issuance Procedures, Fees, Possession, and Exemption Rules) to satisfy proof of licensure requirements is considered to be in possession of the license the person purports to have obtained.

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 22, 2020.

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Colette Barron-Bradsby

Acting General Counsel

Texas Parks and Wildlife Department

Effective date: October 12, 2020

Proposal publication date: July 17, 2020

For further information, please call: (512) 389-4775



**CHAPTER 69. RESOURCE PROTECTION
SUBCHAPTER B. FISH AND WILDLIFE
VALUES**

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 27, 2020, adopted the repeal of 31 TAC

§69.30, concerning Trophy Wildlife Species, and an amendment to §69.20, concerning Application, without changes to the proposed text as published in the July 17, 2020, issue of the *Texas Register* (45 TexReg 4950). The rules will not be republished.

The repeal and amendment eliminate provisions governing the imposition of enhanced civil restitution penalties for trophy specimens of white-tailed deer, mule deer, pronghorn antelope, and desert bighorn sheep taken in violation of the Texas Parks and Wildlife Code or rules of the commission.

Under Parks and Wildlife Code, §12.301, a person who kills, catches, takes, possesses, or injures any fish, shellfish, reptile, amphibian, bird, or animal in violation of the Parks and Wildlife Code or a proclamation or regulation adopted under the Parks and Wildlife Code is liable to the state for the value of each fish, shellfish, reptile, amphibian, bird, or animal unlawfully killed, caught, taken, possessed, or injured. Under Parks and Wildlife Code, §12.302, the Parks and Wildlife Commission is required to adopt rules to establish guidelines for determining the value of injured or destroyed fish, shellfish, reptiles, amphibians, birds, and animals, which are located at 31 TAC Chapter 69, Subchapter B. Those values are commonly referred to as "civil restitution values."

In 1996 the commission adopted rules providing for enhanced civil restitution values of trophy specimens of white-tailed deer, mule deer, pronghorn antelope, and desert bighorn sheep taken in violation of applicable laws, which reflected the relative rarity of such animals at that time. The department has determined that the during the intervening years, techniques of wildlife management have become more effective and much more widely practiced, which, in concert with successful department programs such as the Managed Lands Deer Program and other technical guidance efforts, have led not only to increased numbers of so-called "trophy" animals, but to antler and horn characteristics of individual trophy animals that are far more impressive than what has occurred in the past. Therefore, the department has determined that the original justification for trophy restitution no longer exists and the provisions imposing civil restitution for trophy animals are no longer necessary.

The department received one comment opposing adoption of the rules. The commenter stated that because there will always be trophy animals, there should be larger fines for the unlawful take of trophy specimens. The department disagrees with the comment and responds that the rules as adopted affect civil restitution values, not fines. A fine is a punishment prescribed by statute for a violation of the law, while restitution is the compensation to the people of the state for the value of an animal unlawfully taken or killed. The department has determined that the replacement value of trophy specimens is approximately the same as that of any other specimen. No changes were made as a result of the comment.

The department received one comment supporting adoption of the rules.

31 TAC §69.20

The amendment is adopted under Parks and Wildlife Code, §12.302, which requires the commission to adopt rules to establish guidelines for determining the value of fish, shellfish, reptiles, amphibians, birds, and animals injured or destroyed in violation of the Parks and Wildlife Code or rules of the commission.

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

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TRD-202003885

Colette Barron-Bradsby
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For further information, please call: (512) 389-4775



31 TAC §69.30

The repeal is adopted under Parks and Wildlife Code, §12.302, which requires the commission to adopt rules to establish guidelines for determining the value of fish, shellfish, reptiles, amphibians, birds, and animals injured or destroyed in violation of the Parks and Wildlife Code or rules of the commission.

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

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Colette Barron-Bradsby
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Texas Parks and Wildlife Department

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER A. GENERAL RULES

34 TAC §3.9

The Comptroller of Public Accounts adopts amendments to §3.9, concerning electronic filing of returns and reports; electronic transfer of certain payments by certain taxpayers, without changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5846). The rule will not be republished. The comptroller amends the section to reflect changes in Tax Code, Chapter 151, Subchapter I-1 (Reports by Persons Involved in the Manufacture and Distribution of Alcoholic Beverages) made by House Bill 4542, 86th Legislature, 2019, effective September 1, 2019. The comptroller also proposes amendments to reflect changes in Tax Code, Chapter 151, Subchapter I-2 (Reports by Manufacturers of Certain Off-highway Vehicles Purchased Outside This State)

made by House Bill 1543, 86th Legislature, 2019, effective September 1, 2019.

The comptroller amends subsection (e)(2) by adding brewpubs to implement House Bill 4542. The comptroller amends subparagraph (A) by adding brewpubs to the definition of a seller. The comptroller amends clause (iv) to reflect the updated title to §151.462(b). New subparagraph (C) excludes certain brewpubs from filing reports. Subsequent subparagraphs are re-lettered accordingly. Re-lettered subparagraph (F) is amended to require certain brewpubs to file reports on or after September 1, 2019.

In addition, the comptroller adds new paragraph (5) to implement House Bill 1543, which added Tax Code, Chapter 151, Subchapter I-2 (Reports by Manufacturers of Certain Off-highway Vehicles Purchased Outside This State). Subsequent paragraphs are renumbered accordingly.

New subparagraph (A) provides definitions related to the reporting requirements for manufacturers of off-highway vehicles. Clause (i) defines the term "manufacturer" and clause (ii) defines the term "new off-highway vehicle." The definitions are based on definitions in §151.481 (Definitions).

Clause (iii) defines off-highway vehicles. Off-highway vehicles include vehicles listed in new subclauses (I) - (V).

Clause (iii)(I) defines the term "all-terrain vehicle" based on Transportation Code, §551A.001(1) (Definitions). Subclause (II) defines the term "off-highway motorcycle" based on Transportation Code, §501.0301(1)(B) (Certain Off-Highway Vehicles Purchased Outside This State) and Transportation Code, §541.201(9) (Definitions). Subclause (III) defines the term "recreational off-highway vehicle" based on Transportation Code, §551A.001(5). Subclause (IV) defines the term "sand rail" based on Transportation Code, §551A.001(3). Subclause (V) defines the term "utility vehicle" based on Transportation Code, §551A.001(6).

Subparagraph (B) implements §151.482 (Reports by Manufacturers).

New subparagraph (C) requires a manufacturer to file a report, even if they have no warranty information to report.

Subparagraph (D) implements §151.485 (Civil Penalty), subsequent paragraphs are renumbered accordingly.

No comments were received regarding adoption of the amendment.

The comptroller adopts the amendment under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

The amendment implements Tax Code, Chapter 151, Subchapter I-1 and 2.

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 23, 2020.

TRD-202003941

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387

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SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.285

The Comptroller of Public Accounts adopts amendments to §3.285, concerning resale certificate; sales for resale, without changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5851). The rule will not be republished. The amendments implement House Bill 1525, 86th Legislature, 2019 and Senate Bill 1525, 86th Legislature, 2019. House Bill 1525 establishes sales and use tax collection responsibilities for marketplace providers. Senate Bill 1525 clarifies existing statutes related to sales for resale.

The comptroller amends subsection (a)(8) to include marketplace providers in the definition of "seller" and conforms the definition to statute. The comptroller corrects the reference to §3.286 of this title (relating to Seller's and Purchaser's Responsibilities), cited therein.

The comptroller amends subsection (b) to implement the changes made in Senate Bill 1525. The comptroller amends subsection (b)(1)(A) to delete unnecessary language. The comptroller amends subsection (b)(1)(E) to clarify that a sale for resale includes the sale of tangible personal property or a taxable service acquired for the purpose of transferring it as part of a contract for the sale, other than lease or rental, of tangible personal property with an exempt organization under Tax Code, §151.309 (Governmental Entities) or §151.310 (Religious, Educational, and Public Service Organizations). The comptroller also amends subsection (b)(1)(F) to remove reference to a rule title as the rule was previously referred to in subsection (a)(4).

The comptroller amends subsection (b)(4) to clarify that a sale for resale does not include the sale of tangible personal property or a taxable service acquired for the purpose of performing a service not listed in Tax Code, §151.0101 ("Taxable Services") unless the tangible personal property or taxable service is purchased for the purpose of performing a contract for a service for specified federal agencies.

The comptroller adds new subsection (b)(9) stating that a sale for resale does not include the sale of tangible personal property that is acquired for the purpose of using, consuming, expending it in, or incorporating it into an oil or gas well in the performance of an oil well service taxable under Tax Code, Chapter 191 (Miscellaneous Occupation Taxes).

The comptroller adds new subsection (c)(6) that provides that the independent organization certified under Texas Utilities Code, §39.151 - currently, the Electric Reliability Council of Texas, Inc. (ERCOT) - is not required to collect a resale certificate from a person who purchases electricity from it solely for the purpose of resale and is not required to provide a resale certificate to a person from whom it purchases electricity solely for the purpose of resale. Collection or issuance of resale certificates is not necessary in this context because, due to the manner in which the

ERCOT market functions, all electricity purchased or sold by ERCOT must necessarily be resold before it is used by an electricity consumer.

We received one comment from Chad V. Seely, Vice President and General Counsel of The Electric Reliability Council of Texas, Inc (ERCOT) in support of the proposed rule.

This amendment is adopted under Tax Code §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

This amendment implements Tax Code, §151.006 and §151.008.

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

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TRD-202003938

William Hamner

Special Counsel for Tax Administration

Comptroller of Public Account

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For further information, please call: (512) 475-0387



34 TAC §3.292

The Comptroller of Public Accounts adopts amendments to §3.292, concerning repair, remodeling, maintenance, and restoration of tangible personal property, without changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5855). The rule will not be republished. The section is being amended to reflect the changes made to Tax Code, §151.338 ("Environment and Conservation Services") by Senate Bill 1525, 86th Legislature, 2019. The section is being amended to also reflect the changes made to Tax Code, §160.001(2) ("Definitions") by House Bill 4032, 86th Legislature, 2019.

The comptroller amends subsection (a)(1) "Chapter 160 boat" to update the maximum length of such a boat from 65 to 115 feet to implement House Bill 4032.

The comptroller amends subsection (b)(1) to update the title reference to §3.286 of this title (relating to Seller's and Purchaser's Responsibilities).

The comptroller amends subsection (f) to add the title reference §3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).

The comptroller adds new subsection (h) to clarify the exemption for labor to repair, remodel, maintain, or restore tangible personal property when that labor is required by law to protect the environment or conserve energy to implement Senate Bill 1525.

No comments were received regarding adoption of the amendment.

The amendments are adopted under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and

enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement Tax Code, §151.338, ("Environment and Conservation Services"), and §160.001(2) ("Definitions").

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

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William Hamner

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For further information, please call: (512) 475-0387



34 TAC §3.305

The Comptroller of Public Accounts adopts amendments to §3.305, concerning criminal offenses and penalties, without changes to the proposed text as published in the August 21, 2020, issue of the *Texas Register* (45 TexReg 5858). The rule will not be republished. The comptroller amends the section to reflect the changes in Tax Code, §151.704 (Sales Tax Absorption; Criminal Penalty) made by House Bill 2358, 86th Legislature, 2019.

House Bill 2358 amended Tax Code, §151.704, retitled to Sales Tax Absorption; Criminal Penalty, to provide conditions under which a seller may advertise to a customer that the seller will pay the sales tax due on a taxable transaction. To implement these changes, the comptroller amends subsection (b)(1) to state it is a criminal offense for a seller to state in an advertisement or other similar statement that the sales or use tax payable by the customer is not part of the sales price. The comptroller adds new paragraph (2) to provide the conditions under which a seller can indicate in an advertisement or statement that the seller is paying the tax for the customer. Subsequent paragraphs are renumbered accordingly.

No comments were received regarding adoption of the amendment.

The amendments are adopted under Tax Code, §111.002 (Comptroller's Rules, Compliance, Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.704, (Sales Tax Absorption; Criminal Penalty).

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

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TRD-202003940



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 §4.12

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 21, 2020 issue of the *Texas Register* (45 TexReg 5860) and will be republished.

The adopted amendments are necessary to harmonize updates to 49 CFR with those laws adopted by Texas. The Federal Motor Carrier Safety Administration has granted an expansion of interstate hours of service for short-haul drivers and provided for an exemption for adverse driving conditions. This adoption harmonizes intrastate rules so that intrastate drivers can also use these expanded hours. Section 4.12 (a)(5) is eliminated as the changes in (a)(4) make it redundant.

The department accepted comments on the proposed amendments through September 21, 2020. Written comments were submitted by Dana Moore, Director of Policy & Government Relations with Texas Trucking Association (TTA), requesting review and removal of §4.12(a)(4)(c)(v). The section required a motor carrier maintain business records that provide the date, time, quantity, and location of a product or service, including delivery tickets or sales invoices. TTA's concern was that the rule was not harmonized with FMCSR 395.1 and was more restrictive than Federal Regulations. The Department has reviewed the text and agrees with the comment. Section 4.12(a)(4)(c)(v) has been struck.

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 this paragraph 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 14 consecutive hours;

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

(5) 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.

(6) Unless otherwise exempted, 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.

(7) 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.

(8) 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 paragraph (4) of this subsection 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 refill 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 carriers 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.

(13) Drivers of vehicles under this section, operating in intrastate transportation, who encounter adverse driving conditions and cannot, because of those conditions, safely complete the run within the maximum driving time or duty time during which driving is permitted under subsection (a)(2) of this section, may drive and be permitted or required to drive a commercial motor vehicle for not more than two additional hours beyond the maximum allowable hours permitted under subsection (a)(2) of this section to complete that run or to reach a place offering safety for the occupants of the commercial motor vehicle and security for the commercial motor vehicle and its cargo. Adverse driving conditions means snow, sleet, fog, or other adverse weather conditions, a highway covered with snow or ice, or unusual road and traffic conditions, none of which were apparent on the basis of information known to the driver immediately prior to beginning the duty day or immediately before beginning driving after a qualifying rest break or sleeper berth period, or a motor carrier immediately prior to dispatching the driver.

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 23, 2020.

TRD-202003930

D. Phillip Adkins
General Counsel

Texas Department of Public Safety

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



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 815. UNEMPLOYMENT INSURANCE

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 815, relating to Unemploy-

ment Insurance, without changes, as published in the July 31, 2020, issue of the *Texas Register* (45 TexReg 5325):

Subchapter A. General Provisions, §815.1

Subchapter B. Benefits, Claims and Appeals, §815.12

Subchapter F. Extended Benefits, §§815.170 - 815.172, 815.174

TWC adopts the repeal of the following sections of Chapter 815, relating to Unemployment Insurance, without changes, as published in the July 31, 2020, issue of the *Texas Register* (45 TexReg 5325):

Subchapter B. Benefits, Claims, and Appeals, §815.29

Subchapter F. Extended Benefits, §815.173

TWC adopts the following new subchapter to Chapter 815, relating to Unemployment Insurance, without changes, as published in the July 31, 2020, issue of the *Texas Register* (45 TexReg 5325) and the correction of error notice regarding new §815.181, as published in the August 14, 2020, issue of the *Texas Register* (45 TexReg 5694):

Subchapter G. CARES Act Provisions, §§815.180 - 815.185

The rules will not be republished.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 815 rule change is to address the requirements of the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), as well as to exercise the authority bestowed upon the Agency by Texas Labor Code §209.025.

Federal Funding Under EUISAA

On March 18, 2020, Congress enacted EUISAA, which provides states with emergency funding grants for the administration of their unemployment compensation (UC) programs. The purpose of these grants is to assist states with the unprecedented claim volumes associated with COVID-19.

These grants are allocated into two separate allotments, Allotment I and II. Under EUISAA §4105, if a state meets the requirements of and obtains both Allotment I and II, the federal government will pay 100 percent of any Extended Benefits (EB), beginning on March 18, 2020 until December 31, 2020.

One of the requirements of Allotment I under EUISAA §4102(a) is that "the State requires employers to provide notification of the availability of unemployment compensation to employees at the time of separation from employment." The US Department of Labor has stated that this notice must be made individually to the separated employee.

The Agency has the authority under Texas Labor Code §208.001(b) to require this individual notice. Texas Labor Code §208.001(b) provides that "The commission shall supply, without cost to each employer, printed notices that provide general information about filing a claim for unemployment benefits. Each employer shall post and maintain the notices in places accessible to the individuals in the employ of the employer." To clarify how this notice must be provided, the Agency's three-member Commission (Commission) has determined it prudent to amend Agency rules to define "places accessible" to include general notice in the workplace and an individual notice upon separation.

Texas Labor Code §209.025 provides that "Notwithstanding any other provision of this subchapter, the commission by rule may adjust the extended benefit eligibility period as necessary to maximize the receipt of any fully funded federal extended unemployment benefits, if full federal funding for those benefits is available."

Currently, Texas Labor Code Chapter 209 provides for an Insured Unemployment Rate (IUR) trigger for EB, with benefit eligibility lasting a maximum of 13 weeks. Federal law, however, provides for an alternate trigger, the Total Unemployment Rate (TUR) trigger. The TUR trigger also provides that in periods of high unemployment, an additional seven weeks of EB benefit eligibility is available.

In order to maximize the receipt of fully funded federal EB anticipated by Texas Labor Code §209.025, the Agency must implement the optional TUR trigger with the high unemployment rate period. To ensure that the Agency maximizes the federal funding, a provision is being added to allow for additional weeks of benefit eligibility, in excess of the current seven, if provided for by federal law. Other provisions addressing coordination of benefit programs and the treatment of certain governmental and tribal employers are also addressed.

Without the clarifying emergency rules in place, as currently promulgated, Chapter 815 Subchapter F is explicitly tied to the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111 - 312). Subchapter F is amended to be generally applicable and effective when full federal funding exists.

Federal Extended Benefit Programs

On March 27, 2020, Congress enacted the CARES Act, which provides for the following four new, limited duration, entitlement programs:

- Federal Pandemic Unemployment Compensation (FPUC)
- Pandemic Emergency Unemployment Compensation (PEUC)
- Federally Reimbursed Waiting Week (FRWW)
- Pandemic Unemployment Assistance (PUA)

On March 28, 2020, under delegated authority from Texas Governor Greg Abbott, Agency Executive Director Ed Serna executed an agreement with the US Secretary of Labor to carry out these CARES Act provisions.

FPUC provides an additional \$600 payment on top of other UC payments from the period covering the benefit week ending April 4, 2020, through the benefit week ending July 25, 2020, unless extended.

PEUC provides an additional 13 weeks of UC payments to eligible individuals who exhaust their regular compensation benefits and it expires with the benefit week ending December 26, 2020.

FRWW also expires with the benefit week ending December 26, 2020.

PUA is a disaster UC program for individuals not eligible for regular compensation, EB, or PEUC, including individuals who have exhausted other UC programs. PUA currently provides for 39 weeks of benefits, minus regular compensation and EB, and covers individuals not traditionally covered under UC, including independent contractors and the self-employed. PUA also expires with the benefit week ending December 26, 2020.

Under the CARES Act, FPUC, PEUC, and the FRWW require that a claimant, who receives benefits to which the claimant is not entitled, repay those benefits unless the payment was made to the claimant without fault and such repayment would be contrary to equity and good conscience. Current §815.12 contains these waiver and overpayment regulations for the Temporary Emergency Unemployment Compensation (TEUC) program of 2001, and by extension, the Emergency Unemployment Compensation (EUC) program of 2008. However, it does not contain corresponding provisions for the new pandemic programs FPUC, PEUC, and the FRWW.

To remedy this, §815.12 is amended to be generally applicable to conforming federal extended unemployment compensation programs. By doing so, if Congress were to pass another extended unemployment compensation program in line with previous extension programs, the rule language for waiver and overpayment would not require additional rulemaking. References to TEUC will be replaced with "federal extended unemployment compensation." Subsection 815.12(i) is removed because such a presumption of financial hardship is not generally applicable. Finally, the waiver provisions of §815.12 are amended to reflect the more efficient practice whereby the waiver is automatically considered by the Agency or Commission rather than requiring that the claimant request a waiver in writing.

Without the clarifying emergency rules in place, as currently promulgated, §815.29 contains the rule defining the coordination between Extended Unemployment Compensation and regular compensation as required by P.L. 111 - 205 §3. This section is repealed as it is no longer applicable.

For convenience and ease of use, new Subchapter G contains rules for the CARES Act, and addresses definitions, coordination of programs, appeals, waivers, overpayments, and fraud:

- The definitions rules define the CARES Act programs.
- The coordination rules address the interactions between existing benefit programs and those provided for in the CARES Act. These rules are necessary to provide the order in which each of these benefit programs are paid to claimants.
- The appeals rules address the appellate procedure for CARES Act programs.
- The waiver rules address which CARES Act programs are subject to a potential waiver of overpayments.
- The overpayment rules address the deduction of CARES Act program benefit payments to recover previously overpaid benefits to which the claimant is not entitled.
- The fraud rules address fraud penalties and PUA fraud.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A:

§815.1. Definitions.

Section 815.1 is amended to add new paragraph (14), which defines "places accessible" as locations in which an employer shall provide required notices to an employee, as provided in the Texas Unemployment Compensation Act (Act), Chapter 208.

New paragraph (14)(A) provides that "places accessible" includes notices containing the required information are to be displayed in a manner reasonably calculated to be encountered by all employees.

New paragraph (14)(B) provides that "places accessible" means an employer must provide the required notice information individually to an employee upon separation from employment. As the notice is provided directly to the individual, the employer has significant flexibility in how this information may be made known. Such information may be provided in a paper format, including by mail or with separation paperwork, email, text, or other means reasonably calculated to ensure the individual receives the required notification.

Existing paragraphs (14) and (15) are renumbered to paragraphs (15) and (16).

SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS

TWC adopts the following amendments to Subchapter B:

§815.12. Waiver of Repayment and Recovery of Temporary Extended Unemployment Compensation Overpayments.

Section 815.12 is amended as follows:

Subsections (a) - (h) are amended to change references to Temporary Extended Unemployment Compensation (TEUC) to federal extended unemployment compensation.

Subsections (b) - (d) are amended to reflect that an overpayment waiver determination will be made by the Agency or the Commission without a written request from a claimant. The decision may be appealed in accordance with Chapter 212 of the Act and under the administrative regulations of §§815.16 - 815.18.

Subsections (i) and (j) are removed and subsection (k) is relettered to subsection (i). New subsection (j) is added to reflect that for the purposes of §815.12, a federal extended unemployment compensation program is an unemployment compensation program enacted by Congress that provides additional federally funded benefits. It does not include EB under Chapter 815 Subchapter F or Chapter 209 of the Act.

§815.29. Coordination of Emergency Unemployment Compensation with Regular Compensation.

Section 815.29 is repealed as it relates to legislation no longer in effect.

SUBCHAPTER F. EXTENDED BENEFITS

TWC adopts the following amendments to Subchapter F:

§815.170. State "On" and "Off" Indicator Weeks: Conditional Trigger.

Section 815.170 is amended as follows:

Subsection (a) provides that pursuant to §209.025 of the Act, if full federal funding for EB is available, a week is a state "on" indicator week if:

--the average rate of total unemployment in Texas (seasonally adjusted), as determined by the US Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6.5 percent; and

--the average rate of total unemployment in Texas (seasonally adjusted), as determined by the US Secretary of Labor, for the three-month period referred to in the preceding paragraph,

equals or exceeds 110 percent of such average rate for either, or both, of the corresponding three-month periods ending in the two preceding calendar years.

Subsection (b) states that there is a state "off" indicator for a week if either the requirements of subsection (a)(1) or (a)(2) are not satisfied.

Subsection (c) clarifies that notwithstanding §815.170, any week for which there would otherwise be a state "on" indicator under §209.022 of the Act, shall continue to be such a week and shall not be determined to be a week for which there is a state "off" indicator.

Subsection (d) is removed.

§815.171. High Unemployment Period: Maximum Total Extended Benefit Amount.

Section 815.171 is amended as follows:

Subsection (a) addresses periods of high unemployment under a TUR trigger under §815.170(a). If the conditions under §815.170(a) are met, and the average rate of total unemployment equals or exceeds 8 percent, a high unemployment period exists.

Subsection (b) provides that with respect to weeks beginning in a high unemployment period, the total extended benefit amount payable to an eligible claimant for the claimant's eligibility period is the lesser of:

--80 percent of the total amount of regular compensation payable to the claimant during the claimant's benefit year under the Act;

--20 times the claimant's average weekly benefit amount; or

--46 times the claimant's average weekly benefit amount, reduced by the regular compensation paid, during the claimant's benefit year under the Act.

Subsection (c) provides that if the full federal funding for EB provides for an additional extended benefit amount payable to an eligible claimant in excess of that provided for in subsection (b), then that amount shall be the total extended benefit amount.

§815.172. Concurrent Emergency Unemployment Compensation Programs.

Section 815.172 is amended to capitalize Extended Benefits.

§815.173. Eligibility Requirements during a Period of 100 Percent Federally Shared Benefits.

Section 815.173 is repealed as it relates to legislation no longer in effect.

§815.174. Financing of Extended Benefits.

Section 815.174 is amended as follows:

Subsection (a) provides that if full federal funding for EB is available, the provisions of §209.082, Charges to Reimbursing Employer, and §209.083, Charges to Taxed Employer, of the Act shall not apply; however, subsection (b) states that the provisions of §209.084, Charges to Governmental Employer, and §209.0845, Charges to Indian Tribe, of the Act shall continue to apply.

Subsection (c) is removed.

SUBCHAPTER G. CARES ACT PROVISIONS

TWC adopts new Subchapter G:

§815.180. Definitions.

New §815.180 defines the terms for Subchapter G.

New paragraph (1) defines the CARES Act as the Coronavirus Aid, Relief, and Economic Security Act, Public Law 116 - 136; TITLE II--Assistance for American Workers, Families, and Businesses; Subtitle A--Unemployment Insurance Provisions.

New paragraph (2) defines FPUC as the Federal Pandemic Unemployment Compensation provisions of §2104 of the CARES Act.

New paragraph (3) defines FRWW as the Federally Reimbursed Waiting Week provisions of §2105 of the CARES Act.

New paragraph (4) defines PEUC as the Pandemic Emergency Unemployment Compensation provisions of §2107 of the CARES Act.

New paragraph (5) defines PUA as the Pandemic Unemployment Assistance provisions of §2102 of the CARES Act.

§815.181. Coordination of CARES Act Programs.

New §815.181 describes how CARES Act programs will be integrated into existing benefit programs.

New subsection (a) provides for the program order in which a claimant can claim benefits. That order is as follows:

For a claimant who is eligible for regular compensation, including Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-servicemembers (UCX), the following order of payment applies:

--The claimant must first apply for and receive regular compensation. The amount and duration of these benefits are as defined by the Act;

--if the claimant exhausts regular compensation, the claimant may then be eligible to receive PEUC;

--if the claimant exhausts PEUC and the state has "triggered on" to EB under Chapter 209 of the Act, the claimant may then be eligible to receive EB;

--if the State is not "triggered on" to EB or the claimant exhausts EB, the claimant may then be eligible to receive PUA. If the State "triggers on" to EB during the period in which the claimant is collecting PUA and the claimant has not previously exhausted entitlement to EB for the respective benefit year, then the claimant must stop collecting PUA and file for EB; and

--if the claimant meets the qualifications to receive Trade Readjustment Allowances (TRA), such benefits will be payable after regular compensation, PEUC, and EB if "triggered on", but prior to PUA.

New subsection (b) describes that for a claimant who is not eligible for regular compensation, PEUC, EB, or TRA, and who meets the federal requirements, the claimant may be eligible to collect PUA.

New subsection (c) addresses the additional compensation provided by FPUC. FPUC provides for additional compensation to a claimant collecting regular compensation, PEUC, PUA, EB, a Shared Work program under Chapter 215 of the Act, TRA, and Disaster Unemployment Assistance (DUA). Claimants will receive FPUC payments concurrently with the respective underlying program for which the claimant is eligible. This applies for the benefit week ending April 4, 2020, through the benefit week

ending July 25, 2020 unless subsequently amended by federal law.

§815.182. Appeals

New §815.182 specifies the appeals process for CARES Act programs.

New subsection (a) states a claimant may appeal an adverse FPUC, FRWW, PEUC, or PUA determination pursuant to the provisions and timeframes of Chapter 212 of the Act and the provisions set out in §815.16 of this chapter (relating to Appeals to Appeal Tribunals from Determinations), §815.17 of this chapter (relating to Appeals to the Commission from Decisions), and §815.18 of this chapter (relating to General Rules for Both Appeal Stages).

New subsection (b) clarifies an employer is not a "party of interest," pursuant to §815.15(c), to a FPUC, FRWW, PEUC, or PUA determination and therefore does not have appeal rights. An employer may appear at a FPUC, FRWW, PEUC, or PUA hearing to offer evidence.

New subsection (c) relates to FPUC. It specifies that, when considering an appeal involving FPUC, the Appeal Tribunal and Commission shall look to the merits of the denial of the underlying benefit when determining eligibility for FPUC payments.

§815.183. Waiver

New §815.183 lays out which CARES Act programs are subject to a potential waiver of overpayments.

New subsection (a) states FPUC, the FRWW, and PEUC are federal extended unemployment compensation programs and therefore subject to §815.12.

New subsection (b) clarifies that PUA, as provided by P.L. 116 - 136 §2102, is related to Disaster Unemployment Assistance programs regulated under Title 20, Part 625, Code of Federal Regulations. Therefore, PUA does not constitute a federal extended unemployment compensation program and the waiver provisions of §815.12 do not apply.

§815.184. Overpayments

New §815.184 explains how CARES Act program overpayments will be administered.

New subsection (a) states that unless a FPUC, FRWW, or PEUC overpayment is otherwise recovered, or is waived, the Agency shall, during the three-year period after the date the claimant received the payment of FPUC, FRWW, or PEUC to which the claimant was not entitled, recover the overpayment by deductions from any sums payable to the claimant. No single deduction may exceed 50 percent of the amount otherwise payable to the claimant.

New subsection (b) states that unless a PUA overpayment is otherwise recovered, the Agency shall recover the overpayment by deductions from any sums payable to the claimant. A PUA overpayment may not be waived per §815.183(b) and is not subject to the three-year period limitation stated in §815.184(a). No single deduction may exceed 50 percent of the amount otherwise payable to the claimant.

New subsection (c) states that if a claimant has an unemployment benefits overpayment with an appropriate agency in another state, and the Agency has a reciprocal arrangement with that other state agency under §211.004 of the Act, the Agency shall deduct 50 percent per each single deduction of

the amount of FPUC, FRWW, PEUC, or PUA otherwise payable to the claimant.

§815.185. Fraud

New §815.185 explains how certain instances of fraud will be handled by the Agency.

New subsection (a) states a penalty for fraudulently obtaining benefits under §214.003 of the Act shall not apply to fraudulently obtained FPUC, FRWW, PEUC, and PUA benefits forfeited.

New subsection (b) pertains to FPUC and clarifies that the Agency and the Commission shall examine the underlying payment or statement that precipitated the fraud determination when examining FPUC fraud.

New subsection (c) states that under PUA, the Agency will apply the provisions of 20 C.F.R. §625.14(i) when determining disqualification for fraud.

Comments and Agency responses:

One comment was received on August 28, 2020, during the public comment period, from William Grigg on behalf of Texas RioGrande Legal Aid, Inc. The following is a summary of the comment and the corresponding agency response:

Comment: The Commenter stated four areas of support for the proposed rulemaking. These comments in support include: the proposed amendments to Chapter 815 Subchapter B appropriately respond to future federal unemployment compensation programs, automatically considering waiver of overpayments will protect low-income Texans, and the proposed new Chapter 815 Subchapter G will provide workers with clarity. Additionally, the Commenter supported amending Chapter 815 Subchapter F to apply when full federal funding exists rather than it being tied to a specific funding source.

The Commenter also expressed opposition to two provisions of the proposed rules. First, the Commenter expressed concern over removing the presumption of financial hardship in §815.12(i) as it relates to the PEUC, or similar, program. The concern is that fewer workers will receive the presumption even though they have been unemployed for an extended period of time. The Commenter also stated without supporting evidence that the proposed rule could lead to an increase in waiver denials and appeals. The Commenter suggested amending the rule to presume a financial hardship if the claimant has been unemployed for an extended period of time, which the Commenter has defined as 26 weeks. It is also suggested the presumption apply to fully federally funded Extended Benefits (EB).

Second, the Commenter stated that the proposed amendments to §815.171 would reduce the amount of benefits received during a High Unemployment Period (HUP). The concern is that claimants who receive additional EB during a HUP have little opportunity for employment and that the proposed rules will suffer a reduction in available benefits.

Response: The Agency appreciates the Commenter's comments and support of certain portions of the proposed rules.

When considering a waiver for an eligible federal benefits program, the Agency is required to take into account whether the claimant was without fault for the payment, and if repayment would be contrary to equity and good conscience. When examining the latter, whether the overpayment would result in financial hardship is one of three factors the Agency considers. This

means this factor is not solely dispositive in determining whether a waiver should be granted.

As stated in Part I, the Agency's goal is to make §815.12 generally applicable and potentially adaptable to any current and future federal extended unemployment compensation program which Congress may authorize. Part of making these rules generally applicable requires incorporating flexibility for the different programs involved and other situations that may arise.

The proposed solution of presuming financial hardship after 26 weeks of regular state unemployment benefits is problematic. Under Texas Unemployment Compensation Act (Act), 26 weeks is the maximum amount of allowable benefit weeks for a regular state claim. (See Texas Labor Code, §207.005.)

However, some regular claims provide for as few as 10 weeks of benefits before transitioning to PEUC. Claims will also have varying weekly benefit amounts based upon wage credits. Therefore, while the number of benefit weeks received may be relevant when determining financial hardship, it may not always be dispositive in every situation. Furthermore, the current situation created by COVID-19 may not be applicable to a future situation where federal extended unemployment compensation is available. As a result, the agency believes the current proposed wording of §815.12 best provides for the general applicability sought by these rules and declines to make changes.

The Commenter also references §815.12(i) in relation to EB under the Act. The waiver provisions of §815.12 are not applicable to EB under the Act as there is no waiver for EB available under state law or required by federal law. Therefore, the Agency also declines to make changes in accordance with these comments in opposition.

Second, the Commenter expressed concerns that the proposed amendments to §815.171 would reduce the amount of benefits received during a HUP. TWC respectfully disagrees. HUP is not a separate benefit program from EB, but rather an augmentation of EB when total unemployment equals or exceeds 8 percent. If a regular EB period is triggered "on," the maximum total EB amount payable to a claimant is 50 percent of the total amount of benefits payable to the claimant under the Act in his or her benefit year. (See Texas Labor Code, §209.062. See also P.L. 91 - 373(b)(1); 20 C.F.R. §615.7(b)(1).)

However, during a HUP, this amount increases to 80 percent of the total amount of benefits payable to the claimant under the Act in their benefit year. Therefore, this would result in an increase in the EB payable to claimants during a HUP. Section 815.171 will be administered in the same fashion as it was previously; however, it will no longer be tethered to a specific federal funding source. Administration of a HUP in this fashion is also not only consistent with, but required by, federal law. (See P.L. 91 - 373(b)(3); 20 C.F.R. §615.7(b)(3).)

For these reasons, no changes have been made in response to these comments in opposition.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §815.1

The rule is adopted under Texas Labor Code §301.0015(a)(6) which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule affects Texas Labor Code, Title 4.

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 22, 2020.

TRD-202003889

Dawn Cronin

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: October 12, 2020

Proposal publication date: July 31, 2020

For further information, please call: (512) 689-9855



SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS

40 TAC §815.12

The rule is adopted under Texas Labor Code §301.0015(a)(6) which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule affects Texas Labor Code, Title 4.

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

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Dawn Cronin

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: October 12, 2020

Proposal publication date: July 31, 2020

For further information, please call: (512) 689-9855



40 TAC §815.29

The repeal is adopted under Texas Labor Code §301.0015(a)(6) which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted repeal affects Texas Labor Code, Title 4.

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 22, 2020.

TRD-202003891

Dawn Cronin

Director, Workforce Program Policy

Texas Workforce Commission

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For further information, please call: (512) 689-9855



SUBCHAPTER F. EXTENDED BENEFITS

40 TAC §§815.170 - 815.172, 815.174

The rules are adopted under Texas Labor Code §301.0015(a)(6) which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Texas Labor Code, Title 4.

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

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TRD-202003892

Dawn Cronin

Director, Workforce Program Policy

Texas Workforce Commission

Effective date: October 12, 2020

Proposal publication date: July 31, 2020

For further information, please call: (512) 689-9855



40 TAC §815.173

The repeal is adopted under Texas Labor Code §301.0015(a)(6) which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted repeal affects Texas Labor Code, Title 4.

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

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TRD-202003893

Dawn Cronin

Director, Workforce Program Policy

Texas Workforce Commission

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For further information, please call: (512) 689-9855



SUBCHAPTER G. CARES ACT PROVISIONS

40 TAC §§815.180 - 815.185

The new rules are adopted under Texas Labor Code §301.0015(a)(6) which provides TWC with the authority to

adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules affect Texas Labor Code, Title 4.

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

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Dawn Cronin

Director, Workforce Program Policy

Texas Workforce Commission

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Proposal publication date: July 31, 2020

For further information, please call: (512) 689-9855



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER F. ADVISORY COMMITTEES

43 TAC §1.84

The Texas Department of Transportation (department) adopts amendments to §1.84, concerning Statutory Advisory Committees. The amendments to §1.84 are adopted without changes to the proposed text as published in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4731) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Senate Bill No. 1959, 86th Regular Session, 2019, amended Transportation Code, Chapter 55, Funding of Port Security, Projects, and Studies, to clarify the duties of the Port Authority Advisory Committee (PAAC). Previously, Transportation Code, §55.007, required the PAAC to submit a biennial maritime port mission plan, while Transportation Code, §55.008, required the PAAC to submit a similar port capital program. The required

content of the two reports was unclear but seemingly redundant. The statutory amendments clarified those requirements. The purpose of this rulemaking is to align the rules with the statutory changes.

Amendments to §1.84 specify that the PAAC is required to prepare, not later than December 1 of each even-numbered year, a single maritime port mission plan that conforms with the requirements of Transportation Code, §55.008, and submit the plan to the commission and to the governor, lieutenant governor, speaker of the house of representatives.

COMMENTS

No comments on the proposed amendments to §1.84 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, §55.009, which requires the commission to adopt rules to implement Transportation Code, Chapter 55, and Transportation Code, §201.117, which requires the commission to determine the duties of its advisory committees.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §55.007 and §55.008.

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 24, 2020.

TRD-202003968

Becky Blewett

Deputy General Counsel

Texas Department of Transportation

Effective date: October 24, 2020

Proposal publication date: July 10, 2020

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





REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which

invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

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

Proposed Rule Reviews

Office of the Attorney General

Title 1, Part 3

The Office of the Attorney General (OAG) files this notice of its intent to review 1 TAC Chapter 69, Subchapter C, concerning the management of vehicles. The review is conducted in accordance with Texas Government Code §2001.039, which requires a state agency to review and consider its rules for re-adoption, re-adoption with amendments, or repeal every four years. During the review, the OAG will assess whether the reasons for initially adopting the rules continue to exist.

Elsewhere in this issue of the *Texas Register*, the OAG is contemporaneously proposing an amendment to Chapter 69, Subchapter C, §69.35.

Written comments on the proposed rule review may be submitted for 30 days following the publication of this notice to Karen Hattaway, Assistant Attorney General, General Counsel Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, Karen.Hattaway@oag.texas.gov.

TRD-202003970

Lesley French

General Counsel

Office of the Attorney General

Filed: September 24, 2020



Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal the chapters listed below, in their entirety, contained in Title 16, Part 4, of the Texas Administrative Code. This review and consideration is being conducted in accordance with Texas Government Code §2001.039.

Business and Professionals Programs

Chapter 76, Water Well Drillers and Water Well Pump Installers.

Transportation Safety Programs

Chapter 84, Driver Education and Safety.

Business and Consumer Safety Programs

Chapter 85, Vehicle Storage Facilities.

Chapter 86, Vehicle Towing and Booting.

Medical and Health Professions Programs

Chapter 100, General Provisions for Health-Related Programs.

Chapter 110, Athletic Trainers.

Chapter 111, Speech-Language Pathologists and Audiologists.

Chapter 112, Hearing Instrument Fitters and Dispensers.

Chapter 114, Orthotists and Prosthetists.

Chapter 115, Midwives.

Chapter 116, Dietitians.

During the review, the Department will assess whether the reasons for adopting or readopting the rules in these chapters continue to exist. The Department will review each rule to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current Department procedures. This review is required every four years.

Written comments regarding the review of these chapters may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules> (select the appropriate chapter name for your comment); by facsimile to (512) 475-3032; or by mail to Vanessa Vasquez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

Any proposed changes to the rules in these chapters as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-202004064

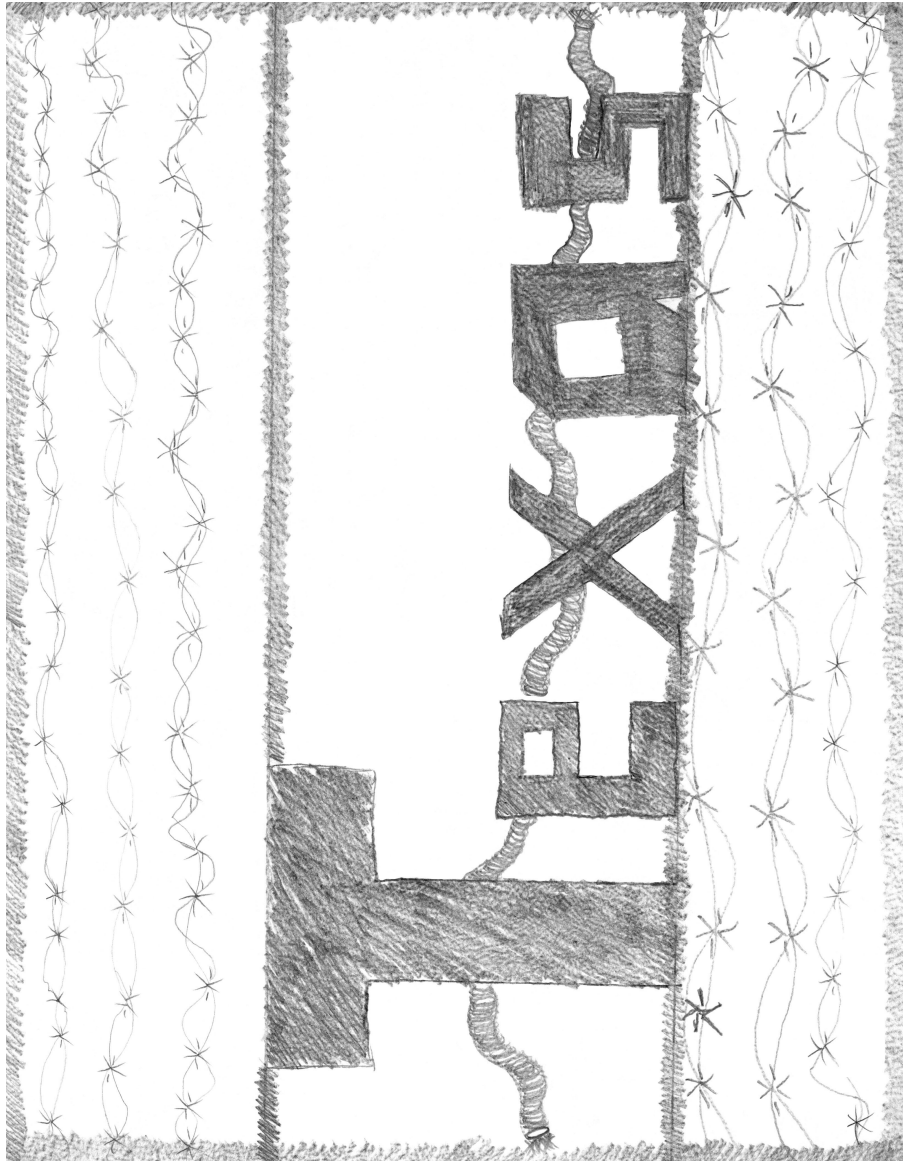
Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Filed: September 30, 2020





TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §34.3(a)

\$250		\$500		\$1,000	
<u>Failure to Display Permit or License</u>	<u>§§11.04 and 61.01</u>	<u>Permit Minor in Package Store</u>	<u>§109.53</u>	<u>Open Saloon - Sale to Non-Member</u>	<u>§§32.01 (a), 32.17 (a)(1) and 32.17 (b)</u>
<u>Failure to Timely File Monthly Report</u>	<u>§§201.075 (DS & Wine), 201.53 (Ale), 203.13 (Beer)</u>	<u>Cash Law</u>	<u>§§61.73 and 102.31; Rule 45.131</u>	<u>Conspiracy to Receive Unlawful Benefit</u>	<u>§104.03</u>
<u>Failure to Pay State Franchise Tax</u>	<u>§§11.61(b)(5), 61.712</u>	<u>Credit Law</u>	<u>§102.32; Rule 45.121</u>	<u>Inducement</u>	<u>§§102.04 (b)(6);102.07 (a)(8); 102.12; Rule 45.110</u>
<u>Failure to Pay State Hotel Tax</u>	<u>§§11.61(b)(5), 61.712</u>	<u>Private Club - Storage of Alco. Bev. not Owned by Members</u>	<u>§32.01(a)(1); Rules 41.51 and 41.52</u>	<u>Unlawful Agreement</u>	<u>§102.16</u>
<u>Failure to Maintain Acceptable Gross Receipts or Sales Tax Bond</u>	<u>§28.17</u>	<u>Inspection Refusal - Regular Business Hours</u>	<u>§32.12</u>	<u>Illegal Contract/Alternating Brewing/Manufacturing</u>	<u>§§12.06 or 62.14</u>
<u>Failure to Maintain Acceptable Alco. Bev. Excise Tax Bond</u>	<u>§§204.01 - .03</u>	<u>Maintaining a Noisy Establishment</u>	<u>§11.61(b)(9)</u>	<u>Illegal Contract Distilling - Spirits</u>	<u>§§11.06; 14.01</u>
<u>Failure to Maintain Acceptable Conduct Surety Bond</u>	<u>§§11.11(a)(2), 61.13; Rule 33.24</u>	<u>Maintaining an Unsanitary Establishment</u>	<u>§11.61(b)(9)</u>	<u>Refilling Distilled Spirits Bottle on Licensed Premise</u>	<u>§28.08</u>
<u>Failure to Report Corporate Change</u>	<u>§28.04 and Rule 41.48</u>	<u>Brand Substitution w/o Customer Consent</u>	<u>§§28.081;104.04; 61.74(a)(13)</u>	<u>Permitting Removal of Alco. Bev. from Premise</u>	<u>§§28.10, 32.17(a)(4)</u>
<u>Possession of Unauthorized Alco. Bev.</u>	<u>§§25.09, 26.01(a), 69.12, 71.04</u>	<u>Poss. of Distilled Spirits w/o ID Stamp (Local Dist. Stamp)</u>	<u>§§28.15(a); 32.20(a)</u>	<u>Sell/Deliver Alco. Bev. while under Suspension</u>	<u>§11.68</u>
<u>Failure to Maintain Acceptable State Sales Tax Bond</u>	<u>§11.61(b)(8)</u>	<u>Failure to Invalidate ID Stamps</u>	<u>§28.09(a); Rule 41.71(h)</u>	<u>Soliciting Alcoholic Beverages</u>	<u>§104.01</u>
<u>Failure to Pay State Sales Tax</u>	<u>§§11.61(c)(2), 61.712</u>	<u>Mixed Bev. - Possession of Un-invoiced/Unauthorized Alco. Bev.</u>	<u>§28.06 (a), (b)</u>	<u>Operating without Required Permit or License</u>	<u>§§11.01, 61.01</u>
<u>Failure to Pay or Report Mixed Bev. Gross Receipts or Sales Tax</u>	<u>§§11.61(b)(5), 61.712</u>	<u>Possession of Alco. Bev. Unfit for Consumption</u>	<u>§103.07</u>	<u>Permit Consumption of Beer at Off-Premise</u>	<u>§71.01</u>

	\$250	\$500	\$1,000		
				<u>Location</u>	
<u>Failure to Maintain Performance Bond</u>	<u>§11.61(b)(8), 61.71(l)</u>	<u>Sell/Deliver Alco. Bev. in Open Container</u>	<u>§§ 22.11, 24.10</u>	<u>Store Alco. Bev. Off Licensed Premise</u>	<u>§§69.10, 71.06</u>
<u>Failure to Timely Provide Records</u>	<u>§§5.32, 5.44 (a)(6)</u>	<u>Acquired Alco. Bev. from Another Retailer</u>	<u>§§69.09, 71.05</u>	<u>Subterfuge</u>	<u>§11.05, 109.53</u>
<u>Failure to Maintain or Properly Document Invoices</u>	<u>§5.32; Rules 41.23, 41.25</u>	<u>Purchase of Alco. Bev. while on Delinquent List</u>	<u>§102.32; Rule 45.121(g)</u>	<u>False/Misleading Statement in Application, Document, Report Etc.</u>	<u>§§11.46 (a)(4), 11.61(b)(4), 61.43(a)(4), and/or 61.71(a)(4) and (11)</u>
<u>Failure to Operate under the Required Tradename</u>	<u>§§61.05, 108.52(c)</u>	<u>Consignment Sale of Alco. Bev.</u>	<u>§§102.07(a)(4); 61.71(a)(8)</u>	<u>Illegal Interior Signage</u>	<u>§61.74(a)(1); Rule 45.113(d)</u>
<u>Outdoor Advertising Violation</u>	<u>Code Chapter 108</u>	<u>Sale away from Licensed Premise</u>	<u>§§11.06, 61.06, 32.17(a)(4)</u>	<u>Prohib. Relationship with Different Levels of Industry</u>	<u>§§102.01; 102.07; 102.15</u>
<u>Failure to Post Required Sign</u>	<u>§§11.041, 11.042, 26.05, 61.11, 61.111, 71.10, 104.07; Rule 31.4</u>	<u>On-Premises Promotions</u>	<u>Rule 45.103</u>	<u>Sale to Respondent on Delinquent List</u>	<u>§102.32(d)</u>
<u>Food & Bev. Permit Holder: Incomplete / Missing Records</u>	<u>§5.32; Rule 33.5(l) and (m)</u>	<u>Session Class Size Exceeds 50</u>	<u>Rules 50.6(a), 50.26(b)(1), (b)(17)</u>	<u>No Permanent Food Service Facility at Addressed Location</u>	<u>§§25.13, 28.18, 32.23, 69.16; Rule 33.5(f)(2)</u>
<u>Failure to Complete or File Excise Tax Report</u>	<u>§5.32, Rule 41.45</u>	<u>Failure to Place Retailer on Delinquent List</u>	<u>Rule 45.121</u>	<u>Ineffective Instruction</u>	<u>Rules 50.3(e), 50.4(b), 50.5(b)</u>
<u>Failure to Meet Trainer Certification Requirements</u>	<u>Rule 50.26(b)</u>	<u>Failure to Report Cash Law Violation</u>	<u>§102.31(c); Rule 45.131(e)</u>	<u>Illegal Sampling / Tasting Event</u>	<u>§§16.01(c), 24.12, 26.08, 37.01, or 52.01</u>
<u>Failure to Properly Issue Trainee Certificates</u>	<u>Rule 50.9(b), (c)</u>	<u>Failure to Report Credit Law Violation</u>	<u>§102.32(e); Rule 45.121</u>	<u>Program Taught by Uncertified Trainer</u>	<u>Rule 50.25(c)</u>
<u>Failure to Properly Schedule/Cancel Training Session</u>	<u>Rule 50.10(a), (b)</u>	<u>Transporting w/o Required Invoice</u>	<u>§§22.08, 23.04, 24.04; Rule 35.1(d)</u>	<u>In-House Program Certified Non-Employees</u>	<u>Rule 50.8</u>
<u>Failure to Meet Testing Requirements</u>	<u>Rule 50.26(b)(19)</u>	<u>Records Incomplete or Missing</u>	<u>§32.13; Rule 41.52</u>	<u>Exclusive Outlet</u>	<u>§§102.13, 109.08</u>

\$250		\$500		\$1,000	
<u>Failure to Meet Requirements-Sch/Pgm Certification</u>	<u>Rule 50.13</u>	<u>Membership/Me mbership Committee Violations</u>	<u>§§32.09, 32.16; Rule 41.52(c)(1)</u>	<u>Commercial Bribery</u>	<u>§102.12</u>
<u>Failure to Properly Prepare/File Session Reports</u>	<u>Rule 50.10(e)</u>	<u>Improper Financial Transactions</u>	<u>§32.06</u>	<u>Prohibited Interest</u>	<u>§§22.06, 51.06, 102.03,102.04, 102.09, 102.10, 102.11, 102.18</u>
		<u>No Written Consent to Scan DL/ID</u>	<u>§109.61(b); Rule 41.52(g)</u>	<u>Unauthorized Manufacturing/Brewing Activity</u>	<u>§§11.01, 61.01</u>
		<u>Adequate Food Service Not Available</u>	<u>Rule 33.5(f)</u>	<u>Transporting Liquor w/out Required Transport Permit</u>	<u>§§11.01, 41.01, 42.01, 43.03, 44.01</u>
		<u>Food Items Not Prepared/ Assembled on Premises</u>	<u>Rule 33.5(e)(1)</u>	<u>Unauthorized Sale/Brew Products for On-Premise Consumption</u>	<u>§12.052</u>
		<u>Alcohol Sale Hours beyond Food Sale Hours</u>	<u>Rule 33.5(g)</u>	<u>Place / Manner - Violated Waiver Order</u>	<u>§§11.61(b)(7), 61.71(a)(17), and Rule 35.31 (b)</u>
		<u>Unauthorized Sale/Brew Products for Off-Premise Consumption</u>	<u>§12.052</u>	<u>Place / Manner - Over Serving</u>	<u>§§11.61(b)(7), 61.71(a)(17), 32.17(a)(8); Rule 35.31</u>
		<u>Engage in Promotional Activity w/o License/Permit</u>	<u>§§50.001; 35.01; 36.01</u>	<u>Place / Manner - Assaultive Offenses</u>	<u>§§11.61(b)(7), 61.71 (a)(17), 32.17(a)(8); Rule 35.31(c)</u>
		<u>Illegal Stocking/ Shelving/ Product Rotation</u>	<u>§102.20; Rule 45.109</u>		
		<u>Unauthorized Market Research</u>	<u>§§108.06, 102.07; Rule 45.113(b)(4)</u>		
		<u>Unauthorized Sweepstakes Contest</u>	<u>§§102.07(e), 108.061; Rule 45.106</u>		
		<u>Unauthorized Coupon</u>	<u>§§102.07(d), 108.06; Rule 45.113</u>		
		<u>Failed to Meet Labeling Requirements</u>	<u>§§37.07, 101.67</u>		

\$250	\$500	\$1,000
	<u>Illegal Bar Spending</u>	§§102.07(g)(2), 102.15(b)(2); Rules 45.113, 45.117
	<u>Illegal Refund/Exchange by Wholesaler/Distributor</u>	§§11.61(b)(2), 61.74(a)(1), 104.05(d), (e)
	<u>Possess/Transport/Store Illicit Beverage</u>	§103.01
	<u>Food Service Not Available/Adequate (Private Club)</u>	§32.03(g); Rule 41.52(e)
	<u>Failure to Maintain ID Stamp Reports</u>	Rule 41.71(d)
	<u>Possess Un-Affixed ID Stamps</u>	§§28.151, 32.201
	<u>Unauthorized Repackaging of Alco. Bev.</u>	§104.05
	<u>Unauthorized Breakdown & Sale of Alco. Bev. Co-packs</u>	§§102.07(a)(5), 108.035; Rule 45.120(c)
	<u>Unauthorized Sale of Alco. Bev. to a Retailer</u>	§§23.01(a)(2), 24.01(a)(2), 25.01(a)(1), 26.01(a), 69.01, 71.01.

Figure: 19 TAC §227.10(a)(4)(C)

Certificate TAC Reference	Certificate Name	Pre-Admission Content Test	Passing Standard
Art			
§233.10	Art: Early Childhood-Grade 12	778 TX PACT Art: Early Childhood-Grade 12	63 out of 100 selected-response items
Career and Technical Education			
§233.13	Technology Education: Grades 6-12	771 TX PACT: Technology Education: Grades 6-12	40 out of 80 selected-response items
§233.13	Family and Consumer Sciences, Composite: Grades 6-12	721 TX PACT: Family and Consumer Sciences, Composite	51 out of 100 selected-response items
§233.13	Human Development and Family Studies: Grades 8-12	721 TX PACT: Family and Consumer Sciences, Composite	51 out of 100 selected-response items
§233.13	Hospitality, Nutrition, and Food Sciences: Grades 8-12	721 TX PACT: Family and Consumer Sciences, Composite	51 out of 100 selected-response items
§233.13	Agriculture, Food, and Natural Resources: Grades 6-12	772 TX PACT: Agriculture, Food, and Natural Resources: Grades 6-12	52 out of 100 selected-response items
§233.13	Business and Finance: Grades 6-12	776 TX PACT: Business and Finance: Grades 6-12	64 out of 100 selected-response items
Computer Science and Technology Applications			
§233.5	Computer Science: Grades 8-12	741 TX PACT Computer Science: Grades 8-12	52 out of 80 selected-response items
§233.5	Technology Applications: Early Childhood-Grade 12	742 TX PACT Technology Applications: Early Childhood-Grade 12	52 out of 80 selected-response items

Certificate TAC Reference	Certificate Name	Pre-Admission Content Test	Passing Standard
Core Subjects			
§233.2	Early Childhood: Prekindergarten-Grade 3	701 TX PACT: Essential Academic Skills (Subtest I: Reading) and 702 TX PACT: Essential Academic Skills (Subtest II: Writing) and 703 TX PACT: Essential Academic Skills (Subtest III: Mathematics)	(701) 25 out of 35 selected-response items (702) 20 out of 30 selected-response items (702) 5 out of 8 score points (1 constructed-response item) (703) 23 out of 36 selected-response items
§233.2	Core Subjects: Early Childhood-Grade 6	701 TX PACT: Essential Academic Skills (Subtest I: Reading) and 702 TX PACT: Essential Academic Skills (Subtest II: Writing) and 703 TX PACT: Essential Academic Skills (Subtest III: Mathematics) or 790 TX PACT Core Subjects: Grades 4-8	(701) 25 out of 35 selected-response items (702) 20 out of 30 selected-response items (702) 5 out of 8 score points (1 constructed-response item) (703) 23 out of 36 selected-response items (790) 94 out of 160 selected-response items
§233.2	Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6	701 TX PACT: Essential Academic Skills (Subtest I: Reading) and 702 TX PACT: Essential Academic Skills (Subtest II: Writing) and 703 TX PACT: Essential Academic Skills (Subtest III: Mathematics) or 790 TX PACT Core Subjects: Grades 4-8	(701) 25 out of 35 selected-response items (702) 20 out of 30 selected-response items (702) 5 out of 8 score points (1 constructed-response item) (703) 23 out of 36 selected-response items (790) 94 out of 160

Certificate TAC Reference	Certificate Name	Pre-Admission Content Test	Passing Standard
			selected-response items
§233.2	Core Subjects: Grades 4-8	790 TX PACT Core Subjects: Grades 4-8	94 out of 160 selected-response items
§233.2	Core Subjects with Science of Teaching Reading: Grades 4-8	790 TX PACT Core Subjects: Grades 4-8	94 out of 160 selected-response items
Dance			
§233.10	Dance: Grades 6-12	779 TX PACT Dance: Grades 6-12	53 out of 80 selected-response items
English Language Arts and Reading			
§233.3	English Language Arts and Reading: Grades 4-8	717 TX PACT English Language Arts and Reading: Grades 4-8	71 out of 100 selected-response items
§233.3	English Language Arts and Reading with Science of Teaching Reading: Grades 4-8	717 TX PACT English Language Arts and Reading: Grades 4-8	71 out of 100 selected-response items
§233.3	English Language Arts and Reading: Grades 7-12	731 TX PACT English Language Arts and Reading: Grades 7-12	59 out of 100 selected-response items
§233.3	English Language Arts and Reading/Social Studies: Grades 4-8	717 TX PACT English Language Arts and Reading: Grades 4-8 and 718 TX PACT Social Studies: Grades 4-8	(717) 71 out of 100 selected-response items (718) 57 out of 100 selected-response items
§233.3	English Language Arts and Reading/Social Studies with Science of Teaching Reading: Grades 4-8	717 TX PACT English Language Arts and Reading: Grades 4-8 and 718 TX PACT Social Studies: Grades 4-8	(717) 71 out of 100 selected-response items (718) 57 out of 100 selected-response items

Certificate TAC Reference	Certificate Name	Pre-Admission Content Test	Passing Standard
Health			
§233.11	Health: Early Childhood-Grade 12	757 TX PACT Health: Early Childhood-Grade 12	57 out of 80 selected-response items
Journalism			
§233.3	Journalism: Grades 7-12	756 TX PACT Journalism: Grades 7-12	45 out of 72 selected-response items
Languages Other Than English			
§233.15	American Sign Language: Early Childhood-Grade 12	784 TX PACT American Sign Language: Early Childhood-Grade 12 (Subtest I) and 785 TX PACT: American Sign Language (ASL): Early Childhood-Grade 12 (Subtest II)	(784) 22 out of 40 selected-response items (785) 23 out of 40 selected-response items (785) 19 out of 32 score points (4 constructed-response items)
§233.15	Arabic: Early Childhood-Grade 12	ACTFL 605 OPI – Arabic and 600 WPT – Arabic	ACTFL 605 OPI – Arabic: Advanced Low; 600 WPT – Arabic: Advanced Low
§233.15	Chinese: Early Childhood-Grade 12	714 TX PACT: LOTE Chinese: Early Childhood-Grade-12	58 out of 80 selected-response items 11 out of 16 score points (2 constructed-response items)
§233.15	French: Early Childhood-Grade 12	710 TX PACT LOTE French: Early Childhood-Grade 12	57 out of 80 selected-response items 10 out of 16 score points (2 constructed-response items)

Certificate TAC Reference	Certificate Name	Pre-Admission Content Test	Passing Standard
Languages Other Than English (continued)			
§233.15	German: Early Childhood-Grade 12	711 TX PACT LOTE German: Early Childhood-Grade 12	59 out of 80 selected-response items 11 out of 16 score points (2 constructed-response items)
§233.15	Hindi: Early Childhood-Grade 12	ACTFL 622 OPI – Hindi and 623 WPT – Hindi	ACTFL 622 OPI – Hindi: Advanced Low; 623 WPT – Hindi: Advanced Low
§233.15	Italian: Early Childhood-Grade 12	ACTFL 624 OPI – Italian and 625 WPT – Italian	ACTFL 624 OPI – Italian: Advanced Low; 625 WPT – Italian: Advanced Low
§233.15	Japanese: Early Childhood-Grade 12	ACTFL 607 OPI – Japanese and 602 WPT – Japanese	ACTFL 607 OPI – Japanese: Intermediate High; 602 WPT – Japanese: Intermediate High
§233.15	Korean: Early Childhood-Grade 12	ACTFL 630 OPI – Korean and 631 WPT – Korean	ACTFL 630 OPI – Korean: Advanced Low; 631 WPT – Korean: Advanced Low
§233.15	Latin: Early Childhood-Grade 12	712 TX PACT LOTE Latin: Early Childhood-Grade 12	31 out of 50 selected-response items 11 out of 16 score points (2

Certificate TAC Reference	Certificate Name	Pre-Admission Content Test	Passing Standard
			constructed-response items)

Certificate TAC Reference	Certificate Name	Pre-Admission Content Test	Passing Standard
Languages Other Than English (continued)			
§233.15	Portuguese: Early Childhood-Grade 12	ACTFL 632 OPI – Portuguese and 633 WPT – Portuguese	ACTFL 632 OPI – Portuguese: Advanced Low; 633 WPT – Portuguese: Advanced Low
§233.15	Russian: Early Childhood-Grade 12	ACTFL 608 OPI – Russian and 603 WPT – Russian	ACTFL 608 OPI – Russian: Intermediate High; 603 WPT – Russian: Intermediate High
§233.15	Spanish: Early Childhood-Grade 12	713 TX PACT LOTE Spanish: Early Childhood-Grade 12	55 out of 80 selected-response items 12 out of 16 score points (2 constructed-response items)
§233.15	Turkish: Early Childhood-Grade 12	ACTFL 626 OPI – Turkish and 627 WPT – Turkish	ACTFL 626 OPI – Turkish: Advanced Low; 627 WPT – Turkish: Intermediate High
§233.15	Vietnamese: Early Childhood-Grade 12	ACTFL 609 OPI – Vietnamese and 604 WPT – Vietnamese	ACTFL 609 OPI – Vietnamese: Advanced Mid; 604 WPT – Vietnamese: Advanced Low
Mathematics and Science			

§233.4	Mathematics: Grades 4-8	715 TX PACT Mathematics: Grades 4-8	58 out of 100 selected-response items
§233.4	Science: Grades 4-8	716 TX PACT Science: Grades 4-8	62 out of 100 selected-response items
Certificate TAC Reference	Certificate Name	Pre-Admission Content Test	Passing Standard
Mathematics and Science (continued)			
§233.4	Mathematics/Science: Grades 4-8	715 TX PACT Mathematics: Grades 4-8 and 716 TX PACT Science: Grades 4-8	(715) 58 out of 100 selected-response items (716) 62 out of 100 selected-response items
§233.4	Mathematics: Grades 7-12	735 TX PACT Mathematics: Grades 7-12	52 out of 100 selected-response items
§233.4	Science: Grades 7-12	736 TX PACT Science: Grades 7-12	48 out of 100 selected-response items
§233.4	Life Science: Grades 7-12	738 TX PACT Life Science: Grades 7-12	63 out of 100 selected-response items
§233.4	Physical Science: Grades 6-12	737 TX PACT Physical Science: Grades 6-12	61 out of 100 selected-response items
§233.4	Physics/Mathematics Grades 7-12	735 TX PACT: Mathematics: Grades 7-12 and 739 TX PACT: Physics Grades 7-12	(735) 52 out of 100 selected-response items (739) 52 out of 100 selected-response items
§233.4	Mathematics/Physical Science/Engineering: Grades 6-12	735 TX PACT Mathematics: Grades 7-12 and 737 TX PACT Physical Science: Grades 6-12	(735) 52 out of 100 selected-response items (737) 61 out of 100 selected-response items

§233.4	Chemistry: Grades 7-12	740 TX PACT Chemistry: Grades 7-12	62 out of 100 selected-response items
Music			
§233.10	Music: Early Childhood-Grade 12	777 TX PACT Music: Early Childhood-Grade 12	68 out of 100 selected-response items

Certificate TAC Reference	Certificate Name	Pre-Admission Content Test	Passing Standard
Physical Education			
§233.12	Physical Education: Early Childhood-Grade 12	758 TX PACT Physical Education: Early Childhood-Grade 12	52 out of 80 selected-response items
Social Studies			
§233.3	Social Studies: Grades 4-8	718 TX PACT Social Studies: Grades 4-8	57 out of 100 selected-response items
§233.3	Social Studies: Grades 7-12	732 TX PACT Social Studies: Grades 7-12	62 out of 100 selected-response items
§233.3	History: Grades 7-12	733 TX PACT History: Grades 7-12	57 out of 100 selected-response items
Speech Communications			
§233.3	Speech: Grades 7-12	729 TX PACT Speech: Grades 7-12	40 out of 64 selected-response items 5 out of 8 score points (1 constructed-response item)
Special Education			
§233.8	Special Education: Early Childhood-Grade 12	701 TX PACT: Essential Academic Skills (Subtest I: Reading) and 702 TX PACT: Essential	(701) 25 out of 35 selected-response items (702) 20 out of 30

		Academic Skills (Subtest II: Writing) and 703 TX PACT: Essential Academic Skills (Subtest III: Mathematics)	selected-response items (702) 5 out of 8 score points (1 constructed-response item) (703) 23 out of 36 selected-response items
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Certificate TAC Reference	Certificate Name	Pre-Admission Content Test	Passing Standard
Special Education (continued)			
§233.8	Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12	701 TX PACT: Essential Academic Skills (Subtest I: Reading) and 702 TX PACT: Essential Academic Skills (Subtest II: Writing) and 703 TX PACT: Essential Academic Skills (Subtest III: Mathematics)	(701) 25 out of 35 selected-response items (702) 20 out of 30 selected-response items (702) 5 out of 8 score points (1 constructed-response item) (703) 23 out of 36 selected-response items
Theatre			
§233.10	Theatre: Early Childhood-Grade 12	780 TX PACT Theatre: Early Childhood-Grade 12	48 out of 80 selected-response items

Figure: 19 TAC Chapter 228 - Preamble

Adopted new §228.10(g) provides clarification to EPPs on how to add replacement certificates to their certification offerings due to the addition of the science of teaching reading requirement codified in HB 3, 86th Texas Legislature, 2019. The current and replacement certificates are:

Current Certificates	Replacement Certificates Reflecting the Science of Teaching Reading
Core Subjects: Early Childhood-Grade 6	Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6
Core Subjects: Grades 4-8	Core Subjects with Science of Teaching Reading: Grades 4-8
English Language Arts and Reading: Grades 4-8	English Language Arts and Reading with Science of Teaching Reading: Grades 4-8
English Language Arts and Reading/Social Studies: Grades 4-8	English Language Arts and Reading/Social Studies with Science of Teaching Reading: Grades 4-8

Figure: 19 TAC Chapter 230 - Preamble

The adopted amendment to §230.21(e) updates the figure to include the four replacement certificates adopted in Chapter 233 and the associated certification examinations requirements along with the corresponding operational dates of those examinations. The current and replacement certificates with the corresponding content pedagogy examinations are:

Certificate	Relevant Content Pedagogy Test(s)
Core Subjects: Early Childhood-Grade 6	<ul style="list-style-type: none"> • 291 Core Subjects EC-6 TExES
Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6	<ul style="list-style-type: none"> • 293 Science of Teaching Reading TExES and either: • 291 Core Subjects EC-6 TExES (last operational date 12/31/2021) or • 391 Core Subjects EC-6 TExES (starting 1/1/2021)
Core Subjects: Grades 4-8	<ul style="list-style-type: none"> • 211 Core Subjects 4-8 TExES
Core Subjects with Science of Teaching Reading: Grades 4-8	<ul style="list-style-type: none"> • 293 Science of Teaching Reading TExES and • 211 Core Subjects 4-8 TExES
English Language Arts and Reading: Grades 4-8	<ul style="list-style-type: none"> • 117 English Language Arts and Reading 4-8 TExES
English Language Arts and Reading with Science of Teaching Reading: Grades 4-8	<ul style="list-style-type: none"> • 293 Science of Teaching Reading TExES and • 117 English Language Arts and Reading 4-8 TExES (last operational date 12/31/2021) or • 217 English Language Arts and Reading 4-8 TExES (starting 1/1/2022)
English Language Arts and Reading/Social Studies: Grades 4-8	<ul style="list-style-type: none"> • 113 English Language Arts and Reading/Social Studies 4-8 TExES
English Language Arts and Reading/Social Studies with Science of Teaching Reading: Grades 4-8	<ul style="list-style-type: none"> • 293 Science of Teaching Reading TExES, and • 113 English Language Arts and Reading/Social Studies 4-8 TExES

Figure: 19 TAC Chapter 233 - Preamble

House Bill 3, 86th Texas Legislature, 2019, requires that all educators who teach any grade level from Prekindergarten-Grade 6 demonstrate proficiency in the science of teaching reading on a certification examination beginning January 1, 2021. To comply with the enabling legislation, the current certificates that cover those grades have been updated to reflect the inclusion of the science of teaching reading component on each of those certificates. The current and adopted replacement certificates are:

Current Certificates	Adopted Replacement Certificates Reflecting the Science of Teaching Reading
Core Subjects: Early Childhood-Grade 6	Core Subjects with Science of Teaching Reading: Early Childhood-Grade 6
Core Subjects: Grades 4-8	Core Subjects with Science of Teaching Reading: Grades 4-8
English Language Arts and Reading: Grades 4-8	English Language Arts and Reading with Science of Teaching Reading: Grades 4-8
English Language Arts and Reading/Social Studies: Grades 4-8	English Language Arts and Reading/Social Studies with Science of Teaching Reading: Grades 4-8

Figure: 22 TAC §138.31(d)



Figure: 22 TAC §138.31(h)



Figure: 22 TAC §139.37(b)

<u>CLASSIFICATION</u>	<u>VIOLATION</u>	<u>CITATION</u>	<u>SUGGESTED SANCTIONS</u>
<u>Surveying Misconduct</u>	<u>Gross negligence</u>	<u>§1071.401(a)(2); §§138.55(a), (b)</u>	<u>Revocation / \$1,500</u>
	<u>Failure to exercise care and diligence in the practice of surveying</u>	<u>§§138.55(b), 138.63(b)(6)</u>	<u>1 year suspension / \$1,000</u>
	<u>Incompetence</u>	<u>§1071.401(a)(2); §§138.59(a), (b); 138.89(b)</u>	<u>3 year suspension / \$1,500</u>
	<u>Misdemeanor or felony conviction without incarceration relating to duties and responsibilities as a professional land surveyor</u>	<u>§139.43(b)</u>	<u>Reprimand / 3 year suspension</u>
	<u>Felony conviction with incarceration</u>	<u>§139.43(a)</u>	<u>Revocation</u>
	<u>Failure to allow LSLs access to County Surveyor Records</u>	<u>§1071.361(a)</u>	<u>1 year suspension / \$1,000</u>
	<u>Failure to comply with any regulations prescribed by the County Surveyor or the commissioner's court for protecting and preserving records</u>	<u>§1071.361(c)</u>	<u>1 year suspension / \$1,500</u>
	<u>LSLS directly or indirectly interested in the purchase or acquisition of title to public land</u>	<u>§1071.401(b)</u>	<u>Revocation / \$1,500</u>
	<u>Failure to use equipment and methods of practice capable of attaining the tolerances specified</u>	<u>§138.83</u>	<u>Reprimand / \$1,000</u>
	<u>Failure to respect junior and senior rights for boundary retracement.</u>	<u>§138.85(1)</u>	<u>1 year suspension / \$1,500</u>
	<u>Failure to follow the footsteps of the original surveyor.</u>	<u>§138.85(2)</u>	<u>1 year suspension / \$1,500</u>
	<u>Failure to rely upon appropriate deeds and/or other documents including those for adjoining</u>	<u>§138.85(3)(A)</u>	<u>1 year suspension / \$1,500</u>

	<u>parcels, for the location of the boundaries of the subject parcel(s).</u>		
	<u>Failure to assume the responsibility for such research of adequate thoroughness to support the determination of the location of intended boundaries of the land parcel surveyed.</u>	<u>§138.85(3)(B)</u>	<u>1 year suspension / \$1,500</u>
	<u>Failure to connect all boundaries to identifiable physical monuments related to corners of record dignity. In the absence of such monumentation, failure to report the surveyor's opinion of the boundary location by other appropriate physical evidence.</u>	<u>§138.85(3)(C)</u>	<u>1 year suspension / \$1,500</u>
	<u>Failure to cite a reference on the drawing and the prepared description to the record instrument that defines the location of adjoining boundaries, if appropriate.</u>	<u>§138.85(3)(D)</u>	<u>1 year suspension / \$1,500</u>
	<u>Failure to follow the intent of the boundary location as evidenced by the record.</u>	<u>§138.85(4)</u>	<u>1 year suspension / \$1,500</u>
	<u>Failure to respect the proper application of the rules of dignity (priority) of calls, and applicable statutory and case law of Texas.</u>	<u>§138.85(5)</u>	<u>1 year suspension / \$1,500</u>
	<u>Failure to set monuments at sufficient depths to retain a stable and distinctive location or be of sufficient size to withstand the deteriorating forces of nature or be of such material that in the surveyor's judgment will best achieve this goal.</u>	<u>§138.87(a)</u>	<u>1 year suspension / \$1,500</u>
	<u>Failure to set, or leave as found, an adequate quantity of monuments of a stable and reasonably permanent nature to represent or reference the property or boundary corners. Failure to show and describe survey</u>	<u>§138.87(b)</u>	<u>1 year suspension / \$1,500</u>

	<u>markers with sufficient evidence of the location of such markers on the surveyors' drawing, written description or report.</u>		
	<u>Failure to tie corners of record to the boundary of the affected tract in metes and bounds descriptions prepared to be used in easements.</u>	<u>§138.87(c)</u>	<u>1 year suspension / \$1,500</u>
	<u>Failure to mark, in a way that is traceable to the responsible registrant or associated employer, all monuments set.</u>	<u>§138.87(d)</u>	<u>1 year suspension / \$1,500</u>
	<u>Failure of registrant/licensee to ensure that document complies with all standards certified to.</u>	<u>§138.89(a)</u>	<u>1 year suspension / \$1,500</u>
	<u>Failure to delineate the relationship between record monuments and the location of boundaries surveyed. Failure to show such relationship on the survey plat, if a plat is prepared, and/or separate report and failure to recite such in the description with the appropriate record referenced thereon and therein.</u>	<u>§138.91(a)</u>	<u>1 year suspension / \$1,500</u>
	<u>Failure to provide a definite and unambiguous identification of the location of boundaries and describe all monuments found or placed for descriptions prepared for defining boundaries.</u>	<u>§138.91(b)</u>	<u>1 year suspension / \$1,500</u>
	<u>Failure to reference courses by notation upon the survey drawing to an identifiable and monumented line or an established geodetic system for directional control.</u>	<u>§138.91(c)</u>	<u>1 year suspension / \$500</u>
	<u>Failure to note and describe, upon the survey drawing, which boundary monuments were found or placed by the surveyor and failure to note other monuments of record dignity relied upon to establish the corners of the property surveyed.</u>	<u>§138.91(e)</u>	<u>1 year suspension / \$1,500</u>

	<u>If any report consists of more than one part, failure to note the existence of the other part or parts.</u>	<u>§138.91(f)</u>	<u>Reprimand / \$500</u>
	<u>If a written narrative is prepared in lieu of a drawing / sketch to report the results of a survey, and there is a failure to contain sufficient information to demonstrate the survey was conducted in compliance with the Surveying Act and rules.</u>	<u>§138.91(g)</u>	<u>1 year suspension / \$1,500</u>
	<u>Failure to apply and adhere to the rules of the board when establishing or delineating the perimeter boundary of the purposed subdivision.</u>	<u>§138.93</u>	<u>1 year suspension / \$1,500</u>
	<u>Falsifying the purpose of a metes and bounds description when preparing a description for a political subdivision</u>	<u>§138.95(1)</u>	<u>1 year suspension / \$1,500</u>
	<u>Preparing a description for a political subdivision that is ambiguous and non-locatable on the ground by ordinary surveying procedures</u>	<u>§138.95(2)</u>	<u>1 year suspension / \$1,500</u>
	<u>Failure to ensure record monuments or physical monuments called for in the description prepared for a political subdivision</u>	<u>§138.95(3)</u>	<u>1 year suspension / \$1,500</u>
	<u>Failure to perform an on the ground survey for any course and distance recited in the description when such is not referenced in a recited record.</u>	<u>§138.95(4)</u>	<u>1 year suspension / \$1,500</u>
	<u>Failure to place the required notation on descriptions prepared for political subdivisions.</u>	<u>§138.95(5)</u>	<u>Reprimand / \$500</u>
<u>Licensing and Registration</u>	<u>Fraud or deceit in obtaining a registration or license</u>	<u>§1071.401(a)(1)</u>	<u>Revocation / \$1,500</u>
	<u>Retaliation against a reference provider</u>	<u>§138.63(c)(2)</u>	<u>1 year suspension / \$1,000</u>

	<u>Enter into a business relationship which is in violation of 138.77 (Firm Compliance)</u>	<u>§138.51(d)</u> ,	<u>1 year suspension / \$500</u>
<u>Ethics Violations</u>	<u>Failure to engage in professional and business activities related to the practice of surveying in an honest and ethical manner</u>	<u>§138.63(a)</u>	<u>2 year suspension / \$1,500</u>
	<u>Misrepresentation; issuing oral or written assertions in the practice of surveying that are fraudulent or deceitful</u>	<u>§§138.57(a)(1), (2)</u>	<u>2 year suspension / \$1,500</u>
	<u>Misrepresentation; issuing oral or written assertions in the practice of surveying that are misleading</u>	<u>§138.57(a)(3)</u>	<u>1 year suspension / \$1,000</u>
	<u>Conflict of interest</u>	<u>§§138.57(c), (d)</u>	<u>2 year suspension / \$1,500</u>
	<u>Inducement to secure specific surveying work or assignment</u>	<u>§138.63(c)(3)</u>	<u>2 year suspension / \$1,500</u>
	<u>Accept compensation from more than one party for services on the same project</u>	<u>§138.63(c)(4)</u>	<u>2 year suspension / \$1,000</u>
	<u>Solicit professional employment in any false or misleading advertising</u>	<u>§138.63(c)(5)</u>	<u>1 year suspension / \$1,000</u>
	<u>Offer or practice surveying while license or registration is expired or inactive</u>	<u>§§138.7(a) and 138.13(a) and (h)</u>	<u>1 year suspension / \$500</u>
	<u>Failure to act as a faithful agent to their employers or clients</u>	<u>§138.63(b)(4)</u>	<u>1 year suspension / \$1,000</u>
	<u>Reveal confidences and private information</u>	<u>§§138.61(a), (b), (c)</u>	<u>Reprimand / \$1,000</u>
	<u>Retaliation against a complainant</u>	<u>§138.63(c)(2)</u>	<u>1 year suspension / \$1,000</u>
	<u>Aiding and abetting unlicensed practice or other assistance</u>	<u>§§138.63(b)(3), 138.63(c)(1)</u>	<u>3 year suspension / \$1,500</u>
	<u>Failure to report violations of others</u>	<u>§138.55(c)</u>	<u>Reprimand / \$1,000</u>

	<u>Failure to prevent violation of laws, codes, or ordinances</u>	<u>§§138.63(b)(1), (2)</u>	<u>Reprimand / \$1,000</u>
	<u>Failure to conduct surveying and related business in a manner that is respectful of the client, involved parties and employees</u>	<u>§138.63(b)(5)</u>	<u>1 year suspension / \$1,000</u>
	<u>Competitive bidding with governmental entity</u>	<u>§138.53</u>	<u>Reprimand / \$1,000</u>
	<u>Falsifying documentation to demonstrate compliance with continuing education requirements</u>	<u>§§138.17(p)(2), (3), 138.63(a)</u>	<u>2 year suspension / \$1,500</u>
	<u>Action in another jurisdiction</u>	<u>§§138.65(a) and (b)</u>	<u>Similar sanction as listed in this table if action had occurred in Texas</u>
<u>Improper use of Seal</u>	<u>Failure to safeguard seal and/or electronic signature</u>	<u>§138.33(d)</u>	<u>Reprimand / \$500</u>
	<u>Failure to sign, seal, date, include caveat, or include firm identification on work</u>	<u>§§138.33(e), (f), (h), (m), 138.35(a), (b); 138.91(d)</u>	<u>Reprimand / \$500</u>
	<u>Sealing work not performed or directly supervised by the professional surveyor</u>	<u>§138.33(b)</u>	<u>Reprimand / \$1,000</u>
	<u>Practice or affix seal with expired or inactive license or registration</u>	<u>§§1071.263(a), 138.13(h), 138.37(a)(2)</u>	<u>1 year suspension / \$500</u>
	<u>Practice or affix seal with suspended license or registration</u>	<u>§138.37(a)(2)</u>	<u>Revocation / \$1,500</u>
	<u>Preprinting of blank forms with surveyor seal; use of a decal or other seal replicas</u>	<u>§138.31(e)</u>	<u>1 year suspension / \$1,000</u>
	<u>Sealing work endangering the public</u>	<u>§138.37(a)(1)</u>	<u>Revocation / \$1,500</u>
	<u>Work performed by more than one surveyor not attributed to each surveyor</u>	<u>§138.33(g)</u>	<u>Reprimand / \$500</u>
	<u>Improper use of work product of others</u>	<u>§138.33(c)</u>	<u>Reprimand / \$500</u>
<u>Administrative</u>	<u>Failure to return seal imprint and/or portrait</u>	<u>§§134.97(d), (e); 138.31(a)</u>	<u>Reprimand / \$250</u>

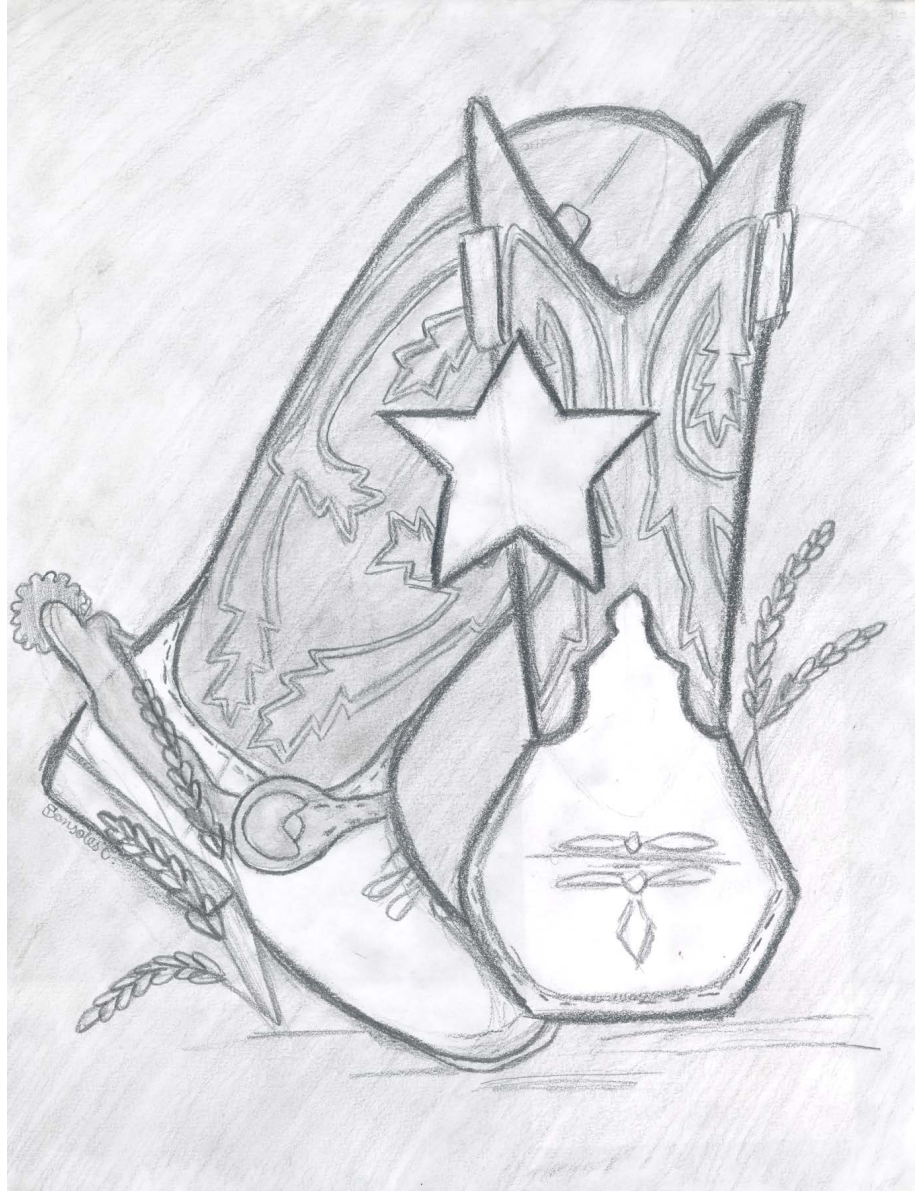
	<u>Failure to report: change of address or employment, or of any criminal convictions, or legal name change</u>	<u>§§138.5(a), (b), and/or (c)</u>	<u>Reprimand / \$150</u>
	<u>Failure to respond to board communications</u>	<u>§138.51(c)</u>	<u>Reprimand / \$500</u>
	<u>Failure to include “inactive” or “retired” representation with title while in inactive status</u>	<u>§138.13(f)</u>	<u>Reprimand / \$500</u>

Figure: 22 TAC §139.37(c)

<u>VIOLATION</u>	<u>CITATION</u>	<u>SUGGESTED SANCTIONS</u>	
		<u>FIRST OCCURRENCE</u>	<u>SUBSEQUENT OCCURRENCES</u>
<u>Use of “R.P.L.S” or “L.S.L.S. designation, or claim to be a “Registered Professional Land Surveyor” or “Licensed State Land Surveyor”</u>	<u>§1071.251(d); §138.1</u>	<u>Cease and Desist and \$1,000</u>	<u>\$1,500 penalty and Injunctive / Criminal Referral</u>
<u>Offer or attempt to practice surveying (e.g., through solicitation, proposal, contract, etc.)</u>	<u>§§1071.251(c)</u>	<u>Cease and Desist and \$1,000</u>	<u>\$1,500 penalty and Injunctive / Criminal Referral</u>
<u>Representation of ability to perform surveying (e.g., telephone or HUB listing, newspaper, or other publications, letterhead, Internet, etc.)</u>	<u>§§1071.251(d); 1071.352(a)</u>	<u>Voluntary Compliance</u>	<u>Cease and Desist and \$500</u>
<u>Unlicensed or unregistered practice of surveying</u>	<u>§1071.251(b); §§138.51(e), 138.77(a)</u>	<u>Cease and Desist and \$1,000</u>	<u>\$1,500 penalty and Injunctive / Criminal Referral</u>
<u>Unauthorized use of an R.P.L.S. or L.S.L.S. seal</u>	<u>§§1071.251(b), (c), (d); 1001.352(a); §138.37(b)</u>	<u>Cease and Desist and \$1,000</u>	<u>\$1,500 penalty and Injunctive / Criminal Referral</u>
<u>Fraudulent use of an R.P.L.S. or L.S.L.S. seal</u>	<u>§§1071.251(b), (c), (d); 1001.352(a); §138.37(b), 138.77(a)</u>	<u>Cease and Desist and \$1,500</u>	<u>\$1,500 penalty and Injunctive / Criminal Referral</u>

Figure: 22 TAC §139.37(d)

<u>VIOLATION</u>	<u>CITATION</u>	<u>SUGGESTED SANCTIONS</u>	
		<u>FIRST OCCURRENCE</u>	<u>SECOND OCCURRENCE</u>
<u>Offer and perform professional land surveying services without being registered</u>	<u>§1071.352; §138.77(a), (e)</u>	<u>Voluntary Compliance / \$500</u>	<u>Cease and Desist / \$1,000</u>
<u>Offer and perform professional land surveying services while registration was expired</u>	<u>§1001.352; §138.77(d), (e)</u>	<u>\$500</u>	<u>\$1,000</u>
<u>Offer only (no professional land surveying services were performed) without being registered or while registration was expired</u>	<u>§1001.352; §138.77(a), (e)</u>	<u>Voluntary Compliance / \$250</u>	<u>Cease and Desist / \$1,000</u>
<u>Failure to include firm name and registration number on surveying work</u>	<u>§§138.77(h); 138.91(d)</u>	<u>Voluntary Compliance</u>	<u>\$750</u>
<u>Failure to notify board of firm registration record modification</u>	<u>§138.73</u>	<u>Voluntary Compliance</u>	<u>\$500</u>



Texas Alcoholic Beverage Commission

Penalty Policy for Regulatory Violations

March 1, 2021

I. General Provisions

A. Definitions

"Executive director" means the executive director of the Texas Alcoholic Beverage Commission or his or her designee.

"Respondent" means the license or permit holder who is the subject of a commission disciplinary action.

B. Effective Date

This Penalty Policy ("Policy") is effective beginning on **March 1, 2021**, and remains in effect until it is revoked or the commission issues a revised policy. The recommended penalties for violations that are subject to this Policy and for which a Notice of Violation is issued after March 1, 2021, will be calculated according to this Policy.

C. Purpose, Use, and Accessibility

This Policy is internal agency guidance describing in detail the agency's method for calculation of recommended penalties for regulatory violations pursuant to commission Rule 34.3.

This Policy does not address when an enforcement action is initiated, but rather, how TABC staff should evaluate violations in order to recommend administrative penalties to the commission.

This Policy is intended for use by commission staff, regulated entities, government officials, and interested members of the general public. The commission will maintain a copy of the current Penalty Policy on its public web site. Questions regarding this Policy should be directed to the TABC Audit Division at (512) 206-3300.

D. Adoption, Periodic Review, and Amendment of the Penalty Policy

This Policy was adopted in the manner of a rulemaking proceeding under the Administrative Procedure Act (Tex. Gov't Code Ch. 2001). As provided by Rule 34.3, the TABC will review this Policy at least once every seven years in the manner of a rulemaking, with opportunities for input from the regulated industry, members of the public, and government officials.

E. Violations Subject to this Penalty Policy

Violations subject to this Policy include violations of statutes and rules listed in commission Rule 34.3, Sanctions for Regulatory Violations. The commission does not intend to assess a penalty for the same alleged conduct under both Rule 34.2 and Rule 34.3, simultaneously.

F. Effect of Penalty Calculation

A penalty calculated pursuant to this Policy is the penalty the executive director will recommend to the commission if a settlement with the respondent is not reached. The calculation of a penalty pursuant to this Policy does not affect the ability of the executive director to agree to a settlement on different terms. Likewise, the commission is not

bound by a calculation pursuant to this Policy or the executive director's recommended penalty and may impose any penalty within statutory limits at its discretion.

G. Statutory Authority and Penalty Limitations

Texas Alcoholic Beverage Code §§5.362, 5.363, 11.61, 11.64, and 11.641 provide the basis for the commission's and its executive director's authority to enforce the laws and rules under its jurisdiction by imposing civil penalties and suspending licenses and permits. Section 11.61 authorizes the suspension of a license or permit for a period of up to 60 days for a variety of reasons, including violation of the laws and rules of the commission. Section 11.64 requires that with some specified exceptions, the commission offer a civil penalty (fine) in lieu of license or permit suspension. It further requires that the amount of a civil penalty assessed by the commission be not less than \$150 or more than \$25,000 for each day the license or permit was to have been suspended. Penalties and suspension days calculated under this Policy may not violate these statutory constraints.

II. Base Penalties: Categorization of Violations

Rule 34.3 assigns a base penalty amount to regulatory violations according to the statute and/or rule violated. Violations are assigned to a category based upon the severity of the violation type and the amount of penalty necessary to deter that violation. The base penalties and the violations categorized under each base penalty were initially adopted following a rulemaking proceeding under the Administrative Procedure Act (Tex. Gov't Code Ch. 2001).

The commission is charged with assessing administrative sanctions in the form of days of suspension with a corresponding administrative penalty amount between \$150 - \$25,000 per day of assessed suspension. The amount of the penalty must be appropriate for the nature and seriousness of the violation. Taking into account the type of permit/license involved and the type of violation, the commission has assigned base penalties of \$250, \$500, or \$1,000. The base penalty for violations within each category represents a single instance of a violation without considering any additional factors that warrant increasing or decreasing the final penalty from the base penalty.

In general, violations in the \$250 category pertain to activities and conduct that make up a business's daily operations, such as record keeping, displaying the permit/license at the premises, or filing a report. Violations of this nature are expected to occur from time to time and, if not connected to a pattern of repeat conduct or purposeful disregard for the Code, pose a minimal impact on public safety, the marketplace, or the commission's ability to carry out its duties.

In general, violations in the \$500 category pertain to the core conduct of a respective permit's/license's authorized privileges. These are often stated as specific prohibitions within the permit's/license's governing chapter in the Code.

In general, violations in the \$1,000 category pertain to conduct that involves, harms, or affects another person or business in some manner. These violations either have a heightened penalty by statute, pose a threat to a fair and orderly marketplace, or impair the commission's ability to effectively carry out its regulatory duties.

III. Number of Violation Events

The number of violation events refers to the number of discrete instances of a particular violation or the amount of time the violation was ongoing. For example, if a distributor provides an impermissible benefit to five different retail store locations, the commission may impose five separate violations. Or, if an ongoing problem has persisted for the past three months, the commission may impose three violations, one for each month. Because circumstances will vary, the commission will determine the appropriate number of violation events on a case-by-case basis. The basis for the number of violation events will be noted on the Penalty Calculation Worksheet ("PCW").

The number of violation events is *not* intended to capture violations from past incidents or inspections or repeated violations. These prior violations will be considered as aggravating circumstances in the next step of the calculation.

IV. Aggravating and Mitigating Circumstances

Adjustments to the penalty amount due to aggravating and mitigating circumstances are based upon the conduct of the respondent in relation to the violation, including culpability (e.g., was the violation an oversight, due to gross negligence, intentional, or even fraudulent?); level of cooperation with the commission's inspections and investigations; and immediate steps taken by the respondent to correct a violation and/or prevent it from occurring again. The nature of the violation itself is not considered in aggravating circumstances as that is accounted for by a higher base penalty categorization.

As noted in Section III, above, prior instances of the same or similar violations may also be considered aggravating circumstances. A respondent that continues to have the same problems again and again will see their subsequent violations aggravated due to that repetition. If the conduct is widespread in the organization or appears to be an ongoing course of conduct in violation of commission statutes or rules, the executive director may consider that an extraordinary or flagrant level of aggravation.

Examples of mitigating and aggravating circumstances are listed in the instructions in Section VII of this Policy. This list is non-exclusive; the executive director may consider other relevant facts and circumstances on a case-by-case basis. The respondent may present evidence of mitigating circumstances to the executive director for consideration.

The executive director's identification and use of mitigating and aggravating circumstances to either enhance or discount the penalty is entirely discretionary.

V. Economic Benefit

The 2019 Sunset Bill (HB 1545) amended §11.641(a) of the Code to require the executive director to consider, when determining the appropriate amount of the civil penalty for a permittee or licensee who has previously violated the Code, whether the permittee or licensee profited from the violation, and if so the amount of the permittee's or licensee's profit. According to the Sunset Report, "(a)llowing TABC to consider a business's profits from violating the law would ensure TABC can effectively penalize a licensee for illegal behavior, so that violating the code and paying a fine does not become simply a cost of doing business."

Pursuant to this direction from the Texas Legislature, in determining the appropriate penalty, the executive director may consider the economic benefit realized by a respondent resulting from the violation. In general, the economic benefit is an assessment of the pecuniary gains from a violation, both in costs avoided, costs delayed, and additional profits gained due to the violative conduct. If the economic benefit realized by the respondent exceeds the calculated penalty amount, the

amount of the economic benefit will be added to the calculated administrative penalty. Essentially, the economic benefit realized due to the violation is recouped by the agency, resulting in a net zero impact to the violator. Then, the administrative penalty is imposed to both provide consequences for the instant violation as well as deter future violations. This will discourage regulated entities from violating the laws or rules of the agency based upon a calculated business decision.

Economic benefit will not be calculated in every case and will often be left blank. Pursuant to statute, it can only be used when the permittee or licensee has previously violated the Code. Of those cases, the commission will calculate the economic benefit when there is reason to believe it is in excess of the penalty that would otherwise be imposed.

The variables leading to an economic benefit to a respondent will vary in every case and therefore cannot be defined in advance in this Policy. Instead, the economic benefit will be determined on a case-by-case basis, using the information available to the commission. Where accounting ledgers, receipts, inventory records, marketing and promotional invoices, bills of lading, or other documentation is not available or is withheld by the respondent, the commission may rely upon reasonable estimates. The commission will explain the basis for its economic benefit calculation within the PCW, using additional sheets, as necessary.

To assist in deciding whether to pursue an economic benefit calculation, staff members will consider the following list of questions:

1. Did the respondent avoid or delay capital outlay required by its license or permit, the Code, or a rule?
2. Did the respondent earn any interest by avoiding or delaying a capital outlay required by its license or permit, the Code, or a rule?
3. Did the respondent gain an economic advantage over its competitors as a result of the violation?
4. Did the respondent avoid or delay any operating costs as a result of the violation?
5. Did the respondent receive increased profits or revenue due to the violation?
6. Did the respondent avoid the purchase of a required bond?

These questions are intended to assist the staff member in thinking about some common types of economic benefits but is not an exclusive list of the types of economic benefits that may be considered based upon the circumstances of the individual case.

Respondents may provide documentation to assist in the accurate calculation of economic benefit. However, the commission may decline to use the information if the respondent selectively provides documentation tending to show little economic benefit but refuses to provide access to other financial documentation requested by the commission in an effort to see a more complete and accurate picture of the circumstances.

VI. Suspension Days in Lieu of Fine

Pursuant to statute, the commission is required to offer a respondent a number of days of license or permit suspension in lieu of paying a fine. Dividing the final penalty amount by the base penalty for that violation results in a commensurate number of days of suspension. This will be done separately for each violation and the number of days will be added from each worksheet, like the fine amounts, to determine the total.

Partial days are allowed only for cases involving multiple violations. In those cases, any partial days will be added to one another, and the resulting number of days, if not a whole number, will be rounded up to the next whole number.

VII. Instructions for Using the Penalty Calculation Worksheet

To Begin: Enter Identification and Violation Information

After entering identifying information regarding the license or permit holder and complaint number, if any, indicate the violation addressed by this Penalty Calculation Worksheet ("PCW"). A violation is characterized as conduct that falls under a single statutory or rule citation. *Only one violation* should be entered on each PCW; in other words, each statute or rule that is violated will be recorded on a separate PCW. Cases involving multiple different violations will require several PCWs, which will be summed up at the end of the process for the final penalty calculation.

Enter the proper database tracking code corresponding to the violation for this PCW and the name of the offense in the Violation Code box (Example: "673--MB Possess. Un-invoiced/Unauth AB"). Enter a narrative description of the violation in the Description of Offense box (Example: "Retailer purchased alcoholic beverages from out-of-state liquor store. Product does not have TABC label approval."). The applicable statutes and rules will automatically populate in the third box. Check to ensure the citations are correct for the violation you have entered.

Step 1: Select the Base Penalty Amount

Go to Commission Rule 34.3, Figure 1 TAC §34.3(a). Find the statute or rule violated listed in the chart and select the base penalty amount corresponding to that violation.

Step 2: Determine the Number of Violation Events

The number of violation events may be based upon the number of discrete instances of conduct or the amount of time a violation continued. First, if the act or omission that violates the Code or rules is a discrete act or omission, count each separate act or omission, resulting in multiple instances of the same unlawful conduct. For example, if a licensee or permittee distributes noncompliant promotional materials, each store or event at which the promotional materials were used may be counted as a separate violation event.

If the violative act or omission is continuing in nature or occurs over an extended period, assess a number of violation events corresponding to the number of days, weeks, or months that the violation continued. For example, if a person fails to file a regularly required report or fails to respond to a request for information or documents, a violation event may be counted for each day the person fails to file the report or comply with the request after the applicable deadline.

Only count the number of violation events of a single statute or rule resulting from the *current* investigation, and do not include prior violations or notices of violations from prior incidents or years or violations of different statutes or rules. A history of prior violations, including prior administrative penalties for violations of the same or similar regulations or demonstrating a pattern of disregard for the law or agency rules, should instead be considered an aggravating factor under Step 3 of this policy.

Provide an explanation of the basis for the number of violations in the area provided (e.g., "Three violations are assessed, one for each location at which the prohibited activity occurred"). Multiply the Base Penalty by the Number of Violations. Enter this amount on the Step 1 Subtotal line (alt: Check to ensure the Step 1 Subtotal automatically calculated and filled in is correct).

Step 3: Consider Mitigating and Aggravating Circumstances

You may increase the penalty due to aggravating circumstances or conduct or discount it in recognition of mitigating circumstances or conduct. Use of mitigating and aggravating circumstances is entirely discretionary. You may consider any information provided to you by the respondent in this step.

Examples of mitigating and aggravating conduct include but are not limited to the factors listed below (considerations specifically authorized in Tex. Alco. Bev. Code §11.64(c) are marked with a *).

Mitigating:

- The violation could not reasonably have been prevented by the respondent by the exercise of due diligence*;
- The respondent was entrapped*;
- An agent, servant, or employee of the respondent violated the Code or a rule without the knowledge of the respondent*;
- The respondent did not knowingly violate the code or rules*;
- The respondent has demonstrated good faith, including taking actions to rectify the consequences of the violation and/or to deter future violations*;
- The violation was a technical one*;
- The respondent is a first-time offender of non-egregious violation;
- The respondent agrees to training of personnel;
- The respondent enters into a Compliance Agreement;
- The respondent has a clean violation history;
- The violation resulted from deception/fraud by an employee without the respondent's knowledge;
- The respondent was cooperative during the investigation;
- The respondent self-reported the violation;
- The respondent voluntarily ceased the violative conduct; and
- The respondent adhered to an agency-imposed cease and desist during the investigation.

Aggravating:

- The respondent is a repeat violator;
- The respondent knowingly and purposefully violated the law or rule;
- The respondent was uncooperative during the investigation;
- The respondent refused to provide records requested by the agency during the investigation;
- The respondent committed additional violations during the investigation through the final resolution;
- The respondent contributes to or encourages non-compliant behavior of an agent, servant, or employee;
- The respondent participated with additional license or permit holders as part of a larger scheme;
- The respondent disregarded an agency-imposed cease and desist order during investigation;
- The respondent exhibits an on-going culture of non-compliance or the behavior is systemic throughout the business entity;
- The respondent does not demonstrate pattern of voluntary compliance (e.g., refuses to accept agency training or Compliance Agreements); and
- The respondent engaged in the conduct despite clear direction from the agency.

Step 4. Economic Benefit

If a license or permit holder has previously violated the Code or rules, an economic benefit factor may be used in the assessment of subse-

quent violations. Determine whether the respondent has violated the Code or a commission rule in the past. If so, decide whether the economic benefits realized by the respondent *as a direct or indirect result of the violative conduct* may exceed the penalty calculated in the Step 3 subtotal. If so, contact your Regional Supervisor to begin the process of calculating the economic benefit. Only count the economic benefits of the particular violation you are assessing with this PCW, not overall economic benefits of all violations in the case.

In deciding whether the economic benefits realized by the respondent may exceed the penalty calculated in the Step 3 subtotal, consider the following list of questions:

1. Did the respondent avoid or delay capital outlay required by its license or permit, the Code, or a rule?
2. Did the respondent earn any interest by avoiding or delaying a capital outlay required by its license or permit, the Code, or a rule?
3. Did the respondent gain an economic advantage over its competitors as a result of the violation?
4. Did the respondent avoid or delay any operating costs as a result of the violation?
5. Did the respondent receive increased profits or revenue due to the violation?
6. Did the respondent avoid the purchase of a required bond?

These questions are intended to assist you in thinking about some common types of economic benefits but is not an exclusive list of the types of economic benefits that may be considered based upon the circumstances of the individual case.

Enter the costs avoided, costs delayed, and additional profits, if any, in the space provided. The Total EB (economic benefit) will be summed for you. Check to ensure the calculation appears to be correct. If the economic benefit you calculate exceeds the penalty amount under Subtotal 3, check the box next to "Total EB exceeds Step 3 Subtotal?" The economic benefit will automatically be added to the Step 3 subtotal and will appear in the TOTAL PENALTY box. Check to ensure that this calculation appears to be correct.

Days of Suspension in Lieu of Penalty

The number of suspension days in lieu of penalty will be automatically calculated by dividing the TOTAL PENALTY by the Base Penalty. If the days in lieu of penalty for all PCWs for all violations in a case add up to a non-whole number, the total number of days in lieu will be rounded up to the nearest whole number. As with the other automatic fields in the PCW, check to ensure this calculation appears correct.

For example, if the first violation type results in a calculation of 2.5 suspension days and the second violation type results in a calculation of 2 suspension days, the sum is 4.5 days. The final suspension days in lieu of penalty will be rounded up to 5 days. Only round up *after* summing all partial or full days from each worksheet.

Go on to the Next PCW

If you have a case with more than one violation type--in other words, there is a violation of another statute and/or rule--begin another PCW for each violation and repeat all of the steps. Be sure to consider only the violation for that PCW when thinking about the number of violation events, aggravating and mitigating circumstances, and economic benefits. When all PCWs for the case are complete, sum the TOTAL PENALTY and # of days in lieu of penalty boxes at the bottom of each page. Round up the days in lieu of penalty to the nearest whole number, if necessary. The resulting totals are the calculated penalty for this case. Use as many PCWs as necessary and never put more than one

type of violation on one PCW. Use additional pages, as necessary, to explain your reasoning for any step.

Remember: A violation or case can be settled at any time and for any penalty amount or number of suspension days to which the executive director and respondent agree, regardless of any calculation under this methodology.

TRD-202003997
Shana Horton
Rules Attorney
Texas Alcoholic Beverage Commission
Filed: September 25, 2020

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/05/20 - 10/11/20 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/05/20 - 10/11/20 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-202004045
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 29, 2020

Texas Education Agency

Request for Applications Concerning the 2021-2022 Nita M. Lowey 21st Century Community Learning Centers (CCLC), Cycle 11, Year 1 Grant Program

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-21-102 is authorized by Public Law 114-95, Elementary and Secondary Education Act of 1965, as amended by Every Student Succeeds Act (ESSA), Title IV, Part B (20 U.S.C. §§7171-7176).

Eligible Applicants. Texas Education Agency (TEA) is requesting applications under RFA #701-21-102 from eligible applicants, which include local educational agencies, including independent school districts, open-enrollment charter schools, and regional education service centers; community-based organizations; Indian tribe or tribal organization (as such terms are defined in the Indian Self-Determination and Education Act (25 U.S.C. 450b), §4); other public or private entities; or a consortium of two or more eligible organizations. Applications must propose to serve campuses that are eligible for schoolwide programs under ESSA, §1114, and the families of such students. A campus is ineligible to be included in a funded application if it meets either of the following conditions: the campus or school was newly opened in the school year 2019-2020 or the campus is a center or center feeder in an active Texas 21st CCLC, Cycle 10 grant program. If an eligible applicant includes one or more ineligible campus or feeder campus, TEA may deem the entire application ineligible for peer review. Each eligi-

ble applicant may submit only one application for funding up to eight centers.

Description. The federal Nita M. Lowey 21st CCLC program supports the creation of community learning centers that provide academic enrichment opportunities during non-school hours for children, particularly students who attend high-poverty and low-performing schools. The program helps students meet state and local student standards in core academic subjects, such as reading and math; offers students a broad array of enrichment activities that can complement their regular academic programs; and offers literacy and other educational services to the families of participating children.

Dates of Project. The 2021-2022 Nita M. Lowey 21st CCLC, Cycle 11, Year 1 grant program will be implemented during the 2021-2022 school year. Applicants should plan for a starting date of no earlier than July 1, 2021, and an ending date of no later than July 31, 2022.

Project Amount. Approximately \$46,049,221 is available for funding the 2021-2022 Nita M. Lowey 21st CCLC, Cycle 11, Year 1 grant program. It is anticipated that approximately 40 grants will be awarded ranging in amounts from \$250,000 to \$1.7 million each year of the five-year project period. Annually, funding after Year 1 ("continuation funding") is contingent on satisfactory progress of prior year compliance with requirements, achievement of stated service and performance targets, general budget approval by the commissioner of education, and appropriations by the United States Congress. Continuation funding requires grantees to submit a noncompetitive continuation grant application each year of the total subgrant period. This project is funded 100% with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Peer reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The complete RFA will be posted on the TEA Grant Opportunities web page at <http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/Grant-ProgramSearch.aspx> for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to 21stcentury@tea.texas.gov, the TEA email address identified in the Program Guidelines of the RFA, no later than Friday, November 13, 2020. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Friday, November 20, 2020. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 11:59 p.m. (Central Time), Thursday, January 7, 2021, to be eligible to be considered for funding. TEA will only accept applications by email to competitive-grants@tea.texas.gov.

Issued in Austin, Texas, on September 30, 2020.

TRD-202004062

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: September 30, 2020

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Commission on State Emergency Communications

Notice Concluding Annual Review of 1 TAC §255.4

The Commission on State Emergency Communications (CSEC) published notice of its annual review of the definitions of the terms "local exchange access line" and "equivalent local exchange access line" in §255.4 in the August 7, 2020, issue of the *Texas Register* (45 TexReg 5517). CSEC is required by Health and Safety Code §771.063 to adopt by rule the foregoing definitions and to annually review these definitions "to address technical and structural changes in the provision of telecommunications and data services."

No comments were received regarding CSEC's notice of annual review.

CSEC has determined not to propose amendments to the definitions in §255.4, and to leave in effect the rule as adopted by CSEC in September 2007.

This concludes CSEC's annual review of §255.4.

TRD-202003964

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Filed: September 23, 2020

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Texas Board of Professional Engineers and Land Surveyors

Hearing on Proposed Rules

AGENDA

HEARING ON PROPOSED RULES

TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Via Videoconference

For General Public Viewing: <https://youtu.be/y0ASV1REnml>

Videoconference call - Zoom (<https://zoom.us/>)

Meeting URL:

<https://zoom.us/j/99053908783?pwd=U01Fam5vR3NoVGVDYzlhS9DTUQ3dz09>

Meeting ID: 990 5390 8783

Password: 092537

October 14, 2020 - 8:30 AM

Due to Governor Greg Abbott's March 13, 2020, proclamation of a state of disaster affecting all counties in Texas due to the Coronavirus (COVID-19) and the Governor's March 16, 2020, suspension of certain provisions of the Texas Open Meetings Act, the October 14, 2020, hearing on proposed rules will be held by video-conference, as otherwise authorized under Texas Government Code section 551.127. Due to the Governor's suspension, the public will not be able to attend the open meeting in person.

Members of the public will have access to view the meeting via YouTube and the link will be available on the agency website at <https://pels.texas.gov>. Members of the public will have access to participate and make public comment in this meeting, by two-way audio/video, by connecting to the video access number identified on the agenda above or by clicking on the link contained on the agency website at <https://pels.texas.gov>. Members of the public are encouraged to confirm the correct conference access number/link 24 hours before the meeting by going to the agency website. An electronic copy of the agenda is available at <https://pels.texas.gov>. A recording of the meeting will be available after October 21, 2020, on the agency website.

For public participants who wish to make public comment, after the meeting convenes, the presiding officer will call roll of board members and then of public attendees. Please identify yourself by name and state whether you would like to provide public comment. You may also email comment@pels.texas.gov in advance of the meeting if you would like to provide public comment. During the public comment portion of the meeting, the presiding officer will recognize you by name and give you an opportunity to speak. All public comments will be limited to three (3) minutes. All participants are asked to keep their microphones muted when they are not providing public comment.

1. Call to Order

2. Public hearing to receive comments from interested persons concerning proposed rule changes under Texas Occupations Code §§1001.101 and 1001.202, which provides the Texas Board of Professional Engineers and Land Surveyors (TBPELS) with the authority to promulgate and adopt rules consistent with the Act governing its administration, including rule amendments, new rules, and rule repeals of the following rule Chapters:

-- 22 Texas Administrative Code Chapter 131, Organization and Administration (as published in the August 7, 2020, issue of the *Texas Register* (45 TexReg 5472))

-- 22 Texas Administrative Code Chapter 134, Licensing, Registration, and Certification for Surveyors (as published in the August 7, 2020, issue of the *Texas Register* (45 TexReg 5479))

-- 22 Texas Administrative Code Chapter 136, Surveying Firm Registration (as published in the August 7, 2020, issue of the *Texas Register* (45 TexReg 5494))

-- 22 Texas Administrative Code Chapter 138, Compliance and Professionalism for Surveyors (as published in the August 14, 2020, issue of the *Texas Register* (45 TexReg 5589))

-- 22 Texas Administrative Code Chapter 139, Enforcement (as published in the August 7, 2020, issue of the *Texas Register* (45 TexReg 5496))

Any interested person may appear and offer comments or statements, either orally or in writing; however, questioning of commenters will be reserved exclusively to the Texas Board of Professional Engineers and Land Surveyors or its staff as may be necessary to ensure a complete record. While any person with pertinent comments or statements will be granted an opportunity to present them during the hearing, TBPELS

reserves the right to restrict statements in terms of time or repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views or similar comments through a representative member where possible. Persons with disabilities who have special needs and who plan to attend the meeting should contact Cristabel Bodden of TBPELS at (512) 440-3051.

3. Adjourn.

Individuals needing auxiliary aids or services should contact the Texas Board of Professional Engineers and Land Surveyors at (512) 440-3051, in a timely manner.

TRD-202004049

Lance Kinney, Ph.D., P.E.

Director

Texas Board of Professional Engineers and Land Surveyors

Filed: September 29, 2020

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 9, 2020**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commissions orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commissions central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **November 9, 2020**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: B2 United, LLC dba Grab N Go; DOCKET NUMBER: 2019-1767-PST-E; IDENTIFIER: RN102352333; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(1)(A) and (B) and (3), by failing to provide an amended registration for any change or additional information to the agency regarding the underground storage tank (UST) system within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to inspect and

test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(iii)(IV) and TWC, §26.3475(c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days, and failing to measure any water level in the bottom of the USTs to the nearest 1/8 of an inch at least once every 30 days and make appropriate adjustments to the inventory records; 30 TAC §334.51(a)(6) and (b)(2)(B)(i) and TWC, §26.3475(c)(2), by failing to ensure that spill and overflow prevention devices are maintained in good operating condition; 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator, Class A, Class B, and Class C, for the Facility; PENALTY: \$12,946; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: City of Runge; DOCKET NUMBER: 2020-0741-PWS-E; IDENTIFIER: RN101424083; LOCATION: Runge, Karnes County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F) and TCEQ Agreed Order Docket Number 2018-0355-MLM-E, Ordering Provision Number 2.e.i, by failing to obtain a sanitary control easement covering land within 150 feet of the facility's three active wells; 30 TAC §290.46(f)(2) and (3)(D)(ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(m)(4) and TCEQ Agreed Order Docket Number 2018-0355-MLM-E, Ordering Provision Number 2.c.i, by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; and 30 TAC §290.46(s)(2)(C)(i) and TCEQ Agreed Order Docket Number 2018-0355-MLM-E, Ordering Provision Number 2.a.ii, by failing to verify the accuracy of the manual disinfectant residual analyzers at least once every 90 days using chlorine solutions of known concentrations; PENALTY: \$2,395; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 850-9479; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Formosa Plastics Corporation, Texas; DOCKET NUMBER: 2019-0688-AIR-E; IDENTIFIER: RN100218973; LOCATION: Point Comfort, Calhoun County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review (NSR) Permit Numbers 7699, 19168, and 76305, and PSDTX266M7, PSDTX1058, and PSDTX1226, Special Conditions (SC) Number 1, Federal Operating Permit (FOP) Numbers O1951, O1958, and O3409, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 8, 9, and 14, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), NSR Permit Numbers 20203 and 76305 and PSDTX1058 and PSDTX1224, SC Numbers 1 and 21, FOP Numbers O1957 and O3409, GTC and STC Numbers 8 and 10, and THSC, §382.085(b), by failing to comply with the maximum allowable emissions rates; and 30 TAC §101.201(c) and §122.143(4), FOP Number O1958, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of the emissions event; PENALTY: \$333,638; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$133,455; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076;

REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: Francisco Espinosa dba FALL BRANCH ESTATES HOMEOWNERS ASSOCIATION, INCORPORATED and Jolene Craver dba FALL BRANCH ESTATES HOMEOWNERS ASSOCIATION, INCORPORATED; DOCKET NUMBER: 2020-0816-PWS-E; IDENTIFIER: RN110438629; LOCATION: Ingram, Kerr County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(n)(1), by failing to maintain at the facility accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; PENALTY: \$50; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Hudspeth County Water Control and Improvement District Number 1; DOCKET NUMBER: 2020-0519-PWS-E; IDENTIFIER: RN101417293; LOCATION: Sierra Blanca, Hudspeth County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(f)(4) and Texas Health and Safety Code, §341.0315(c), by failing to provide a water purchase contract that authorizes a maximum daily purchase rate or a uniform purchase rate in the absence of a specified daily purchase rate, plus the actual production capacity of the system of 0.6 gallons per minute per connection; PENALTY: \$1,800; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (361) 825-3425; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(6) COMPANY: Jam Vo; DOCKET NUMBER: 2020-0540-WQ-E; IDENTIFIER: RN110830015; LOCATION: Pittsburgh, Upshur County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), and Texas Pollutant Discharge Elimination System General Permit Number TXR15377Z, Part III, Section G., by failing to install and maintain best management practices at the site which resulted in a discharge of pollutants; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Lee Mehta Dealerships, Incorporated dba Reliance Chevrolet Buick GMC; DOCKET NUMBER: 2020-0505-AIR-E; IDENTIFIER: RN110954526; LOCATION: Bay City, Matagorda County; TYPE OF FACILITY: used vehicle dealership; RULES VIOLATED: 30 TAC §114.20(c)(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to ensure a motor vehicle is equipped with either the emission control system or devices that were originally part of the motor vehicle or motor vehicle engine, or an alternate emission control system or device prior to selling the motor vehicle; and 30 TAC §114.20(c)(3) and THSC, §382.085(b), by failing to display a notice of the prohibitions and requirements of 30 TAC §114.20 at a commercial motor vehicle sales facility in a conspicuous and prominent location; PENALTY: \$2,063; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Montina Enterprise, LLC dba Bennie's Kountry Store; DOCKET NUMBER: 2020-0603-PST-E; IDENTIFIER: RN101888915; LOCATION: Willis, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: OCI Beaumont LLC; DOCKET NUMBER: 2019-1777-AIR-E; IDENTIFIER: RN102559291; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: methanol and ammonia manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 901 and PSDTX1334, Special Conditions Number 1, Federal Operating Permit Number O1645, General Terms and Conditions and Special Terms and Conditions Number 16, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$4,912; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$2,115; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: Quadvest, L.P.; DOCKET NUMBER: 2020-0896-MWD-E; IDENTIFIER: RN104810866; LOCATION: Hockley, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014675001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$4,300; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: RABT Incorporated dba Cedar Lake Mart; DOCKET NUMBER: 2020-0642-PST-E; IDENTIFIER: RN104334412; LOCATION: Eustace, Henderson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(1)(C) and (3), by failing to provide an amended registration for any change or additional information to the agency regarding the underground storage tank (UST) system within 30 days from the date of the occurrence of the change or addition; 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$4,790; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: RANCH COUNTRY OF TEXAS, INCORPORATED; DOCKET NUMBER: 2020-0771-UTL-E; IDENTIFIER: RN103105367; LOCATION: Sealy, Austin County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §291.93(3)(A) and TWC, §13.139(d), by failing to provide a written planning report for a utility possessing a Certificate of Convenience and Necessity that has reached or exceeded 85% of all or part of its capacity; PENALTY: \$267; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: RNT Group, LLC; DOCKET NUMBER: 2020-0579-MWD-E; IDENTIFIER: RN105374755; LOCATION: Murchison, Henderson County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0015651001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1), §319.5(b), and TPDES Permit Number WQ0015651001, Effluent Limitations and Monitoring Requirements Number 1, by failing to collect and analyze effluent samples at the intervals specified in the permit; PENALTY: \$7,276; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512)

239-2512; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(14) COMPANY: Texas Sludge Disposal Inc; DOCKET NUMBER: 2019-0611-IHW-E; IDENTIFIER: RN103197638; LOCATION: Taft, San Patricio County; TYPE OF FACILITY: dewatering and compost processing plant; RULE VIOLATED: 30 TAC §335.2(a), by failing to not cause, suffer, allow, or permit the disposal of industrial solid waste at an unauthorized facility; PENALTY: \$37,362; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(15) COMPANY: Trecora Chemical, Incorporated; DOCKET NUMBER: 2020-0910-AIR-E; IDENTIFIER: RN100660612; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §106.6(b), Permit By Rule Registration Number 84058, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$3,413; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: VALLEY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2020-0652-PWS-E; IDENTIFIER: RN101176543; LOCATION: Spur, Dickens County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(j), by failing to complete a Customer Service Inspection certificate prior to providing continuous water service to new construction or any existing service when the water purveyor has reason to believe a cross-connection or other potential contamination hazard exists; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzers at least once every 90 days using the chlorine solutions of known concentrations; and 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; PENALTY: \$864; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-202004042
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 29, 2020



Amended Notice of Hearing (to Change Hearing Date.)
Quail Run Services, LLC: SOAH Docket No. 582-20-4375;
TCEQ Docket No. 2019-1472-MWD; Proposed Permit No.
WQ0015711001

APPLICATION.

Quail Run Services, LLC, P.O. Box 570177, Houston, Texas 77257, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015711001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. TCEQ received this application on July 17, 2018.

The facility will be located on the east side of State Highway 80, approximately 1.0 mile south of the intersection of County Road 488 and State Highway 80, in Karnes County, Texas 78116. The treated effluent will be discharged to a man-made ditch; thence to a pond;

thence to a man-made ditch; thence to Shockley Creek; thence to Elm Creek; thence to Sandies Creek; thence to Guadalupe River Below San Marcos River in Segment No. 1803 of the Guadalupe River Basin. The unclassified receiving water uses are minimal aquatic life use for the man-made ditches and Shockley Creek, limited aquatic life use for the pond and Elm Creek (Karnes County downstream to 0.6 miles into Gonzales County), and high aquatic life use for Elm Creek (0.6 mi downstream of the Gonzales County boundary). The designated uses for Segment No. 1803 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code (TAC) Section 307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Elm Creek (Gonzales County), which has been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.746388%2C29.200833&level=12>>. For the exact location, refer to the application.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at the Karnes City Public Library, 302 South Panna Maria Avenue, Karnes City, Texas.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. -- November 12, 2020

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com>

Meeting ID: 160 429 7418

Password: Kf72Yk

or

To join the Zoom meeting via telephone:

(346) 248-7799

Meeting ID: 160 429 7418

Password: 856559

Visit the SOAH website for registration at: <http://www.soah.texas.gov/>

or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later

date, will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on June 16, 2020. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.tceq.texas.gov.

Further information may also be obtained from Quail Run Services, LLC at the address stated above or by calling Mr. Jeff Goebel, at (713) 783-6611.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Issued: September 29, 2020

TRD-202004051

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 29, 2020



Enforcement Orders

An agreed order was adopted regarding Epic Renewables, Inc. and William Michael Bruce, Docket No. 2018-0032-MLM-E on September 25, 2020, assessing \$9,850 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Marine Quest - Hidden Cove, L.P., Docket No. 2018-1091-MWD-E on September 25, 2020 assessing \$21,274 in administrative penalties with \$4,254 deferred. Information concerning any aspect of this order may be obtained by contacting Christopher Moreno, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Miller Environmental Services, LLC, Docket No. 2019-0632-IHW-E on September 25, 2020 assessing \$30,000 in administrative penalties with \$6,000 deferred. Information concerning any aspect of this order may be obtained by contacting

Tyler Richardson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Scout Energy Management LLC, Docket No. 2019-1296-AIR-E on September 25, 2020, assessing \$23,602 in administrative penalties with \$4,720 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shell Chemical LP, Docket No. 2019-1309-AIR-E on September 25, 2020, assessing \$50,438 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kinder Morgan Crude & Condensate LLC, Docket No. 2019-1430-AIR-E on September 25, 2020, assessing \$53,662 in administrative penalties with \$10,732 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Troy L. Williams dba Bell and Ford Marina Campground, Docket No. 2019-1630-PWS-E on September 25, 2020, assessing \$2,276 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Undine Texas Environmental, LLC, Docket No. 2019-1663-MWD-E on September 25, 2020, assessing \$14,813 in administrative penalties with \$2,962 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Harris County Municipal Utility District 304, Docket No. 2019-1678-PWS-E on September 25, 2020, assessing \$520 in administrative penalties with \$104 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Quadvest, L.P., Docket No. 2019-1721-MWD-E on September 25, 2020, assessing \$5,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Blue Origin Texas, LLC, Docket No. 2019-1752-PWS-E on September 25, 2020, assessing \$8,823 in administrative penalties with \$1,764 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Tracy L. Taylor, Docket No. 2019-1779-PWS-E on September 25, 2020, assessing \$7,986 in administrative penalties with \$1,597 deferred. Information concerning

any aspect of this order may be obtained by contacting Julianne Dewar, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Consolidated Water Supply Corporation, Docket No. 2020-0020-PWS-E on September 25, 2020, assessing \$2,325 in administrative penalties with \$2,325 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ZAFAR, INC. dba Bellaire Shell, Docket No. 2020-0042-PST-E on September 25, 2020, assessing \$16,227 in administrative penalties with \$3,245 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Austin, Docket No. 2020-0068-MWD-E on September 25, 2020, assessing \$6,150 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Katelyn Tubbs, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding ARLANXEO USA LLC, Docket No. 2020-0119-AIR-E on September 25, 2020, assessing \$198,000 in administrative penalties with \$39,600 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SR Aus, LLC, Docket No. 2020-0368-MWD-E on September 25, 2020, assessing \$11,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Stephanie Frederick, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Canyon Regional Water Authority, Docket No. 2020-0377-PWS-E on September 25, 2020, assessing \$1,725 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Samantha Salas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ash Grove Cement Company, Docket No. 2020-0415-AIR-E on September 25, 2020, assessing \$9,393 in administrative penalties with \$1,878 deferred. Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202004014

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 25, 2020



Notice of District Petition

Notice issued September 25, 2020

TCEQ Internal Control No. D-05132020-026; P DUB Land Holdings, LTD, a Texas limited corporation (Petitioner) filed a petition for creation of Tierra Blanca Municipal Utility District No. 1 of Randall County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the real property in the proposed District; (2)) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 230.1 acres situated in Randall County, Texas; and (4) none of the land in the proposed District is located within the corporate limits or extraterritorial jurisdiction of any city.

The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, or extend inside or outside of the boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) collect, transport, process, dispose of and control domestic, and commercial wastes; (3) gather, conduct, divert, abate, amend, and control local storm water or other local harmful excesses of water in the District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; (5) purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the District is created. (6) It is further prosed the District be granted road powers pursuant to Texas Water Code, Section 54.234. According to the petition, a preliminary investigation has been instituted to determine the cost of the project, and it is estimated by the Petitioners the ultimate cost of project contemplated will be approximately \$34,038,767 (including \$24,041,021 for water, wastewater, and drainage plus \$9,997,746 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O.

Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202004030

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 28, 2020



Notice of District Petition

Notice issued September 25, 2020

TCEQ Internal Control No. D-07012020-001; MR Stallion Run, LLC, a Texas limited liability company (Petitioner) filed a petition for creation of Travis County Municipal Utility District No. 26 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land in the proposed District; (2) the lienholders consent to the creation of the proposed District; (3) the proposed District will contain approximately 178.771 acres located within Travis County, Texas; and (4) all of the land within the proposed District is within the corporate limits of City of Mustang Ridge. By Resolution No. 20-162, passed and adopted on May 11, 2020, the City of Mustang Ridge, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment and appliances necessary to: (1) provide a water supply for municipal uses, domestic uses and commercial purposes; (2) collect, transport, process, dispose of and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state; (3) gather, conduct, divert and control local storm water or other local harmful excesses of water in the District; (4) pay organization expenses, operational expenses during construction and interest during construction; (5) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads, or improvements in aid of those roads; (6) purchase, construct, acquire, provide, operate, maintain, repair, improve, extend and develop park and recreational facilities for the inhabitants of the District; and (7) provide such other facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is created and permitted under state law. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately \$26,600,000 (including \$15,400,000 for water, wastewater, and drainage plus \$10,200,000 for roads, plus \$1,000,000 for recreational improvements).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202004031

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 28, 2020



Notice of District Petition

Notice issued September 25, 2020

TCEQ Internal Control No. D-05152020-034; Lefevre Development, Inc., a Texas corporation, and LEFCO Investments, Inc., a Texas corporation (Petitioners) filed a petition for creation of Montgomery County Municipal Utility District No. 160 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 140.6575 acres located within Montgomery County, Texas; and (4) all of the land within the proposed District is within the corporate limits of the City of Montgomery. By Resolution No. 2020-02, passed and adopted on February 11, 2020, the city of Montgomery, Texas gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, or extend inside or outside of the boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) collect, transport, process, dispose of and control domestic, and commercial wastes; (3) gather, conduct, divert, abate, amend, and control local storm water or

other local harmful excesses of water; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; (5) design, acquire, construct, finance, improve, and maintain parks and recreational facilities; (6) purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$11,140,000 (\$4,100,000 for water, wastewater, and drainage plus \$2,600,000 for recreation plus \$4,440,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202004032

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 28, 2020



Notice of District Petition

Notice issued September 25, 2020

TCEQ Internal Control No. D-07012020-001; Headway Estates, LTD, a Texas limited partnership, and Hannover Estates, LTD, a Texas limited partnership (Petitioners) filed a petition for creation of Harris County Municipal Utility District No. 560 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was

filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 235.642 acres located within Harris County, Texas; and (4) all of the land within the proposed district is located within the extraterritorial jurisdiction of the City of Houston. By Ordinance No. 2020-131, passed and adopted on February 19, 2020 the City of Houston, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the general nature of the work proposed to be done by District at present time is the purchase, construction, acquisition, maintenance, and operation of a waterworks and sanitary sewer system for residential and commercial purposes, construction, acquisition, improvement, extension, maintenance, and operations of works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District, and to control abate and amend local storm waters or other harmful excesses of waters and road facilities and park and recreational facilities, and such other purchase, construction, acquisition, improvement, maintenance and operation of such additional facilities, systems, plants and enterprises, as shall be consistent with all of the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately \$115,244,000 (including \$66,104, 000 for water, wastewater, and drainage plus \$35,620,000 for roads plus \$13,520,000 for park and recreational facilities).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at

(512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202004033

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 28, 2020



Notice of District Petition

Notice issued September 25, 2020

TCEQ Internal Control No. D-06292020-057; Mr. Robert Johnson and Ms. Teresa Johnson (Petitioners) filed a petition for creation of J-O Ranch Municipal Utility District of Comal County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 126.553 acres located within Comal County, Texas; and (4) all of the land within the proposed district is located within the extraterritorial jurisdiction of the City of New Braunfels.

By Resolution No. 2020-R29, passed and adopted on May 11, 2020, the City of New Braunfels, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment and appliances necessary to: (1) provide a water supply for municipal uses, domestic uses and commercial purposes; (2) collect, transport, process, dispose of and control all domestic, industrial, or communal wastes whether in fluid, solid, or composite state; (3) gather, conduct, divert and control local storm water or other local harmful excesses of water in the District; (4) pay organization expenses, operational expenses during construction and interest during construction; (5) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads, or improvements in aid of those roads; and (6) to provide such other facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is created and permitted under state law.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$16,900,000 (including \$14,100,000 for water, wastewater, and drainage plus \$2,800,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Inter-

nal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202004034

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 28, 2020



Notice of Hearing Jupiter Brownsville, LLC: SOAH Docket
No. 582-21-0111; TCEQ Docket No. 2020-1080-AIR;

Proposed Permit Nos. 147681, PSDTX1522, and
GHGPSDTX172

APPLICATION.

Jupiter Brownsville, LLC, 5151 Belt Line Road, Suite 715, Dallas, Texas 75254-7547, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of proposed State Air Quality Permit 147681, issuance of Prevention of Significant Deterioration (PSD) Air Quality Permit PSDTX1522, and issuance of Greenhouse Gas (GHG) PSD Air Quality Permit GHGPSDTX172 for emissions of GHGs, which would authorize construction of a Heavy Condensate Upgrader Facility located at 11700 RL Ostos Road, Brownsville, Cameron County, Texas 78521. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <<https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.355277%2C25.961111&level=12>>. For the exact location, refer to the application. This application was processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code (TAC), Chapter 101, Subchapter J. The proposed facility will emit the following air contaminants in a significant amount: carbon monoxide, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less and sulfur dioxide. In addition, the facility will emit the following air contaminants: hazardous air pollutants, hydrogen sulfide and sulfuric acid mist.

The degree of PSD increment predicted to be consumed by the proposed facility and other increment-consuming sources in the area is as follows:

Sulfur Dioxide

Maximum Averaging Time	Maximum Increment Consumed ($\mu\text{g}/\text{m}^3$)	Allowable Increment ($\mu\text{g}/\text{m}^3$)
3-hour	417	512
24-hour	31	91
Annual	2	20

PM₁₀

Maximum Averaging Time	Maximum Increment Consumed ($\mu\text{g}/\text{m}^3$)	Allowable Increment ($\mu\text{g}/\text{m}^3$)
24-hour	0	30
Annual	4	17

Nitrogen Dioxide

Maximum Averaging Time	Maximum Increment Consumed ($\mu\text{g}/\text{m}^3$)	Allowable Increment ($\mu\text{g}/\text{m}^3$)
Annual	3	25

PM_{2.5}

Maximum Averaging Time	Maximum Increment Consumed ($\mu\text{g}/\text{m}^3$)	Allowable Increment ($\mu\text{g}/\text{m}^3$)
24-hour	7	9
Annual	1	4

This application was submitted to the TCEQ on July 14, 2017. The Executive Director has determined that the emissions of air contaminants from the proposed facility which are subject to PSD review will not violate any state or federal air quality regulations and will not have any significant adverse impact on soils, vegetation, or visibility. All air contaminants have been evaluated, and "best available control technology" will be used for the control of these contaminants.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The permit application, executive director's preliminary decision, draft permit, and the executive director's preliminary determination summary and executive director's air quality analysis, are available for viewing and copying at the TCEQ Central Office and the TCEQ Harlingen Regional Office. Copies of these documents are also available at the Brownsville Public Library, 2600 Central Boulevard, Brownsville, Cameron County, Texas. Copies may also be obtained by emailing jupiterbrownsville@gmail.com or by calling (956) 335-3100. The facility's compliance file, if any exists, is available for public review at the TCEQ Harlingen Regional Office, 1804 W Jefferson Avenue, Harlingen, Texas.

DIRECT REFERRAL.

The Notice of Application and Preliminary Decision was published in English and Spanish on May 25, 2019. On August 20, 2020, the Applicant filed a request for direct referral to the State Office of Administrative Hearings (SOAH). Therefore, the chief clerk has referred this

application directly to SOAH for a hearing on whether the portions of the application for State Air Quality Permit Number 147681 and for PSD Air Quality Permit Number PSDTX1522 comply with all applicable statutory and regulatory requirements. A contested case hearing is not applicable to the portion of the application for GHG PSD Air Quality Permit Number GHGPSDTX172, and the Executive Director may issue final approval of the application for the portion of the application for GHG PSD Air Quality Permit Number GHGPSDTX172.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. -- November 16, 2020

To join the Zoom meeting via computer:

<https://soah-texas.zoomgov.com/>

Meeting ID: 160 566 6542

Password: 0111JUP

or

To join the Zoom meeting via telephone:

(346) 248-7799

Meeting ID: 160 566 6542

Password: 0606839

Visit the SOAH website for registration at: <http://www.soah.texas.gov/> or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will be conducted in accordance with the Chapter 2001, Texas Government Code; Chapter 382, Texas Health and Safety Code; TCEQ rules including 30 TAC Chapter 116, Subchapters A and B; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155.

To request to be a party, you must attend the hearing and show you would be affected by the application in a way not common to the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

MAILING LIST.

You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION.

Public comments and requests must be submitted either electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application, the permitting process, or the contested case hearing process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040. General information regarding the TCEQ may be obtained electronically at www.tceq.texas.gov.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information regarding the TCEQ can be found at www.tceq.texas.gov.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Further information may also be obtained from Jupiter Brownsville LLC at the address stated above or by calling Mr. Tom Ramsey, Chief Executive Officer at (956) 335-3100.

Issued: September 29, 2020

TRD-202004061

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 30, 2020



Notice of Intent to Perform Removal Action at the Kingsland Proposed State Superfund Site, Kingsland, Llano County, Texas

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) hereby issues public notice of intent to perform a removal action, as provided by Texas Health and Safety Code (THSC), §361.133, for the Kingsland proposed state Superfund site (the site). The site, including all land, structures, appurtenances, and other improvements, occupies approximately 0.758 acres located at 2101 West Ranch Road 1431 (also known as 2101 Farm-to-Market Road 1431) in Kingsland, Llano County, Texas. The site includes any areas where hazardous substances have come to be located as either a direct or indirect result of releases of hazardous substances from the site. The site was proposed for listing on the Texas Superfund Registry in the July 31, 1998, issue of the *Texas Register* (24 TexReg 7927).

The site is the location of a former laundromat that operated from 1968 through 1988. Until 1979, the former laundromat contained a coin-operated dry-cleaning machine that used tetrachloroethylene, also known as perchloroethylene (PCE), as a cleaning solvent. PCE is a hazardous substance listed in 40 Code of Federal Regulations §302.4(a) and, therefore, is a hazardous substance under the Texas Solid Waste Disposal Act (THSC, Chapter 361). A commercial building is currently located at the site.

The removal action will consist of measures necessary to mitigate the exposure risk to occupants of the on-site building, such as sealing the concrete floor, installation of a vapor mitigation system, or other actions as deemed appropriate. The removal action is appropriate to protect human health and the environment and can be completed without extensive investigation and planning and will achieve a significant cost reduction for the site.

A portion of the records for the site is available for review during regular business hours at the Kingsland Branch Library, located at 125 W. Polk St., Kingsland, Texas 78639, (325) 388-3170. Copies of the complete public record file may be obtained from the commission's Central File Room (CFR). Due to the coronavirus, the CFR is currently closed to the public, however, the site records may be accessed by visiting the TCEQ CFR Online at <https://records.tceq.texas.gov> under the record series "WST/Superfund" and Primary ID "002". Additionally, information requests can be submitted by emailing cfreg@tceq.texas.gov or at <https://www.tceq.texas.gov/agency/data/records-services>.

Information is also available regarding the state Superfund program at <https://www.tceq.texas.gov/remediation/superfund/sites/index.html>.

For further information, please contact Scott Settemeyer, TCEQ Project Manager, Remediation Division, at (512) 239-3429, or John Flores, TCEQ Community Relations Coordinator, at (800) 633-9363 or (512) 239-5674.

TRD-202004041

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 29, 2020



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 9, 2020**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 9, 2020**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: BZSTAR'S 2, INC. dba EZ Trip 2; DOCKET NUMBER: 2018-0897-PST-E; TCEQ ID NUMBER: RN102130531; LOCATION: 2944 North Buckner Boulevard, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retails sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$4,500; STAFF ATTORNEY: Kevin Bartz, Litigation Division, MC 175, (512) 239-6225; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: NORTH VICTORIA UTILITIES, INC.; DOCKET NUMBER: 2019-1445-PWS-E; TCEQ ID NUMBER: RN102673324; LOCATION: 210 Longview Drive near Victoria, Victoria County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(B)(iii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request. Specifically, records of the disinfectant residual monitoring results from the distribution system were not available for review; 30 TAC §290.43(c)(1), by failing to provide the ground storage tank (GST) with a roof ventilator designed by an engineer and installed in strict accordance with American Water Works Association standards and equipped with a corrosion-resistant 16-mesh or finer screen. Specifically, the GST vent did not have a screen; 30 TAC §290.43(c)(2), by failing to ensure that the facility's GST hatch remains locked except during inspection and maintenance; Texas Health and Safety Code, §341.0315(c), and 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to maintain a

minimum disinfectant residual of 0.2 milligram per liter (mg/L) of free chlorine throughout the distribution system at all times. Specifically, on June 3, 2019, a free chlorine residual of 0.00 mg/L was measured at 210 Longview Drive; and 30 TAC §290.42(b)(1) and (e)(3), by failing to provide continuous and effective disinfection that can be secured under all conditions; PENALTY: \$890; STAFF ATTORNEY: Ben Warms, Litigation Division, MC 175, (512) 239-5144; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-202004040

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 29, 2020



Notice of Opportunity to Request a Public Meeting for a Development Permit Application for Construction Over a Closed Municipal Solid Waste Landfill: Proposed Permit No. 62040

Application. Wallcon Industrial, LLC, 3819 Maple Avenue, Dallas, Texas 75219, has applied to the Texas Commission on Environmental Quality (TCEQ) for a development permit for construction over a closed municipal solid waste landfill (Proposed Permit No. 62040). The proposed development concerns a tract of land of approximately 12.53 acres located at 2377 Walnut Hill Lane, Dallas, Texas 75219 and consists of an enclosed office/warehouse facility comprised of two, single-story buildings with a total footprint of about 182,512 square feet, and associated concrete drive, parking areas, sidewalks, landscaping, and support utilities. The development permit application is available for viewing and copying at Bachman Branch Public Library 9480 Webb Chapel Road Dallas, Texas 75220, and may be viewed online at <https://clientportal.vertexeng.com/fl/A3IDVscVbk#folder-link/>. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/1C49SO1>. For exact location, refer to application.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application to the Office of Chief Clerk at the address included in the information section below. TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

If a public meeting is to be held, a public notice shall be published in a newspaper that is generally circulated in the county in which the proposed development is located. All the individuals on the adjacent landowners list shall also be notified at least 15 calendar days prior to the meeting.

Executive Director Action. The executive director shall, after review of the application, issue his decision to either approve or deny the development permit application. Notice of decision will be mailed to the owner and to each person that requested notification of the executive director's decision.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at <www.tceq.texas.gov/goto/cid>. Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments, requests, and petitions must be submitted either electronically at <<http://www14.tceq.texas.gov/epic/eComment/>> or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at <www.tceq.texas.gov/goto/pep>. Si desea información en español, puede llamar al (800) 687-4040.

General information regarding the TCEQ can be found at our web site at <www.tceq.texas.gov>. Further information may also be obtained from Wallcon Industrial, LLC at the address stated above or by calling The Vertex Companies, Inc at (214) 499-9234).

TRD-202004060

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 30, 2020



Notice of Water Rights Application

Notices issued September 29, 2020

APPLICATION NO. 13612; Navidad Operating Company, LLC, 16421 FM 344 W, Bullard, Texas 75757, Applicant, seeks a temporary water use permit to divert and use not to exceed 30 acre-feet of water within a period of two years from Brush Creek (Birdwell Lake), tributary of Theuvenins Creek, tributary of the Neches River, Neches River Basin at a maximum diversion rate of 1.11 cfs (500 gpm) for mining purposes in Tyler County. The application was received on May 20, 2019. Additional information and fees were received on July 1, 2019 and February 13, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on July 16, 2019. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, streamflow restrictions and installing a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by October 22, 2020.

APPLICATION NO. 13644; Navidad Operating Company, LLC, 16421 FM 344 W, Bullard, Texas 75757, Applicant, seeks a temporary water use permit to divert and use not to exceed 30 acre-feet of water within a period of two years from Sevenmile B ranch (Allison Lake), tributary of Theuvenins Creek, tributary of the Neches River, Neches River Basin at a maximum diversion rate of 1.11 cfs (500 gpm) for mining purposes in Tyler County. The application was received on November 25, 2019. Additional information and fees were received on January 31 and February 5 and 13, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on February 13, 2020. The Executive Di-

rector completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, streamflow restrictions and installing a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by October 22, 2020.

APPLICATION NO. 13487; Aethon Energy Operating, LLC, 12377 Merit Drive, Suite 1200, Dallas Texas, 75251, Applicant, seeks a Temporary Water Use Permit to divert and use not to exceed 3,351.2 acre-feet of water within a period of 3 years from the Attoyac River, Neches River Basin for mining purposes in Nacogdoches County. The application and partial fees were received on March 23, 2018. Additional information and fees were received on July 6, 2018. The application was declared administratively complete and filed with the Office of the Chief Clerk on September 24, 2018. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, streamflow restrictions and installation of a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by October 13, 2020.

APPLICATION NO. 13525; Aethon Energy Operating, LLC, 12377 Merit Drive, Suite 1200, Dallas Texas, 752151, Applicant, seeks a Temporary Water Use Permit to divert and use not to exceed 3,222.3 acre-feet of water within a period of 3 years from the Attoyac River, Neches River Basin for mining purposes in Nacogdoches and San Augustine counties. The application and fees were received on October 3, 2018. The application was declared administratively complete and filed with the Office of the Chief Clerk on November 13, 2018. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions including, but not limited to, streamflow restrictions and installation of a measuring device for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by October 13, 2020.

APPLICATION NO. 13677; Vopak Moda Houston, LLC, P.O. Box 897, Deer Park, Texas 77536-0897, Applicant, has applied for a Water Use Permit to divert and use not to exceed 300 acre-feet of water per year from two diversion points on Buffalo Bayou (Houston Ship Channel), tributary of the San Jacinto River, San Jacinto River Basin, at a maximum diversion rate of 33.4 cfs (15,000 gpm) at

each point, for industrial purposes in Harris County. The application and fees were received on February 7, 2020. The application was declared administratively complete and filed with the Office of the Chief Clerk on March 17, 2020. The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions, including, but not limited to, the installation of measuring devices for diversions. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results. A public meeting is intended for the taking of public comment, and is not a contested case hearing. The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement [I/we] request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns.

Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202004059

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 30, 2020

Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Personal Financial Statement due July 31, 2020

Carl Anderson, 12150 14th St., Santa Fe, Texas 77510

Dwayne A. Bohac, 7941 Katy Freeway #230, Houston, Texas 77024

Gary O. Boren, 5009 103rd St., Lubbock, Texas 79424

Kim A. Cooks, P.O. Box 224102, Dallas, Texas 75222

Emily F. Cutrer, 8902 Sundance Ridge, Texarkana, Texas 75503

Ralph Diaz, 10610 Gettysburg, Corpus Christi, Texas 78410-2407

John Esparza, Texas Trucking Association, 510 W. 15th St., Austin, Texas 78701

Amber N. Givens-Davis, 3824 Cedar Springs Rd., Ste. 253, Dallas, Texas 75219

Carol Kay Hawkins-Garcia, 7927 Union Shoals, San Antonio, Texas 78244

Sandra L. Jackson, P.O. Box 542601, Grand Prairie, Texas 75054

Traci G. LaChance, P.O. Box 877, Clute, Texas 77531

Stephanie V. Leibe, 310 Heritage Dr., Austin, Texas 78737

Lloyd A. Loya, 1815 Military Rd., Penitas, Texas 78576

Albert H. Myers, 288 FM 770 N., Liberty, Texas 77575

Courtney N. Phillips, Ph.D., 1807 W. 46th St., Austin, Texas 78756

Aaron Paul Pierce, 2214 Washington Ave., Waco, Texas 76701

Cesar Rodriguez, Jr., 2020 W. 30th St., Mission, Texas 78574

Luis Rosas, 201 E. Main St. #800, El Paso, Texas 79901

Debra S. Sharp, 2118 W. Main St., Houston, Texas 77098

Michael Williams, 4912 Shadowood Rd., Colleyville, Texas 76034

Shaukat A. Zakaria, 2600 Cordes Dr., Ste. E, Sugar Land, Texas 77479

TRD-202003994

Anne Peters

Executive Director

Texas Ethics Commission

Filed: September 25, 2020

General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of September 14, 2020 to September 25, 2020. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, October 2, 2020. The public comment period for this project will close at 5:00 p.m. on Sunday, November 1, 2020.

FEDERAL AGENCY ACTIONS:

Applicant: Enterprise Products Operating LLC

Location: The project site is located in the Houston Ship Channel at the Enterprise Houston Terminal, 15602 Jacintoport Boulevard, in Houston, Harris County, Texas.

Latitude & Longitude (NAD 83): 29.737892, -95.126816

Project Description: The applicant proposes to add 4 Dredge Material Placement Areas (DMPAs), specifically 14, 15, 16 and HMS 850, to a current authorization for maintenance dredging activities, which was previously modified on 20 August 2019. Alternative dredging procedures are also proposed to be added to the current authorization, including mechanical silt blade maintenance dredging of approximately 98 acres at the Enterprise Houston Terminal on the Houston Ship Channel.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2008-00073. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act of 1899 and Section 404 of the Clean Water Act. The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 20-1312-F1

Applicant: U.S. Army Corps of Engineers- Galveston District

Location: Within navigable waters of the US located in the Houston Ship Channel (HSC) along with all side, access, and bypass channels as well as any immediate adjacent affected bay system, excluding all sanctuaries and refuges, located in Galveston, Chambers, and Harris Counties, Texas.

Project Description: This general permit authorizes work in navigable waters of the US to facilitate utility line removals as ordered by the Corps' District Engineer (DE) Directive to Remove letters sent out on behalf of the Secretary of the Army for the construction of the Federally authorized HSC Improvement Project (HSCIP).

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2020-00228. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act of 1899 and Section 404 of the Clean Water Act.

CMP Project No: 21-1013-F1

Applicant: Port of Galveston (Galveston Wharves)

Location: The project site is located along the Galveston Ship Channel, in Galveston County, Texas.

Latitude & Longitude (NAD 83): 29.313683, -94.785142

Project Description: This is a permit extension of time for previously authorized work and a project modification. The applicant requests an extension of time for the maintenance of Port facilities and includes work currently permitted under Permit Amendment No. SWG-2011-00162 for the closure of Slips 12-14, 14-15, 36-37, 38-39, and 40-41 and the deepening of the existing dry-dock basin to -90 MSL.

New work will consist of the expansion of the existing 1,400-foot Turning Circle No.1 at Station 9+000 to 1,500-foot and improvements to Berth 10 which will provide the navigational safety and structural requirements necessary for larger cruise ships to begin service to the Port in 2021. New work dredged material and continued maintenance dredged material will be placed in previously authorized Pelican Island Disposal Areas A, B, C, the "Todd" Disposal Area, and/or Fort San Jacinto Disposal Area. Improvements to Berth 10 include: demolish and

remove twenty existing cast-in-place topping and existing deck units; remove twenty-two existing double bill bollards; seventeen new foam finders; thirteen new four-pile breasting dolphins; six new four-pile mooring dolphins; eight new 200-ton T-head bollards; six new 100-ton T-head bollards; four new 12-pile dolphins; and, maintenance dredging of all berthing and turning areas to previously authorized depths.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2011-00162. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act of 1899 and Section 404 of the Clean Water Act. The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 21-1014-F1

Applicant: Celanese Corporation

Location: The project site is located in Clear Creek Channel, where State Highway (SH) 146 crosses in Clear Lake Shores, in Harris County, Texas.

Latitude & Longitude (NAD 83): 29.549328, -95.023611

Project Description: The applicant proposes to decommission in place 2,750 linear feet of an existing 6-inch pipeline and the removal of 875 linear feet of the existing 6-inch pipeline near SH 146 and under Clear Creek Channel due to the planned expansion of SH 146. All workspace for the pipeline removal and abandonment are within the Texas Department of Transportation (TXDOT) construction temporary or permanent right-of-way.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2020-00459. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act of 1899.

CMP Project No: 21-1016-F1

Applicant: Enterprise Products Operating LLC

Location: The project site is located in Barbour's Cut, Wharf No. 8, at the west end of the Barbour's Cut Ship Channel Turning Basin, at 0 N L Street, in Morgan's Point, Harris County, Texas.

Latitude & Longitude (NAD 83): 29.685, -95.009

Project Description: The applicant proposes to utilize silt blade dredging techniques in order to conduct maintenance dredging activities over a previously authorized 12.6-acre area to depths of -45 feet Mean Low Tide (MLT) with 2 feet allowable over depth.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2014-00905. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act of 1899 and Section 404 of the Clean Water Act. The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 21-1015-F1

Applicant: U.S. Army Corps of Engineers

Location: Within navigable waters of the US within the SWG area of responsibility boundaries, excluding waters located in Louisiana.

Latitude & Longitude (NAD 83): N/A

Project Description: This general permit authorizes work in navigable waters of the US for the construction, repair, rehabilitation, maintenance, modification, and replacement, of residential or commercial pile-supported piers for single or multifamily residences for single littoral parcels including lodging facilities.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2002-02904. This application will be reviewed pursuant to Section 10 of the Rivers and Harbor Act.

CMP Project No: 21-1025-F1

Applicant: Port of Harlingen

Location: The project is located in the Arroyo Colorado River at the existing Harlingen Turning Basin and within state and Port-owned property along the shoreline in Harlingen, Cameron County, Texas.

Latitude & Longitude (NAD 83): 26.195476, - 97.598268

Project Description: The applicant proposes to extend the existing turning basin located at the terminal end of the Harlingen Federal Channel and construct two barge fleet stations within state and Port-owned property along the banks of the Arroyo Colorado. The two barge fleet stations would be constructed along the eastern bank of the Channel. Barge Fleet Station #1 and #2 would be 8.4-acre basins. The fleet stations would be mechanically excavated to an approved channel depth of -15 feet (ft.) MLLW (-12 ft. MLLW plus an additional 2 ft. allowable overdepth and 1 ft. advanced maintenance). The turning basin would be deepened to an approved channel depth of -17 ft. mean lower low water (MLLW) (-14 ft. MLLW plus an additional 2 ft. allowable overdepth and 1 ft. advanced maintenance) and extended southward by 743 feet to create an additional 9.59 acres of turning basin. Mechanical excavation methods from land and barges would be used to excavate approximately 1 million cubic yards of material from above the water line and 150,000 cubic yards of material would be excavated below the water line. Dredge material will be placed within upland areas on a nearby feed lot property (Site 1) and/or two adjacent, undeveloped parcels of land both owned by the Port (Site 4). An approximate 638-foot-long sheetpile bulkhead would be installed along the western bank of the current and newly extended turning basin. Also, an approximate 253-foot-long sheetpile bulkhead would be installed approximately 3 feet in front of an existing bulkhead and 400 cubic yards of backfill would be placed between the bulkheads. This will provide a total of 891-feet of bulkhead in the project area. The port also proposes to conduct maintenance dredging of the turning basin and barge fleet stations for a 10-year period. Maintenance dredging would occur every three years and total approximately 165,000 cubic yards of maintenance dredge material per dredge cycle. Maintenance dredge material will be placed in a nearby federal dredged material placement area (PA) such as PA 21 or PA 23.

MITIGATION: The applicant proposes to mitigate for the permanent impacts by creating 1.81 acres and enhancing 0.38 acres of emergent wetland for a total of 2.19 acres. The expected wetland mitigation ratio is 1:1. The wetland to be impacted is the 1.53-acre fringe emergent wetland along the Arroyo Colorado riparian corridor. This wetland will be impacted by excavation to create the turning basin extension. The mitigation site is located on property owned by the applicant and is approximately 2,000 feet downstream of the turning basin. The mitigation site that will be created is currently undeveloped with upland areas dominated by native thornscrub habitat. The upland will be excavated to similar elevations as the impacted wetland and planted with vegetation identified within similar fringe wetlands such as smooth cordgrass, sea ox-eye daisy (*Borrhichia frutescens*), seashore dropseed (*Sporobolus virginicus*), and primrose willow (*Ludwigia peruviana*). The part of the mitigation site that will be enhanced is the abutting fringe wetland along the Arroyo Colorado. The enhancements will include removal of non-native species such as common reed, topographic contouring that will help increase the diversity of plant species and enhance wetland hydrology, and planting of native species as needed. A copy of the plan will be provided upon request.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-1997-00932. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 21-1024-F1

Applicant: Vidal Conde

Location: The project site is located in the Aransas Channel and adjacent wetlands on the east side of the Aransas Causeway on Parrot Island Blocks 3R and 4R in Aransas Pass, Nueces County, Texas.

Latitude & Longitude (NAD 83): 27.877010, - 97.094590

Project Description: The applicant proposes to reclaim land by constructing a 345-foot-long bulkhead with a 55 foot-long wing wall on the west side, and a 38-foot-long wing wall on the east side, approximately 85 feet from the front property line in open waters of the Aransas Channel, and place approximately 511 cubic yards of backfill into 0.25 acre of open waters and adjacent wetlands below the high tide line. The applicant's stated purpose is to stabilize the site from further long-term erosion that has occurred along this shoreline over the years. Review of map data shows that the proposed bulkhead will be approximately 225 feet from the centerline of Aransas Channel.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2010-00813. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 21-1023-F1

Applicant: City of Corpus Christi

Location: The project site is located in Corpus Christi Bay at North Beach between the Corpus Christi Ship Channel and Rincon Channel in Corpus Christi, Nueces County, Texas.

Latitude & Longitude (NAD 83): 27.818086, -97.389368

Project Description: This request is for an extension of time for a permit issued 17 February 2015 and due to expire 31 December 2020. The applicant proposes to place up to 150,000 cubic yards (CY) of beach quality sand (compatible with existing beach) per event on an approximately 3,900-foot stretch of North Beach, a downtown recreational area on the western shoreline of Corpus Christi Bay. Of the total material to be placed, approximately 130,000 CY would be imported from an inland source and the remaining 20,000 CY would be excavated and redistributed from the northern (accretional) end of the existing beach. Material would be placed over a total of approximately 21.6 acres of existing beach within jurisdictional areas below the Annual High Tide Line; of the total placement area, 20.3 acres are below the Mean High Water Line. Sand would be excavated from a total of approximately 4.2 acres of jurisdictional areas below the Annual High Tide Line; of the area excavated, 4.0 acres will be from below the Mean High Water Line.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-1998-00131. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA). Note: The consistency review for this project may be conducted by the Texas Commission on Envi-

ronmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 21-1022-F1

FEDERAL AGENCY ACTIVITIES:

Applicant: US Fish and Wildlife Service

Location: The project site is located in Espiritu Santo Bay starting at a point (28.409214° North; -96.479264° West) and continuing to a point (28.332152° North; -96.463007° West) on Matagorda Island, near Port O'Connor, in Calhoun County, Texas.

Latitude & Longitude (NAD 83): 28.365265, -96.481988

Project Description: The applicant proposes to perform hydraulic dredging to a uniform depth of -10 feet mean low water removing a total of 381,327 cubic yards of material starting at the Gulf Intracoastal Waterway (GIWW), through Espiritu Santo Bay, and terminating at the Matagorda Island boat dock within the USFWS Aransas National Wildlife Refuge. The hydraulic dredging will be performed in phases.

In Phase 1, the applicant proposes to start at the confluence of the GIWW at a point (28.409214° North; 096.479264° West) to dredge a channel, 3,715 linear feet by 125-foot-wide, into Espiritu Santo Bay. The applicant also proposes to start at the Matagorda Island boat dock within the USFWS Aransas National Wildlife Refuge at a point (28.332152° North; 096.463007° West) to dredge a channel 835 linear feet by 272-foot-wide which will then narrow to 100-foot-wide at the entry to Matagorda Island. The Phase 1 hydraulic dredging will remove a total of 113,560 cubic yards of material. A total of 65,382 cubic yards of material will be pumped by pipe equally into the Eastern and Western USACE dredged material placement areas (DMPAs) also known as Dewberry and Blackberry Islands which are located adjacent to the GIWW. A total of 48,178 cubic yards will be pumped by pipe into the upland DMPA located on Matagorda Island, authorized by SWG-1998-01075, formerly D-9406.

In Phase 2, the applicant proposes to start at terminus of Phase 1 dredging limits to dredge a channel, 27,459 linear feet by 125-foot-wide, within Espiritu Santo Bay. The Phase 2 hydraulic dredging will remove a total of 267,767 cubic yards of material. This dredged material will be pumped by pipe into the upland DMPA located on Matagorda Island, authorized by SWG-1998-01075, formerly D-9406.

Type of Application: U.S. Army Corps of Engineers (USACE) permit application # SWG-2000-00995, formerly 22065. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA).

CMP Project No: 21-1021-F2

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202004063

Mark A. Havens

Chief Clerk and Deputy Land Commissioner

General Land Office

Filed: September 30, 2020

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Department of State Health Services

Licensing Actions for Radioactive Materials

During the first half of July 2020, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Business Filing and Verification Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radiation Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: 512-834-6690, or by e-mail to: RAMlicensing@dshs.texas.gov.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
San Angelo	W&W-AFCO Steel L.L.C.	L07064	San Angelo	00	07/02/20
Throughout TX	Federal Norm Services L.L.C.	L07063	Dallas	00	07/02/20

Throughout TX	Arctic Testing and Inspection L.L.C.	L07065	La Porte	00	07/06/20
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AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Dallas	Medi Physics Inc. dba GE Healthcare	L05529	Dallas	54	07/09/20
Dallas	Texas Oncology P.A.	L05534	Dallas	17	07/10/20
Fort Worth	Baylor All Saints Medical Center dba Baylor Scott & White All Saints Medical Center – Fort Worth	L02212	Fort Worth	112	07/07/20
Fort Worth	University of North Texas Health Science Center Fort Worth	L02518	Fort Worth	51	07/09/20
Houston	Shell Chemical L.P.	L02116	Houston	60	07/13/20
Houston	NDT Texas L.L.C.	L06928	Houston	06	07/03/20
Lubbock	Methodist Children’s Hospital dba Covenant Children’s Hospital	L06852	Lubbock	04	07/08/20
Lufkin	Memorial Health System of East Texas dba Chi St Luke’s Health Memorial	L01346	Lufkin	102	07/07/20
Lufkin	East Texas Hematology and Oncology Clinic P.A.	L06039	Lufkin	07	07/06/20
Plano	Orano Med L.L.C.	L06781	Plano	19	07/02/20
Throughout TX	Rodriguez Engineering Laboratories L.L.C. dba Rodriguez Engineering Laboratories	L04700	Austin	27	07/02/20
Throughout TX	Rodriguez Engineering Laboratories L.L.C. dba Rodriguez Engineering Laboratories	L04700	Austin	27	07/06/20
Throughout TX	Universal Pressure Pumping Inc.	L06871	Cleburne	07	07/06/20
Throughout TX	Professional Service Industries Inc.	L06332	Grapevine	15	07/13/20

Throughout TX	The Methodist Hospital dba Houston Methodist	L00457	Houston	210	07/08/20
Throughout TX	Versa Integrity Group Inc.	L06669	Houston	26	07/02/20
Throughout TX	Barracuda Specialty Service L.L.C.	L06915	Humble	05	07/02/20
Throughout TX	Barracuda Specialty Service L.L.C.	L06915	Humble	06	07/07/20
Throughout TX	Kleinfelder Inc.	L06960	Irving	03	07/02/20
Throughout TX	PSI Wireline Inc.	L05911	San Angelo	12	07/02/20
Throughout TX	Professional Service Industries Inc.	L04946	San Antonio	20	07/02/20
Throughout TX	O'Connor & Kezar L.L.C.	L06318	San Antonio	06	07/07/20
Throughout TX	Oilpatch NDT L.L.C.	L06718	Seabrook	17	07/02/20
Throughout TX	Southwestern Imaging Systems and Services L.P.	L06241	Spring	06	07/07/20
Throughout TX	Ludlum Measurements Inc.	L01963	Sweetwater	111	07/02/20
Throughout TX	Professional Service Industries Inc.	L04943	Victoria	12	07/02/20

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Clifton	Lhoist North America of Texas L.L.C.	L02461	Clifton	18	07/02/20
Throughout TX	Professional Service Industries Inc.	L04947	Austin	29	07/02/20
Throughout TX	Professional Service Industries Inc.	L04938	Clute	15	07/02/20
Throughout TX	Professional Service Industries Inc.	L04939	Corpus Christi	21	07/13/20
Throughout TX	Professional Service Industries Inc.	L06338	Odessa	05	07/13/20
Throughout TX	Professional Service Industries Inc.	L03924	Plano	32	07/13/20

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
Valley View	Pumpco Energy Services Inc.	L06507	Valley View	25	07/02/20

TRD-202004065
 Barbara L. Klein
 General Counsel
 Department of State Health Services
 Filed: September 30, 2020



Texas Lottery Commission

Scratch Ticket Game Number 2288 "JOKER'S WILD"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2288 is "JOKER'S WILD". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2288 shall be \$2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2288.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, JOKER SYMBOL, WILD SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$500 and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2288 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV

JOKER SYMBOL	WIN\$
WILD SYMBOL	DBL
\$2.00	TWO\$
\$4.00	FOR\$
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$50.00	FFTY\$
\$100	ONHN
\$500	FVHN
\$30,000	30TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2288), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 2288-000001-001.

H. Pack - A Pack of the "JOKER'S WILD" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. Please note the Packs will be in an A, B, C and D configuration.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "JOKER'S WILD" Scratch Ticket Game No. 2288.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "JOKER'S WILD" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose twenty-three (23) Play Symbols. If a player matches any of

the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "JOKER" Play Symbol, the player wins the PRIZE for that symbol instantly. If the player reveals a "WILD" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly twenty-three (23) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly twenty-three (23) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the twenty-three (23) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the twenty-three (23) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to ten (10) times in accordance with the approved prize structure.

B. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. Each Ticket will have three (3) different WINNING NUMBERS Play Symbols.

E. Non-winning YOUR NUMBERS Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than two (2) times.

G. The "JOKER" (WINS) and "WILD" (DBL) Play Symbols will never appear in the WINNING NUMBERS Play Symbol spots.

H. The "WILD" (DBL) Play Symbol will only appear on winning Tickets as dictated by the prize structure.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. No Prize Symbol in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and \$20).

2.3 Procedure for Claiming Prizes.

A. To claim a "JOKER'S WILD" Scratch Ticket Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$50.00, \$100 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "JOKER'S WILD" Scratch Ticket Game prize of \$30,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "JOKER'S WILD" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "JOKER'S WILD" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "JOKER'S WILD" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a

prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2288. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2288 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$2.00	748,800	9.62
\$4.00	576,000	12.50
\$5.00	115,200	62.50
\$10.00	86,400	83.33
\$20.00	57,600	125.00
\$50.00	47,580	151.32
\$100	3,180	2,264.15
\$500	240	30,000.00
\$30,000	5	1,440,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.40. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2288 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2288, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202004050
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: September 29, 2020



South East Texas Regional Planning Commission

Regionally Coordinated Transportation Planning

Request For Proposals

Background

The South East Texas Regional Planning Commission (SETRPC) is a voluntary association of local governments that serves the area composed of Hardin, Jefferson, and Orange counties. The SETRPC resolves area-wide problems by promoting intergovernmental cooperation and coordination, by conducting comprehensive regional planning, and by providing a forum for the discussion and study of area issues. The SETRPC also conducts comprehensive planning services in community development, transportation, and environmental resources. The SETRPC is the designated Lead Agency in the southeast Texas region for regional public transportation coordination and cooperation with the Texas Department of Transportation for compliance with Chapter 461 of House Bill 3588 (eliminate waste, generate efficiencies, and reduce air pollution), in developing a coordinated public transit-human services transportation plan as required by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). This plan is called the Regional Public Transportation Coordination Plan (RPTCP) and was completed in March 2017. The RPTCP for the southeast Texas region identifies efforts for regional service coordination, creates a transportation coordination plan, and creates an action plan for priority projects.

Public transportation in the southeast Texas region includes primarily demand-response service, with two localities managing fixed-route systems. The SETRPC has been proceeding with planning efforts to implement projects in the region to provide seamless transportation within the region for the users of public transportation.

Objective

The SETRPC is seeking consultant services to assist in completing an updated, comprehensive Regionally Coordinated Transportation Plan and in participating in public involvement outreach. In addition, consultant services will involve performing transportation planning to develop implementation strategies for enhancing regional transportation services that lead to seamless public transportation throughout the southeast Texas region. It is anticipated that the requested services would be performed between February 2021 and December 2021. Proposals are being requested from qualified firms or individuals with specific experience to perform this assignment.

If your firm is interested and qualified to complete regionally coordinated transportation planning for the southeast Texas region, please contact our office to express your interest:

Bob Dickinson Director

Transportation and Environmental Resources

South East Texas Regional Planning Commission

2210 Eastex Freeway

Beaumont, Texas 77703

Fax: (409) 729-6511

Email: bdickinson@setrpc.org

All responding firms will receive a complete Request for Proposal package. Final proposals will be due by 3:00 p.m. CST on Friday, November 13, 2020.

TRD-202004057

Bob Dickinson

Director

South East Texas Regional Planning Commission

Filed: September 30, 2020



How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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