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XX.

TEXAS WORKFORCE COMMISSION

The rules are adopted under Texas Labor Code §§301.0015 and 302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

Chapter 817. CHILD LABOR

SUBCHAPTER A. GENERAL PROVISIONS

The new rules are adopted under Texas Labor Code, Title 2, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Labor Code, Chapter 51, Employment of Children.

§817.1. Title and Purpose

- (a) Title. These rules may be cited as the Texas Child Labor Rules.
- (b) Purpose. The purpose of these rules is to implement and interpret the provisions of the Texas Labor Code, Chapter 51, Employment of Children.

The provisions of this §817.1 adopted to be effective January 12, 1998, as published in the Texas Register, January 2, 1998, 23 TexReg 150.

§817.2. Definitions

The following words and terms, when used in this chapter or in Texas Labor Code, Chapter 51, shall have the following meanings.

- (1) Applicant--A child or the child's parent, legal guardian, legal custodian, or prospective employer.
- (2) Business or enterprise operated by a parent or custodian--A business or enterprise in which a parent or custodian exerts active direct control over the entire operation of the business or enterprise by making day-to-day decisions affecting basic income and work assignments, hiring and firing employees, and exercising direct supervision of the work.
- (3) Business or enterprise owned by a parent or custodian--A business or enterprise owned by a parent or custodian as a sole proprietor, a partner in a partnership, or an officer or member of a corporation.
- (4) Casual employment--Employment that is irregular or intermittent and not on a scheduled basis.
- (5) Child--An individual under 18 years of age.
- (6) Child actor--A child under the age of 14 who is to be employed as an actor or other performer.
- (7) Child actor extra--A child under the age of 14 who is employed as an extra without any speaking, singing, or dancing roles, usually in the background of the performance.
- (8) Direct supervision of the parent or custodian--A child is employed under the direct supervision of a parent or custodian when the parent or custodian controls, directs, and supervises all activities of the child.
- (9) Employee--An individual who is employed by an employer for compensation.
- (10) Employer--An entity who employs one or more employees or acts directly or indirectly in the interests of an employer in relation to an employee.

- (11) Employment--Any service, including service in interstate commerce, that is performed for compensation or under a contract of hire, whether written, oral, express, or implied.
- (12) Executive director--The executive director of the Texas Workforce Commission or the executive director's designee.
- (13) Private school--As set forth in Texas Education Code, Chapter 5, a school that offers a course of instruction for students in one or more grades from prekindergarten through grade 12, and is not operated by a governmental entity.

The provisions of this §817.2 adopted to be effective January 12, 1998, as published in the Texas Register, January 2, 1998, 23 TexReg 150. Amendments to this section were adopted to be effective August 11, 2014, as published in the Texas Register, August 8, 2014, 39 TexReg 6065.

§817.3. Employment of Children

Employment of children not permitted by Subchapter B of this Chapter (relating to Limitations on the Employment of Children), Subchapter C of this Chapter (relating to Employment of Child Actors), or the Texas Labor Code, Chapter 51, is prohibited.

The provisions of this §817.3 adopted to be effective January 12, 1998, as published in the Texas Register, January 2, 1998, 23 TexReg 150.

§817.4. Statement of Commission Intent

- (a) In adopting §817.21 of this title (relating to Limitations on the Employment of 14 and 15 Year Old Children) and §817.23 of this title (relating to Limitations on the Employment of 16 and 17 Year Old Children), the Commission intends for the federal child labor laws to govern the employment of children in Texas, unless a provision of this chapter or Texas Labor Code, Chapter 51, clearly indicates otherwise. The Commission so intends only to the extent the federal laws are consistent with Texas Labor Code, Chapter 51.
- (b) In adopting §817.24 of this title (relating to Limitations on the Employment of Children to Solicit), the Commission recognizes and hereby implements the legislative intent of Texas Labor Code §51.0145 to apply to the employment of children to sell or solicit products or services usually in a door-to-door manner, but which occasionally takes other forms, such as in parking lots or other common areas. The activity that is the subject of this regulation has been variously labeled over the years as candy sales, door-to-door sales, youth peddling, traveling youth crews, and other names. The activity usually involves one or more recruiters or drivers and at least one product supplier. The operation may involve taking children from lower income neighborhoods to sell in higher income neighborhoods, using a name and presentation that suggests the activity is aimed primarily at keeping the children out of gangs and off drugs.

The provisions of this §817.4 adopted to be effective January 12, 1998, as published in the Texas Register, January 2, 1998, 23 TexReg 150. Amendments to this section were adopted to be effective April 16, 1999, as published in the Texas Register, April 22, 1999, 24 TexReg 3111. Amendments to this section were adopted to be effective November 18, 1999, as published in the Texas Register, November 12, 1999, 24 TexReg 10140.

§817.5. Certificate of Age

- (a) To request a certificate of age, an applicant must submit the following:
 - (1) a completed application on a form provided by the Commission;

- (2) a recent photograph (color or black and white) approximately 1 ½ inches by 1 ½ inches, showing a full head shot of the applicant; and
 - (3) proof of age. A copy of one of the following documents is required as proof of age:
 - (A) birth certificate;
 - (B) baptismal certificate showing the date of birth;
 - (C) life insurance policy insuring the life of the child reflecting the date of birth;
 - (D) passport or certificate of arrival in the United States issued not more than one year prior to the date of application for certificate; or
 - (E) the school record or the school-census record of the age of the child, together with the sworn statement of a parent, guardian, or person having custody of the child as to the age of the child and also a certificate signed by a physician specifying his opinion as to the age of the child, and the height, weight, and other facts relating to development upon which his opinion concerning age is based.
- (b) Certificates of age are effective from the date of their issuance until the applicant reaches 18 years of age. No renewal is necessary, but lost certificates may be reissued upon new application.

The provisions of this §817.5 adopted to be effective January 12, 1998, as published in the Texas Register, January 2, 1998, 23 TexReg 150.

§817.6. Appeals

Hearings conducted under Texas Labor Code, Chapter 51, are subject to the rules and hearing procedures set out in the Unemployment Insurance Rules at 40 TAC Chapter 815, except to the extent that such sections are clearly inapplicable or contrary to provisions set out under the Texas Child Labor Rules or under Texas Labor Code, Chapter 51.

The provisions of this §817.6 adopted to be effective November 6, 2000, as published in the Texas Register, November 3, 2000, 25 TexReg 11104.

SUBCHAPTER B. LIMITATIONS ON THE EMPLOYMENT OF CHILDREN

The new rules are adopted under Texas Labor Code, Title 2, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Labor Code, Chapter 51, Employment of Children.

§817.21. Limitations on the Employment of 14- and 15-Year-Old Children.

The Commission adopts by reference 29 Code of Federal Regulations (CFR) §§570.31 - 570.34 and §§570.70 - 570.72 in effect on the date this section is adopted or the successor rule to any such regulation adopted by the U.S. Department of Labor, as state rules governing the employment of 14- and 15-year-old children in Texas, to the extent that they are consistent with the Fair Labor Standards Act (FLSA), 29 United States Code (USC) §201 et seq. In the event of any inconsistency between federal regulations and FLSA, FLSA shall take precedence. These rules apply to such employment whether or not that

employment is subject to FLSA. The application of this section is limited to the extent it is consistent with Texas Labor Code, Chapter 51.

The provisions of this §817.21 adopted to be effective January 12, 1998, as published in the Texas Register, January 2, 1998, 23 TexReg 150. Amendments to this section were adopted to be effective April 16, 1999, as published in the Texas Register, April 22, 1999, 24 TexReg 3111. Amendments to this section were adopted to be effective August 11, 2014, as published in the Texas Register, August 8, 2014, 39 TexReg 6065.

§817.22. Hardship Waiver of Hours Requirements for 14 and 15 Year Old Children

- (a) An applicant applying for a hardship waiver from the limitations on hours worked for 14 and 15 year old children must obtain a certificate of age under the provisions of §817.5 of this title (relating to Certificate of Age) and file a hardship application. The applicant may file both applications concurrently.
- (b) A hardship application must contain:
 - (1) full details of the prospective employment and the proposed hours to be worked;
 - (2) a written statement that it is necessary for the child to work to support himself or his immediate family, with supporting information;
 - (3) a written statement from the principal of the school in which the child is enrolled as to the advisability of allowing the child to work the hours identified; and
 - (4) a written statement from the prospective employer. The prospective employer's statement shall provide:
 - (A) that the child will be employed; and
 - (B) full details of the work, including rate of pay, hours to be worked, and expected duration of employment.
- (c) A hardship application may contain any other information the applicant believes would support the granting of the waiver.
- (d) All waivers shall be valid for one year unless established for a shorter period and may be extended at the sole discretion of the executive director.
- (e) After all pertinent information has been reviewed by the Commission, the waiver will be granted or denied. If additional information is needed before a decision is made, the Commission may gather additional facts and schedule a conference to review the merits of the application with interested persons.
- (f) At any conference the Commission will be represented by an employee designated by the executive director who shall make a written report to the executive director within 20 working days following the conference. The report shall contain a determination as to whether or not the waiver should be granted. Unless changed by the executive director, the initial determination shall remain in full force and effect. All interested parties will be advised in writing of the final determination of the Commission as soon as practicable. No appeal to the Commissioners is authorized.
- (g) This proceeding is not a contested case under the Texas Government Code, Chapter 2001, Administrative Procedure Act.

The provisions of this §817.22 adopted to be effective April 16, 1999, as published in the Texas Register, April 16, 1999, 24 TexReg 3111.

§817.23. Limitations on the Employment of 16- and 17-Year-Old Children.

The Commission adopts by reference 29 CFR §§570.50 - 570.68 in effect on the date this section is adopted or the successor rule to any such regulation adopted by the U.S. Department of Labor, as state rules governing the employment of 16- and 17-year-old children in Texas, to the extent that they are consistent with FLSA, 29 USC §201 et seq. In the event of any inconsistency between federal regulations and FLSA, FLSA shall take precedence. These rules apply to such employment whether or not that employment is subject to FLSA. The application of this section is limited to the extent it is consistent with Texas Labor Code, Chapter 51.

The provisions of this §817.23 adopted to be effective January 12, 1998, as published in the Texas Register, January 2, 1998, 23 TexReg 150. Amendments to this section were adopted to be effective April 22, 1999, as published in the Texas Register, April 16, 1999, 24 TexReg 3111. Amendments to this section were adopted to be effective August 11, 2014, as published in the Texas Register, August 8, 2014, 39 TexReg 6065.

§817.24. Limitations on the Employment of Children to Solicit

- (a) A person may not begin the employment of a child to solicit, as defined in Texas Labor Code §51.0145 and as described in §817.4(b) of this Chapter (relating to Statement of Commission Intent), until the Commission's Labor Law Department has received:
 - (1) a copy of the signed Parental Consent Form approved by the Commission; and
 - (2) the information required by statute to be provided to the individual who gives consent.
- (b) A copy of the Parental Consent Form may be obtained from the Commission's Labor Law Department.
- (c) A person employing a child under Texas Labor Code §51.0145 shall limit each solicitation trip to within a radius of no greater than thirty miles from the child's home, unless the parent or other person identified in Texas Labor Code §51.0145(c) (1) signs a Parental Consent Form in advance of the solicitation trip specifically approving a greater distance.

The provisions of this §817.24 adopted to be effective November 18, 1999, as published in the Texas Register, November 12, 1999, 24 TexReg 10140.

SUBCHAPTER C. EMPLOYMENT OF CHILD ACTORS

The new rules are adopted under Texas Labor Code, Title 2, which provides the Texas Workforce Commission with the authority to adopt, amend, or rescind such rules as it deems necessary for the effective administration of the Commission and compliance with Texas Labor Code, Chapter 51, Employment of Children.

§817.31. Child Actor Authorization

- (a) A child under 14 years of age may be employed in Texas as a child actor only by compliance with the provisions of this Subchapter.
- (b) Every person applying for child actor authorization must submit:

- (1) an application for authorization on a form provided by the Commission and signed by a parent, guardian, or person having custody of the child;
 - (2) proof of age; and
 - (3) a photograph that complies with § 817.5 of this title (relating to Certificate of Age).
- (c) An authorization is effective when issued and expires when the child reaches 14 years of age, unless the Commission establishes a shorter time period. Lost authorization certificates may be reissued upon new application.

The provisions of this §817.31 adopted to be effective January 12, 1998, as published in the Texas Register, January 2, 1998, 23 TexReg 150.

§817.32. Application Exceptions

- (a) Special authorization for child actors to be employed as extras is granted without the need for filing an application if the employer or its agent:
- (1) communicates with the Commission prior to the actual work being performed, identifying the employer, the project, the approximate number of extras intended to be employed on the particular project, and the anticipated dates of employment;
 - (2) prior to employment, uses reasonable efforts to establish that each prospective child actor extra is under 14 years of age;
 - (3) secures the written consent of a parent, guardian, or person having custody of the child to his or her employment as an extra on the particular project;
 - (4) notifies all affected school principals of the intent to employ their students as extras, furnishing such details concerning the nature and duration of the work as to give school authorities reasonable information concerning the proposed use of their students in the particular project; and
 - (5) submits a written post-production report to the Commission, within 10 days following the last day extras are employed, identifying the name, social security number, date of birth, and inclusive dates of employment for each child actor so employed, certifying compliance with Texas Labor Code, Chapter 51 and this Chapter 817 (relating to Child Labor).
- (b) Special authorizations for extras are deemed effective upon employment and expire as soon as one of the following events occurs:
- (1) the child reaches age 14;
 - (2) the child receives a Child Actor Authorization;
 - (3) the parent, guardian, or person having custody of the child revokes consent in writing; or
 - (4) the child's employment on the particular project by that employer ends.

The provisions of this §817.32 adopted to be effective January 12, 1998, as published in the Texas Register, January 2, 1998, 23 TexReg 150.

§817.33. Limitations on Employment of Child Actors

No child actor under 14 years of age may be employed:

- (1) in a manner that results in a failure to receive class credits because of unexcused class absences, or any violation of the State Compulsory School Attendance Law, Texas Education Code, §25.085, either as it is presently worded or may hereafter be amended to read, or of any rules promulgated thereunder;
- (2) in a position declared hazardous by the Commission;
- (3) during hours that would not be within the limits set by Texas Labor Code, § 51.013, for 14 and 15 year old children, except that the child is permitted, with parental consent, to work during otherwise prohibited hours, so long as the child does not work again for the same employer within 12 hours after completing work for the particular session and does not by being so employed work in excess of eight hours in one day or 48 hours in one week;
- (4) where the child is required to use a dressing room that is simultaneously occupied by an adult or by a child of the opposite sex;
- (5) where the child is not provided with a suitable place to rest or play;
- (6) where the child is sent to wardrobe, makeup, or hair-dressing, unless the child is under the general supervision of the child's parent, guardian, or person having custody of the child if the parent, guardian or person having custody is physically present at the place of employment;
- (7) where the child's parent, guardian, or person having custody of the child is prevented from being present at the place of employment while the child is working;
- (8) where the child's parent, guardian, or person having custody of the child is prevented from being within sight and sound of the child at any time during employment; or
- (9) for more than two consecutive school days during a school year in which the child is legally required to attend school without being furnished a tutor for the child's continuing education. The tutor shall be certified to teach in Texas by the Texas Education Agency or the State Board for Educator Certification, and shall make reasonable efforts to coordinate subjects and assignments with the child's classroom teachers.

The provisions of this §817.33 adopted to be effective January 12, 1998, as published in the Texas Register, January 2, 1998, 23 TexReg 150.