TEXAS REGISTER

Volume 45 Number 30 *July 24, 2020* *Pages 5061 - 5256*

a section of the
Office of the Secretary of State
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Austin, Texas 78711
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Texas Register, **(ISSN 0362-4781, USPS 12-0090),** is published weekly (52 times per year) for $340.00 ($502.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P. O. Box 1710, Latham, NY 12110.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Easton, MD and at additional mailing offices.

POSTMASTER: Send address changes to the *Texas Register,* 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

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Open Meetings

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

Meeting agendas are available on the *Texas Register*'s Internet site:
https://www.sos.texas.gov/open/index.shtml

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

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

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

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

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

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

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 July 8, 2020

Appointed to the State Board of Veterinary Medical Examiners, for a term to expire August 26, 2025, Sue T. Allen of Waco, Texas (Ms. Allen is being reappointed).

Appointed to the State Board of Veterinary Medical Examiners, for a term to expire August 26, 2025, Michael A. White, D.V.M. of Conroe, Texas (Dr. White is being reappointed).

Appointed to the State Board of Veterinary Medical Examiners, for a term to expire August 26, 2025, Victoria R. Whitehead of Lubbock, Texas (replacing George Antuna, Jr. of Schertz, whose term expired).

Appointments for July 9, 2020

Appointed to the Stephen F. Austin State University Board of Regents, for a term to expire January 31, 2021, Robert A. Flores of Garrison, Texas (replacing Nelda Luce Blair of The Woodlands, who resigned).

Greg Abbott, Governor

TRD-202002918

♦ ♦ ♦

Proclamation 41-3747

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, I issued Executive Order GA-27 on June 25, 2020, relating to the need for increased hospital capacity during the COVID-19 disaster ; and

WHEREAS, Executive Order GA-27 initially covered Bexar, Dallas, Harris, and Travis counties; and

WHEREAS, Executive Order GA-27 provided that its list of covered counties could be adjusted by proclamation thereafter; and

WHEREAS, I issued a proclamation on June 30, 2020, adding Cameron, Hidalgo, Nueces, and Webb counties to the list of counties covered by Executive Order GA-27; and

WHEREAS, elevated concerns exist concerning hospital capacity in additional parts of the state;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby add the following counties, effective at 11:59 p.m. on Friday, July 10, 2020, to the list set forth in Executive Order GA-27 and my prior proclamation:

All counties within Trauma Service Area J: Andrews, Brewster, Crane, Ector, Glasscock, Howard, Jeff Davis, Loving, Martin, Midland, Pecos, Presidio, Reeves, Terrell, Upton, Ward, and Winkler counties;

All counties within Trauma Service Area K: Coke, Concho, Crockett, Irion, Kimble, Mason, McCulloch, Menard, Reagan, Runnels, Schleicher, Sterling, Sutton, and Tom Green counties;

All counties within Trauma Service Area M: Bosque, Falls, Hill, Limestone, and McLennan counties;

All counties within Trauma Service Area O that are not already covered by Executive Order GA-27: Bastrop, Blanco, Burnet, Caldwell, Fayette, Hays, Lee, Llano, San Saba, and Williamson counties;

All counties within Trauma Service Area P that are not already covered by Executive Order GA-27: Atascosa, Bandera, Comal, Dimmit, Edwards, Frio, Gillespie, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Kinney, La Salle, Maverick, Medina, Real , Uvalde , Val Verde, Wilson, and Zavala counties;

All counties within Trauma Service Area O that are not already covered by Executive Order GA-27: Austin, Colorado, Fort Bend, Matagorda, Montgomery, Walker, Waller, and Wharton counties;

All counties within Trauma Service Area R: Brazoria, Chambers, Galveston, Hardin, Jasper, Jefferson, Liberty, Newton, and Orange counties;

All counties within Trauma Service Area S: Calhoun, DeWitt, Goliad, Jackson, Lavaca, and Victoria counties;

All counties within Trauma Service Area T that are not already covered by Executive Order GA-27: Jim Hogg and Zapata counties;

All counties within Trauma Service Area U that are not already covered by Executive Order GA-27: Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Refugio, and San Patricio counties; and

All counties within Trauma Service Area V that are not already covered by Executive Order GA-27: Starr and Willacy counties.

This proclamation shall remain in effect and in full force for as long as Executive Order GA-27 is in effect and in full force, unless otherwise modified, amended, rescinded, or superseded by the governor.

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 9th day of July, 2020.

Greg Abbott, Governor

TRD-202002855

♦ ♦ ♦

Proclamation 41-3748

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 issued proclamations renewing 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, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, a state of disaster continues to exist in all counties due to COVID-19;

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, 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 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 10th day of July, 2020.

Greg Abbott, Governor

TRD-202002856

♦ ♦ ♦

Proclamation 41-3749

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on August 23, 2017, certifying that Hurricane Harvey posed a threat of imminent disaster for Aransas, Austin, Bee, Brazoria, Calhoun, Chambers, Colorado, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Harris, Jackson, Jefferson, Jim Wells, Karnes, Kleberg, Lavaca, Liberty, Live Oak, Matagorda, Nueces, Refugio, San Patricio, Victoria, Waller, Wharton, and Wilson counties; and

WHEREAS, the disaster proclamation of August 23, 2017, was subsequently amended on August 26, August 27, August 28, and September 14 to add the following counties to the disaster proclamation: Angelina, Atascosa, Bastrop, Bexar, Brazos, Burleson, Caldwell, Cameron, Comal, Grimes, Guadalupe, Hardin, Jasper, Kerr, Lee, Leon, Madison, Milam, Montgomery, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Trinity, Tyler, Walker, Washington, and Willacy; and

WHEREAS, on September 20, 2017, and in each subsequent month effective through today, I issued proclamations renewing the disaster declaration for all counties listed above; and

WHEREAS, due to the catastrophic damage caused by Hurricane Harvey, a state of disaster continues to exist in those same counties;

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 the 60 counties listed above.

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 10th day of July, 2020.

Greg Abbott, Governor

TRD-202002857

♦ ♦ ♦

Proclamation 41-3750

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that exceptional drought conditions pose a threat of imminent disaster in Bailey, Briscoe, Carson, Castro, Dallam, Deaf Smith, Floyd, Gaines, Gray, Hale, Hansford, Hartley, Hutchinson, Lamb, Motley, Oldham, Ochiltree, Parmer, Randall, Roberts, Swisher, Terry, and Yoakum counties.

WHEREAS, significantly low rainfall and prolonged dry conditions continue to increase the threat of wildfire across these portions of the state; and

WHEREAS, these drought conditions pose an imminent threat to public health, property, and the economy;

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties 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.

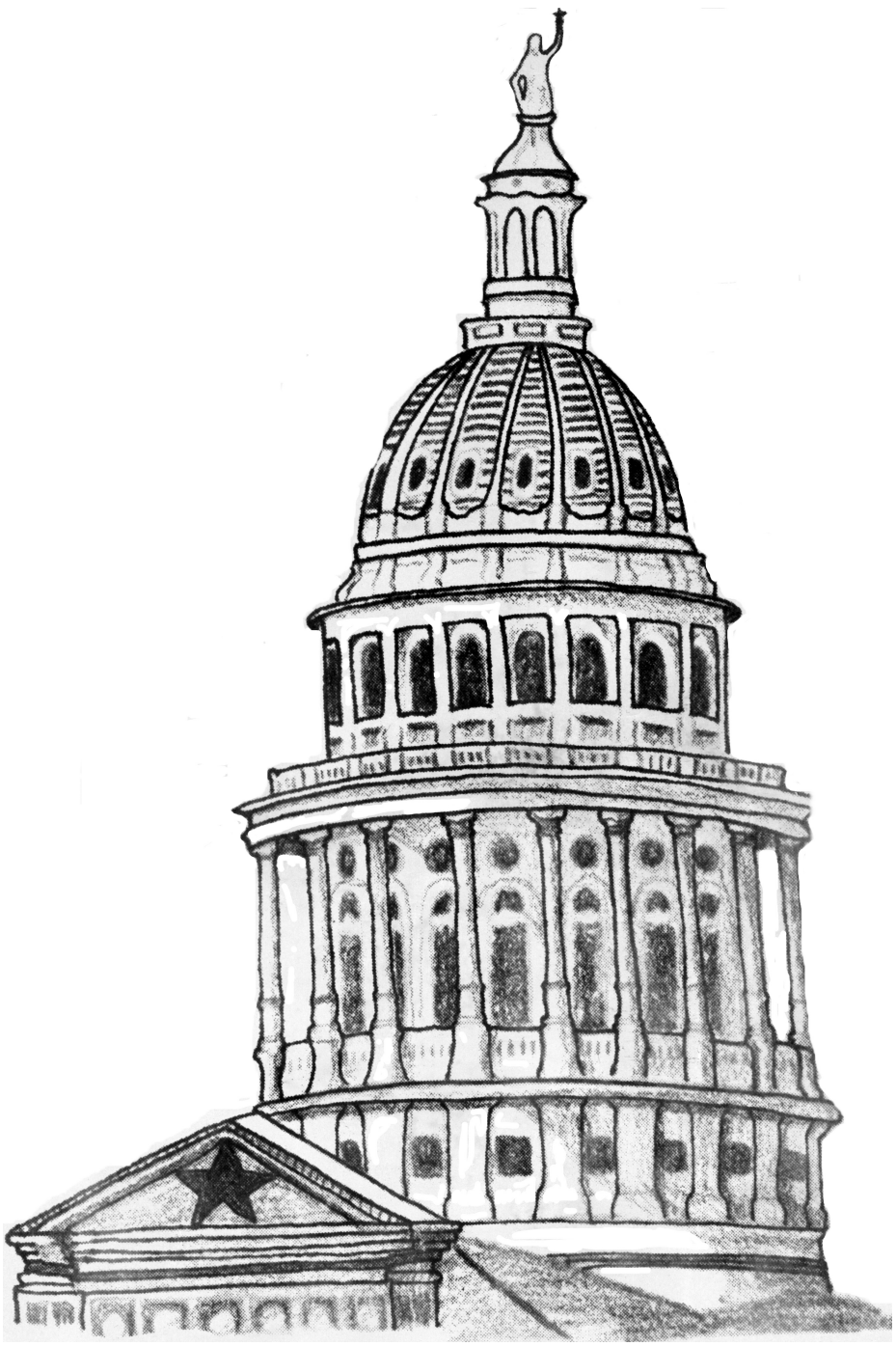
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

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 13th day of July, 2020.

Greg Abbott, Governor

TRD-202002891

♦ ♦ ♦



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-0363-KP

Requestor:

The Honorable Mayes Middleton

Co-Chair, Joint Interim Committee to Study a Coastal Barrier System

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Extension of filing deadlines for elections postponed pursuant to the Governor's proclamation allowing for the postponement of the May 2020 local elections (RQ-0363-KP)

Briefs requested by July 29, 2020

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

TRD-202002914
Lesley French
General Counsel
Office of the Attorney General
Filed: July 15, 2020

♦ ♦ ♦

Opinions

Opinion No. KP-0320

Harrison Keller, Ph.D.

Commissioner of Higher Education

Texas Higher Education Coordinating Board

Post Office Box 12788

Austin, Texas 78711

Re: Whether Rider 52 to the Higher Education Coordinating Board's appropriation in the General Appropriations Act allows students to qualify for financial assistance through the Program to Encourage Certification to Teach Bilingual Education, English as a Second Language, or Spanish by taking an exam comparable to the State Board for Educator Certification Bilingual Target Language Proficiency Test or by passing a practice exam (RQ-0329-KP)

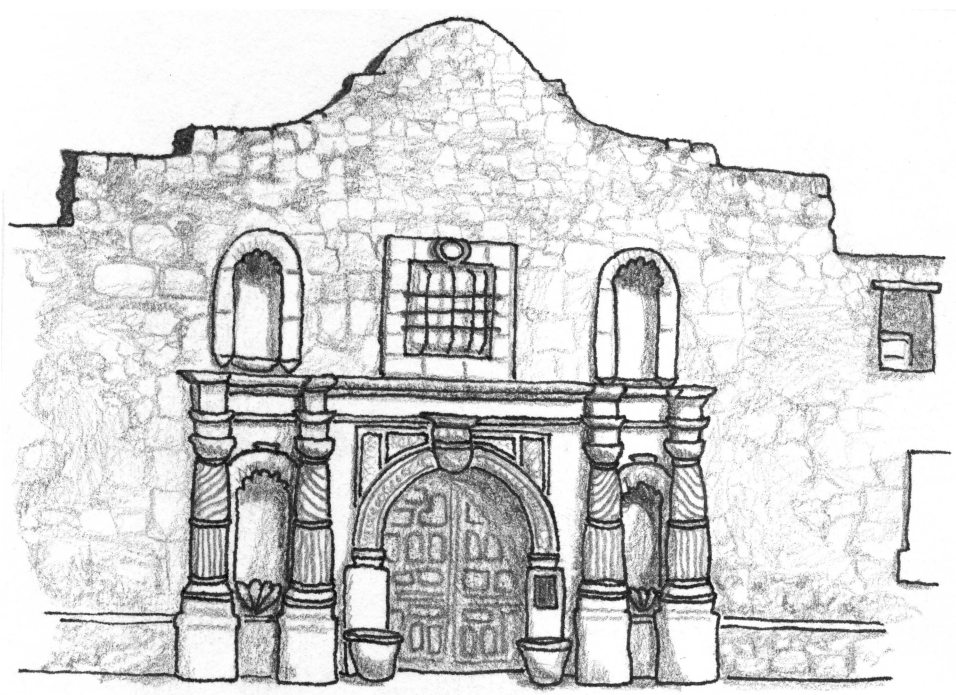
S U M M A R Y

The Eighty-Sixth Legislature appropriated funds to the Higher Education Coordinating Board for grants to encourage students to become certified to teach bilingual education, English as a Second Language, or Spanish in school districts with high critical needs. Pursuant to Rider 52 of the Board's appropriation, in order to qualify for the grants, students must "successfully pass the State Board for Educator Certification Bilingual Target Language Proficiency Test," among other requirements. Given the plain language of the General Appropriations Act, a court is unlikely to conclude that institutions of higher education may use passage of other exams for comparable programs to meet this qualification requirement or that passage of a practice exam satisfies the testing requirement.

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

TRD-202002915
Lesley French
General Counsel
Office of the Attorney General
Filed: July 15, 2020

♦ ♦ ♦



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 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 379. FAMILY VIOLENCE PROGRAM

The Executive Commissioner of the Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 1 Texas Administrative Code (TAC), Chapter 379 Family Violence Program, amended §§379.206, 379.614, 379.615, 379.626, 379.628, 379.701, 379.709, 379.711, 379.713, 379.902, 379.1605, 379.2012, 379.2013, 379.2024, 379.2026, 379.2027, 379.2106, 379.2108, and 379.2110, concerning emergency rules 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. The Commission accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of these Family Violence Program COVID-19 Emergency Rules.

Current rules in 1 TAC Chapter 379 require HHSC Family Violence Program (FVP) contractors to provide in-person group services, convene board meetings, and have signed confidentiality agreements, which may put contractors staff and clients' health and safety at risk, at this time. Continuing to require the same levels of services and in-person participation during the time of an emergency is untenable and, without certain flexibilities, could deter survivors from accessing critical supportive services. To protect contractor staff, FVP clients, and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting emergency rule amendments to allow flexibilities in FVP service provisioning.

SUBCHAPTER B. SHELTER CENTERS

DIVISION 2. CONTRACT STANDARDS

1 TAC §379.206

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055 and Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010. 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. Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010, authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program.

The amended sections implement Texas Government Code §531.0055, which 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. The amended sections also implement Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program.

§379.206. Requesting a Variance or Waiver.

(a) To request a waiver from the maximum prescribed funding percentage, a center [~~center's board~~] must submit:

(1) a completed Family Violence Program Waiver Request Form prescribed by the Health and Human Services Commission (HHSC);

(2) supporting documentation demonstrating the center's efforts to raise funds compared to its budget; and

(3) a written agreement to receive technical assistance as designated by HHSC.

(b) To request a variance or waiver from any other requirement in this subchapter, the center [~~center's board~~] must submit a completed Family Violence Program Waiver Request Form prescribed by HHSC demonstrating the need for the variance or waiver.

(c) In the event of a natural disaster, emergency, or public health concern, a variance or waiver from any other requirement in this subchapter may be submitted by email to the center's assigned HHSC Family Violence Program contract manager.

(d) [~~(c)~~] A center [~~center's board~~] may submit a request for a variance or waiver up to 45 calendar days after the Annual Funding Report is due.

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 July 8, 2020.

TRD-202002813
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: July 8, 2020
Expiration date: November 4, 2020
For further information, please call: (512) 206-5646

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DIVISION 6. PROGRAM ADMINISTRATION

1 TAC §§379.614, 379.615, 379.626, 379.628

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055 and Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010. 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. Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010, authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program.

The amended sections implement Texas Government Code §531.0055, which 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. The amended sections also implement Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program.

§379.614. Confidentiality Information for Adult Residents and Nonresidents.

A center must provide to adult residents and nonresidents, in writing or verbally, at least the following:

(1) the right to see their records;

(2) the kind of information recorded, why, and the methods of collection;

(3) who within the center has access to the resident's or nonresident's case files and records;

(4) an overview of the center's policy and practices on confidentiality;

(5) current state and federal laws regarding the limits of confidentiality under the law, including mandatory reporting for abuse or suspected abuse of:

(A) children;

(B) the elderly; and

(C) people with disabilities;

(6) an overview of the center's policy for responding to court orders;

(7) an overview of the center's policy for requests for information under the Public Information Act;

(8) an overview of the center's policy for release of information;

(9) when the records will be decoded or destroyed; and

(10) an overview of what kind of information will remain in the file once a resident or nonresident terminates services.

§379.615. Confidentiality Agreements.

(a) A center must have all employees, volunteers, board members, student interns, and adult residents [~~and adult nonresidents~~] sign a confidentiality agreement. The agreement must have a provision that states that confidentiality must be maintained after an employee, volunteer, board member, student intern, or resident [~~, or nonresident~~] leaves the center. The signed agreements must be placed:

(1) in the personnel files of the employees;

(2) in the corporate records of the board members; and

(3) in the individual files of volunteers, student interns, and residents [~~, and nonresidents~~].

(b) A center must at a minimum, verbally inform adult nonresidents of the confidentiality policy and require that adult nonresidents provide verbal agreement that acknowledges their understanding of and intent to comply with the policy. When possible, adult nonresidents must sign a confidentiality agreement.

§379.626. Disruption in Providing Services.

(a) A center must develop, maintain, and comply with written policies and procedures for any disruption in the ability to provide services.

(b) Any disruption in the ability to provide services must be [~~verbally~~] reported immediately to the Health and Human Services Commission (HHSC).

(c) The report to HHSC must include a description of the disruption and how services will be or were maintained.

[~~(c) After the initial verbal notification, the center must submit to HHSC, within two weeks, a written description of the disruption and how services will be or were maintained.~~]

§379.628. Resident and Nonresident Rights.

A center must:

(1) provide [~~written~~] rights to all residents and nonresidents either in writing or verbally;

(2) make reasonable accommodations to provide [~~written~~] rights for residents and nonresidents with limited English proficiency in writing or verbally; and

(3) post resident and nonresident rights in a visible area within all center facilities.

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 July 8, 2020.

TRD-202002814

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: July 8, 2020
Expiration date: November 4, 2020
For further information, please call: (512) 206-5646

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DIVISION 7. SERVICE DELIVERY

1 TAC §§379.701, 379.709, 379.711, 379.713

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055 and Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010. 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. Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010, authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program.

The amended sections implement Texas Government Code §531.0055, which 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. The amended sections also implement Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program.

§379.701. Shelter Center Services.

(a) When safe for the resident, nonresident, and staff, the [~~The~~] center must provide [~~, at a minimum,~~] access in-person or remotely to the following services[~~,~~] by providing the services directly, by providing referrals to entities that provide the services [~~referral~~], or by providing the services through formal arrangements with other agencies.[~~, and~~] The center must have written procedures regarding these services as described in this subchapter:

(1) 24-hour-a-day shelter;

(2) a crisis call hotline available 24 hours a day;

(3) emergency medical care;

(4) intervention services, including safety planning, understanding and support, information, education, referrals, resource assistance, and individual service plans;

(5) emergency transportation;

(6) legal assistance in the civil and criminal justice systems, including identifying individual needs, legal rights and legal options and providing support and accompaniment in pursuing those options;

(7) information about educational arrangements for children;

(8) information about training for and seeking employment; and

(9) a referral system to existing community services.

(b) If a center is unable to directly or through a formal arrangement provide a service(s) requested by a resident or nonresident, due to safety concerns, the center must refer the client to another organization capable of providing the requested service(s). Prior to referring the client, a center must ensure that the other organization has the capacity to offer the requested services.

§379.709. Nonresident's Orientation.

A center must ensure orientation is provided verbally [~~orally~~] and in writing when possible, is documented, and includes, but is not limited to:

(1) explanation of services available;

(2) termination policy;

(3) nonresidents' rights;

(4) nondiscrimination statement;

(5) grievance procedures;

(6) safety and security procedures;

(7) confidentiality and limits of confidentiality;

(8) waivers of liability; and

(9) a wellness check for all family members that addresses their immediate needs.

§379.711. Group Intervention.

A center must:

(1) provide at least one in-person or remote weekly support group for adult residents and adult nonresidents; and

(2) not mandate adult resident or adult nonresident attendance at weekly support groups.

§379.713. Delivery of Children's Direct Services.

The center must:

(1) have services available that are specific to meet the needs of children;

(2) provide transportation or make transportation arrangements for child residents who attend school;

(3) provide or arrange for school supplies and clothing for child residents;

(4) provide an in-person or remote [~~a~~] support group for child residents at least weekly, when age appropriate; and

[~~(5) provide a recreational or social group for child residents at least weekly; and~~]

(5) [~~(6)~~] offer information and referral services for nonresident children if nonresident services are offered to the child's parent.

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 July 8, 2020.

TRD-202002815
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: July 8, 2020
Expiration date: November 4, 2020
For further information, please call: (512) 206-5646

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SUBCHAPTER C. SPECIAL NONRESIDENTIAL PROJECTS
DIVISION 2. CONTRACT STANDARDS

1 TAC §379.902

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055 and Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010. 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. Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010, authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program.

The amended sections implement Texas Government Code §531.0055, which 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. The amended sections also implement Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program.

§379.902. Requesting a Variance or Waiver.

(a) To request a variance or waiver from a specific requirement in this subchapter, the center [~~contractor's board~~] must submit a completed Family Violence Program Waiver Request Form prescribed by the Health and Human Services Commission demonstrating the need for the variance or waiver.

(b) In the event of a natural disaster, emergency, or public health concern, a variance or waiver from any other requirement in this subchapter may be submitted by email to the center's assigned HHSC Family Violence Program contract manager.

(c) [~~(b)~~] A center [~~contractor's board~~] may submit a request for a variance or waiver up to 90 calendar days after the end of the contract year for which the variance or waiver is requested.

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 July 8, 2020.

TRD-202002816
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: July 8, 2020
Expiration date: November 4, 2020
For further information, please call: (512) 206-5646

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SUBCHAPTER D. NONRESIDENTIAL CENTERS
DIVISION 2. CONTRACT STANDARDS

1 TAC §379.1605

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055 and Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010. 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. Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010, authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program.

The amended sections implement Texas Government Code §531.0055, which 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. The amended sections also implement Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program.

§379.1605. Requesting a Variance or Waiver.

(a) To request a waiver from the maximum prescribed funding percentage, the center [~~center's board~~] must submit:

(1) a completed Family Violence Program Waiver Request Form prescribed by the Health and Human Services Commission (HHSC);

(2) supporting documentation demonstrating the center's efforts to raise funds compared to its budget; and

(3) a written agreement to receive technical assistance as designated by HHSC.

(b) To request a variance or waiver from any other requirement in this subchapter, the center [~~center's board~~] must submit a completed Family Violence Program Waiver Request Form prescribed by HHSC demonstrating the need for the variance or waiver.

(c) In the event of a natural disaster, emergency, or public health concern, a variance or waiver from any other requirement in this subchapter may be submitted by email to the center's assigned HHSC Family Violence Program contract manager.

(d) [~~(c)~~] A center [~~center's board~~] may submit a request for a variance or waiver up to 45 calendar days after the Annual Funding Report is due.

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 July 8, 2020.

TRD-202002817

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: July 8, 2020
Expiration date: November 4, 2020
For further information, please call: (512) 206-5646

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DIVISION 6. PROGRAM ADMINISTRATION

1 TAC §§379.2012, 379.2013, 379.2024, 379.2026, 379.2027

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055 and Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010. 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. Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010, authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program.

The amended sections implement Texas Government Code §531.0055, which 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. The amended sections also implement Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program.

§379.2012. Confidentiality Information for Adult Program Participants.

A center must provide to adult program participants, verbally and in writing, when possible, at least the following:

(1) the right to see their records;

(2) the kind of information recorded, why, and the methods of collection;

(3) who within the center has access to the program participants' case files and records;

(4) an overview of the center's policy and practices on confidentiality;

(5) current state and federal laws regarding the limits of confidentiality under the law, including mandatory reporting for abuse or suspected abuse of:

(A) children;

(B) the elderly; and

(C) people with disabilities;

(6) an overview of the center's policy for responding to court orders;

(7) an overview of the center's policy for requests for information under the Public Information Act;

(8) an overview of the center's policy for release of information;

(9) when the records will be decoded or destroyed; and

(10) an overview of what kind of information will remain in the file once a program participant terminates services.

§379.2013. Confidentiality Agreements.

(a) A center must have all employees, volunteers, board members, and student interns [~~, and adult program participants~~] sign a confidentiality agreement. The agreement must have a provision that states that confidentiality must be maintained after an employee, volunteer, board member, or student intern [~~, or program participant~~] leaves the center. The signed agreements must be placed:

(1) in the personnel files of the employees;

(2) in the corporate records of the board members; and

(3) in the individual files of volunteers and[~~,~~] student interns[~~, and program participants~~].

(b) A center must verbally inform adult program participants of the confidentiality policy and require that all adult program participants provide verbal agreement that acknowledges their understanding of and intent to comply with the policy. When possible, adult program participants must sign a confidentiality agreement.

§379.2024. Minimum Hours for a Nonresidential Center.

When safe for the resident, nonresident, and staff, a [~~A~~] center must provide in-person or remote services to victims of family violence [~~a minimum of 40 hours per week~~] with a consistent schedule of service hours that may be regular business hours or other hours as approved by the Health and Human Services Commission.

§379.2026. Disruption in Providing Services.

(a) A center must develop, maintain, and comply with written policies and procedures for any disruption in the ability to provide services.

(b) Any disruption in the ability to provide services must be [~~verbally~~] reported immediately to the Health and Human Services Commission (HHSC).

(c) The report to HHSC must include a description of the disruption and how services will be or were maintained.

[~~(c) After the initial verbal notification, the center must submit to HHSC, within two weeks, a written description of the disruption and how services will be or were maintained.~~]

§379.2027. Program Participant Rights.

A center must:

(1) provide [~~written~~] rights to all program participants verbally and, when possible, in writing;

(2) make reasonable accommodations to provide [~~written~~] rights for program participants with limited English proficiency verbally and, when possible, in writing; and

(3) post program participant rights in a visible area within all center facilities.

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 July 8, 2020.

TRD-202002818
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: July 8, 2020
Expiration date: November 4, 2020
For further information, please call: (512) 206-5646

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DIVISION 7. SERVICE DELIVERY

1 TAC §§379.2106, 379.2108, 379.2110

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §§2001.034 and 531.0055 and Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010. 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. Human Resources Code, Title 2, Chapter 51, Subtitle E, §51.010, authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program.

The amended sections implement Texas Government Code §531.0055, which 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. The amended sections also implement Texas Human Resources Code §51.010, which authorizes the Executive Commissioner of HHSC to adopt rules governing the HHSC Family Violence Program.

§379.2106. Program Participant's Orientation.

A center must ensure that an orientation is provided to a program participant verbally [~~orally~~] and, when possible, in writing, is documented, and includes, but is not limited to:

(1) explanation of services available;

(2) termination policy;

(3) program participants' rights;

(4) nondiscrimination statement;

(5) grievance procedures;

(6) safety and security procedures;

(7) confidentiality and limits of confidentiality;

(8) waivers of liability; and

(9) a wellness check for all family members that addresses their immediate needs.

§379.2108. Group Intervention.

A center must:

(1) provide at least one in-person or remote weekly support group for adult program participants; and

(2) not mandate adult program participant attendance at weekly support groups.

§379.2110. Delivery of Children's Direct Services.

A center must:

(1) have services available that are specific to meet the needs of children, including information and referral services; and

(2) when providing services in-person, make reasonable accommodations to provide recreational or social activities for children during the time in which the adult parent is receiving services.

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 July 8, 2020.

TRD-202002819
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: July 8, 2020
Expiration date: November 4, 2020
For further information, please call: (512) 206-5646

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 295. OCCUPATIONAL HEALTH
SUBCHAPTER C. TEXAS ASBESTOS HEALTH PROTECTION

25 TAC §295.65

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts on an emergency basis an amendment to §295.65 in Title 25 Texas Administrative Code, Chapter 295, Occupational Health, Subchapter C, Texas Asbestos Health Protection, concerning an emergency rule in response to COVID-19 in order to set forth standards by which licensed training providers can provide live online asbestos refresher courses as an alternative to in-person courses. As authorized by Texas Government Code §2001.034, HHSC 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. DSHS and HHSC accordingly finds that an imminent peril to the public health, safety, and welfare

of the state requires immediate adoption of this Texas Asbestos Health Protection rule regarding live online refresher courses.

To protect asbestos licensees and the public health, safety, and welfare during the COVID-19 pandemic, HHSC, on behalf of DSHS, adopts an emergency rule amendment to §295.65, Training: Approval of Training Courses, that sets forth requirements for DSHS to approve live online refresher courses as an alternative to in-person refresher courses. Completion of an annual asbestos refresher course is required to renew an asbestos license and engage in asbestos detection and abatement, which is an essential service in Texas. The rule requires approval by DSHS of live online refresher training courses; requires that online refresher courses have systems in place to authenticate student identity, protect sensitive user information, provide an interactive component, monitor time spent online, provide technical support, provide a distinct certificate, and allow course audits by DSHS; requires submission of an application for approval; and requires additional recordkeeping.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Occupations Code §1954.051 and §1954.053. 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 DSHS and for the administration of Health and Safety Code, Chapter 1001. Texas Occupations Code §1954.051 authorizes the Executive Commissioner of HHSC to adopt rules governing general rulemaking authority. Texas Occupations Code §1954.053 authorizes the Executive Commissioner of HHSC to adopt rules governing performance standards and work practices.

The amendment implements Texas Government Code §531.0055 and Texas Occupations Code §1954.051 and §1954.053.

§295.65. Training: Approval of Training Courses.

(a) - (h) (No change.)

(i) COVID-19 emergency rule for live online asbestos refresher training. An online course that is presented to a student live by a licensed training provider may be provided if the course meets the requirements of this subsection.

(1) Scope.

(A) For purposes of this subsection, a live online asbestos refresher training course (online refresher course) means an online asbestos refresher training course that is presented with simultaneous, real-time interaction between the instructor and student. Self-paced training that can be taken at any time or place is prohibited.

(B) A training provider must not provide, offer, or claim to provide an online refresher course without applying for and receiving approval from the department as required under this subsection.

(C) An online refresher course must be approved separately from an in-person refresher course.

(D) A licensed training provider may apply for approval to provide an online refresher course that the training provider is approved to teach in-person.

(2) Online refresher course requirements. A training provider that offers an online refresher course must have a system in place that:

(A) authenticates the identity of the student taking the training and their eligibility to enroll in the course to deter fraud and falsification of student identity;

(B) uses encryption technology to protect sensitive user information;

(C) ensures that the student is focusing on the training material throughout the entire training period, such as a strong interactive component to ensure continued student focus through discussion between the student and approved instructor or approved guest speaker, or interactive video clips, or both;

(D) monitors and records a student's actual time spent online, including applicable breaks;

(E) allows the student to ask questions of an approved instructor or approved guest speaker and allows the instructor or guest speaker to provide a response to the student's question during the online refresher course;

(F) provides technical support to the student during the online refresher course to address any technical issue as soon as possible but no later than the end of the course day. If a student is inadvertently logged out of an online session due to a technical issue, the student must be given credit for the portion of the course completed and be required to make-up the portion of the course missed;

(G) reduces the opportunity for document fraud by providing a distinct online refresher course certificate that contains all the requirements of subsection (f) of this section and specifies that the course is a live online refresher course; and

(H) provides the department unrestricted access to an online refresher course for auditing purposes and at no charge at any time the course is being given.

(3) Approval requirements.

(A) A licensed training provider must submit an application for approval of an online refresher course to the department that includes, in addition to the requirements of subsection (d)(2) of this section and §295.64(i) of this title (relating to Training: Required Asbestos Training Courses), the following:

(i) that the application is for an online refresher course;

(ii) the discipline of the online refresher course;

(iii) documentation of the systems in place required by paragraph (2) of this subsection; and

(iv) a technical support plan that describes potential technical issues that may occur and how the issues will be immediately handled.

(B) If approved by the department to conduct online refresher training, the training provider must clearly identify that the course is approved by the department when advertising or registering a student for the course.

(4) Notification requirements. For online refresher courses, the group photograph required in subsection (f)(3) of this section may include multiple frames or photographs if a single group photograph is not feasible.

(5) Recordkeeping requirements. A licensed training provider that is approved to administer an online refresher course is subject to the following additional recordkeeping requirements.

(A) Student identity authentication and verification data.

(B) Student online time tracking data.

(C) Training instructor, guest speaker, and technical support contact data.

(6) Disciplinary action.

(A) For purposes of license or registration renewal, the department will not accept certificates from an online refresher course that was not approved by the department.

(B) Failure to obtain approval before conducting an online refresher course and failure to meet the requirements of this subsection may result in disciplinary action against the licensed training provider.

(C) The department will withdraw course approval if the training provider fails to meet the requirements of this subsection.

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 July 13, 2020.

TRD-202002888
Barbara Klein and Karen Ray
General Counsel and Chief Counsel
Department of State Health Services
Effective date: July 13, 2020
Expiration date: November 9, 2020
For further information, please call: (512) 834-6608

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 35. EMERGENCY RULES

SUBCHAPTER A. COVID-19 EMERGENCY RULES

28 TAC §35.2

The Texas Department of Insurance is renewing the effectiveness of emergency new §35.2 for a 60-day period. The text of the emergency rule was originally published in the April 10, 2020, issue of the *Texas Register* (45 TexReg 2378).

Filed with the Office of the Secretary of State on July 15, 2020.

TRD-202002930
James Person
General Counsel
Texas Department of Insurance
Original effective date: April 1, 2020
Expiration date: September 27, 2020
For further information, please call: (512) 676-6584

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28 TAC §35.3

The Texas Department of Insurance is renewing the effectiveness of emergency new §35.3 for a 60-day period. The text of the emergency rule was originally published in the April 17, 2020, issue of the *Texas Register* (45 TexReg 2478).

Filed with the Office of the Secretary of State on July 15, 2020.

TRD-202002931
James Person
General Counsel
Texas Department of Insurance
Original effective date: April 3, 2020
Expiration date: September 29, 2020
For further information, please call: (512) 676-6584

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

SUBCHAPTER G. STANDARDS FOR CHIP MANAGED CARE

1 TAC §370.602

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §370.602, concerning Member Complaints and Appeals.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with The Patient Protection and Affordable Care Act of 2010, §2719, as codified in the United States Code, Title 42 §300gg-19(b), which standardizes the external review process of adverse benefit determinations for members of commercial health insurance issuers to meet federal consumer protection standards. The proposed amendment also clarifies the current Children's Health Insurance Program (CHIP) managed care organization (MCO) Member Internal Complaint and Appeal Process.

In accordance with the Code of Federal Regulations, Title 42, §457.1120, HHSC elected to follow the statewide standard review process that Texas commercial health insurance issuers use, instead of a program specific review process. Therefore, §2719 also applies to CHIP MCOs.

The CHIP external review process was administered by Texas Department of Insurance (TDI). As of June 30, 2018, TDI no longer administers the CHIP external review process. All CHIP MCOs follow the federal Health and Human Services-administered external review process described in this rule amendment.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §370.602(a) clarifies that in addition to the Texas Insurance Code and TDI regulations, CHIP member complaints and appeals are subject to federal and state laws, regulations, and rules.

The proposed new language for §370.602(b) provides information on the existing complaint and appeal process, clarifying that a CHIP member may file a complaint or appeal with their MCO through the MCO's internal complaint and appeal system.

The proposed amendment to existing §370.602(b) relabels it to §370.602(c) and clarifies that a complaint may be submitted to TDI to report an alleged MCO violation, in addition to filing with the MCO.

The proposed new language for §370.602(d) describes the external review process conducted by the independent review organization (IRO). If a member or the representative of a member is dissatisfied with the MCO's resolution of an appeal of an adverse benefit determination, and has exhausted the MCO internal appeal system, the member or the representative of a member may request an external review by the IRO.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new rule;

(6) the proposed rule will expand an existing rule;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Mr. Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The proposed rule does not impose any additional costs on small businesses, micro-businesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons

and is necessary to receive a source of federal funds or comply with federal law.

PUBLIC BENEFIT AND COSTS

Stephanie Muth, Deputy Executive Commissioner for Medicaid and CHIP Services, has determined that for each year of the first five years the rule is in effect, the public benefit will be improved objectivity in the external review of appeals of adverse benefit determinations.

Mr. Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply. The proposed rule codifies existing HHSC practices for CHIP member complaints appeals and is consistent with federal requirements.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhsc.state.tx.us.*

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register* (the comment period). Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last business day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 19R057" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Health and Safety Code Chapters 62 and 63, which provide HHSC with the authority to administer CHIP in Texas and adopt rules as necessary to implement the chapters.

The amendment affects Texas Government Code §531.0055.

§370.602. Member Complaints and Appeals.

(a) CHIP member complaints and appeals are subject to disposition consistent with applicable federal and state laws, regulations and rules, including the Texas Insurance Code and [~~any applicable~~] Texas Department of Insurance (TDI) regulations.

(b) Any member, or a representative acting on behalf of the member, may file a complaint or appeal with their managed care organization (MCO) through the MCO's internal appeal and complaint system.

(c) [~~(b)~~] Any person, including those dissatisfied with the MCO's resolution of a member complaint or appeal, may submit a complaint to report an alleged violation to TDI.

(d) Any member or a representative acting on behalf of the member may request an external review of the MCO's adverse benefit determination, to be conducted by an independent review organization, when:

(1) the MCO internal appeal and complaint system regarding the adverse benefit determination has been exhausted; and

(2) the member or representative acting on behalf of the member is dissatisfied with the MCO's resolution of the appeal of an adverse benefit determination.

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 July 7, 2020.

TRD-202002777
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 624-6998

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TITLE 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 16. HISTORIC SITES

13 TAC §16.3

The Texas Historical Commission (hereafter referred to as the "Commission") proposes amendments to §16.3 of Title 13, Part 2, Chapter 16 of the Texas Administrative Code, concerning historic sites. These amendments are needed as part of the Commission's overall effort to clarify language in order to implement necessary updates, additions, and changes to more precisely reflect the procedures of the historic sites division.

The rule amends the current two-phase process and creates a three-phase process within the updated State Historic Sites Historic Properties Collection Plan for the evaluation of a historic property. The amendments provide the criteria to be used in preliminary staff evaluations and defines a process to more effectively evaluate properties and contain costs.

FISCAL NOTE. There will be no fiscal impact. The proposed revisions to the process of historic site evaluation will minimize the fiscal impact and contain costs in evaluating potential properties and be more cost effective to the state. Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule as proposed.

PUBLIC BENEFIT/COST NOTE. The benefit to the public will be achieved by providing an improved and enhanced structured approach in property evaluations. The proposed new three step procedure will insure that the process is the most effective and efficient in the deployment of state resources. Mr. Wolfe has

also determined that for each year of the first five-year period the amended rule is in effect, the public benefit will be a clearer statement of the criteria to be used in evaluating potential historic sites and a more clearly defined process.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT. There are no anticipated economic costs to persons who are required to comply with the amendments to the rule as proposed. There is no effect on the local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022 and 2001.024(a)(6).

COSTS TO REGULATED PERSONS. The proposed amendments do not impose a cost on regulated persons or entities; therefore, they are not subject to Texas Government Code, §2001.0045.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES. The proposed rule amendments provide an opportunity for the historic sites division to operate more strategically in assessing properties with a preliminary in-house first step to determine if further investment of state resources is required in any property assessment. There is no anticipated economic impact of these amendments to the rule. Mr. Wolfe has also determined that there will be no negative impact on rural communities, small or micro-businesses because of implementing the rule amendments and therefore no regulatory flexibility analysis, as specified in Texas Government Code §2006.002, is required. There are no anticipated economic costs to the public in compliance with the amendments to the rule, as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the amendments would be in effect, the proposed amendments: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not create a new regulation; will not repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendments would be in effect, the proposed amendments will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. THC has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. Comments on the proposal may be submitted to Joseph Bell, Deputy Executive Director of Historic Sites, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.*

STATUTORY AUTHORITY. These amendments are proposed under the authority of Texas Government Code§442.005(q), which provides the Commission with the authority to promulgate rules to reasonably affect the purposes of the Commission; Texas Government Code §§442.0057 and 442.0058, which allow the Commission to accept donations of land or sell or exchange land; and Texas Government Code §442.0053(a), which provides that the Commission by rule shall adopt the criteria to determine to the eligibility for the inclusion of real property into the state historic sites system.

CROSS REFERENCE TO STATUTE. Texas Government Code §442.0053(a) provides the Commission with the authority to adopt the criteria to determine to the eligibility for real property's inclusion into the state historic sites system and Texas Government Code §442.0056(a) provides the Commission with the authority to acquire historic sites. No other statutes, articles, or codes are affected by this new rule.

§16.3. Addition of Historic Sites to the Texas Historical Commission Historic Sites Program.

(a) Criteria. The addition of new Historic Sites will follow the "State Historic Sites Historic Properties Collection Plan" in a three-step process [~~"Historic Sites Division Property Collection Plan"~~] as posted on the Texas Historical Commission's (Commission) website at thc.texas.gov detailing themes and subthemes in Texas history, site assessment, operational and managerial evaluations processes and the following criteria:

(1) The property must have recognized statewide or national significance based on the standards of the National Register of Historic Places.

(2) The property should be able to provide interpretation of a significant theme or event of Texas history that is not fully represented by the Commission's existing historic sites or other historic sites accessible to the public. The Commission will strive to maintain a geographic, cultural and thematic balance in its program.

(3) The property should have exceptional integrity of location (including surrounding environment), design, material, setting, feeling, and association.

(4) The property should have appropriate collections (objects, manuscript material, artifacts) associated with the historic site or necessary artifacts related to the site's history and period of significance should be identified and available.

(5) The property must be appropriate for use as an interpretive museum or historic site, have high potential to attract and accommodate diverse and new audiences, and be accessible to travelers as well as to the local community.

(6) The property must be available without restrictions that would limit the Commission's options for preservation and interpretation as a historic site (for example, a life estate retained by the grantor, restrictions against future sale or conveyance, or limits on alterations deemed appropriate by the Commission). The Commission encourages the use of easements or other restrictions to ensure the preservation of historic sites.

(7) Financial resources must be available or assured, including an endowment fund where appropriate, or sources of funding must be identified in a comprehensive funding plan to ensure the restoration, interpretation, development, long term operation and preservation of the site.

(8) The property must have the potential for strong supporting partnerships including community support.

(b) Evaluation Process. To evaluate the site against these criteria, the Commission will follow a three[~~two~~]-step process as follows.

(1) In phase one, staff will determine if the property should be recommended to be added to the Commission's portfolio of State Historic Sites. The preliminary evaluation will briefly address the following issues:

(A) Where is the property located?

(B) What is the current condition of the property?

(C) What improvements would need to be made to meet THC standards for visitor access, experience, and safety?

(D) What is the importance of the property in Texas and/or American History?

(E) That is the estimation of the property's value, strategically, operationally and culturally?

(F) Are there resources such as artifact collections or endowment that accompany the property?

(G) Are there resources available to adequately interpret the property's themes and stories to the public?

(H) Are the necessary resources available to preserve and care for the property's physical infrastructure and collections?

(I) Does THC have the financial and FTE resources to operate the property?

(J) What is the property's potential for the generation of sustainable visitation and revenue?

(2) [~~(1)~~]Phase 2. If the property is recommended for additional study, a [~~A~~] staff committee will be assigned [~~appointed~~] to conduct a preliminary review of the property with reference to criteria noted in subsection (a) of this section. The committee will make a recommendation to the Commission whether to proceed with the development of a historic site management plan in phase three of the[~~second step~~] evaluation process.

(3) [~~(2)~~] Staff will obtain and use the following information in phase two:

(A) A description of the property, including land, structures and other features.

(B) A preliminary inventory of collections and equipment.

(C) A statement of significance or reference to its designation on the National Register of Historic Places/National Historic Landmark and an evaluation of the site's integrity.

(D) A statement from the current owner indicating a willingness to transfer the real and relevant personal property and the terms and conditions for such a transfer.

(E) Needed and available funding for development costs and continuing operational costs.

(F) Letters of support from interested parties, including an indication of willingness to create an appropriate support group.

(G) A statement identifying how the property would support the educational mission of the Historic Sites Program to serve a broad and diverse audience.

(H) A preliminary estimate of the visitation and costs for development and operation of the site.

(4) [~~(3)~~] Phase 3. Upon positive action by the Commission on the recommendation noted in paragraph (2) [~~(1)~~] of this subsection, the staff will prepare or have prepared a management plan in phase three for the site's evaluation [~~site~~] including:

(A) Evaluation of the site, including but not limited to buildings, support facilities, infrastructure (including roads, trails, utility service/water and sewer systems), landscape features, and collections.

(B) Required staffing and services for operation of the site, including ongoing costs of preservation, operation, maintenance and marketing.[~~Merits of the proposed site compared to other sites in Texas that embody the same or similar historical or physical characteristics.~~]

(C) Preservation and facility development needs.

(D) Costs and timeline for making the property available to the public.

(E) Required staffing and consultant services for development of the site.[~~Any limitation on site development, such as environmental regulations and local restrictions (zoning, land use).~~]

(F) Projected audience/annual visitation, sources of funding to support programming including community partnerships, potential earned revenue, philanthropic and endowment. [~~Needed staffing and consultant services for development of the site.~~]

[~~(G) Needed staffing and services for operation of the site, including ongoing costs of preservation operation, and marketing.~~]

[~~(H) Business plan for the site identifying projected audience/annual visitation, sources of funds for all aspects of the program including available community support, potential to generate revenue, and endowment.~~]

(5) [~~(4)~~]The management [~~This~~] plan will be reviewed by a panel of experts including an independent Texas historian, museum professional, and expert in heritage tourism and their recommendation will be taken into consideration by the Commission to determine whether the property should be accepted.

(6) [~~(5)~~] The decision to accept a site is within the sole discretion of the Commission, including determining whether acceptance of a property that meets all technical criteria is in the best interest of the State.

(c) A property that is adjacent to an existing THC State Historic Site that will enhance the preservation, protection or interpretation of the existing site, or a property that is needed to support the operations of the state historic site as a program support facility, may be acquired by purchase or donation by action of the Commission on recommendation of the Executive Director, without the evaluation process described in subsection (b) of this section.

(d) A right of way or easement required to allow for installation or connection of necessary utilities at a THC State Historic Site between regular meetings of the Commission, may be approved by the Executive Director with the approval of the Chairman. This action will be ratified at the next meeting of the Commission.

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

Filed with the Office of the Secretary of State on July 7, 2020.

TRD-202002770
Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 463-6100

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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 102. FEES

22 TAC §102.1

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §102.1, concerning fees. This amendment will increase certain fees to account for the agency changing to biennial renewals for dental licensure. This amendment will correct the fee as it pertains to patient protection and the Texas.gov internet portal. This amendment will reduce the fee collected for the prescription monitoring program. This amendment will add a late fee for the nitrous oxide monitoring fee and remove the nitrous oxide monitoring fee duplicate certificate fee. This amendment will increase the fee for peer assistance to the maximum amount allowed under Section 467.0041 of the Texas Health and Safety Code, and remove the fee from the rule.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the agency's compliance with legislative directives and the protection of the public safety and welfare by collecting fees in sufficient amounts to permit the proper function of Texas state programs.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment. The rule as proposed covers the same individuals currently subject to the existing 22 TAC §102.1, and the current Board rule does not specifically affect any geographic region of Texas. No expansion of applicably will occur by the adoption of this rule. Therefore, no new local economies will be affected by this rule amendment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does require an increase in fees paid to the agency for the standalone nitrous oxide monitoring registrations; (5) the proposed rule does not create a new regulation; (6) the proposed rule does not expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule is necessary to implement legislation and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendments may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Occupations Code §254.004, which directs the Board to establish reasonable and necessary fees sufficient to cover the cost of administering the Board's duties.

No other statutes or rules are affected by this rulemaking.

§102.1 Fees.

(a) Effective October 1, 2020, [~~September 1, 2019~~] the Board has established the following reasonable and necessary fees for the administration of its function. Upon initial licensure or registration, and at each renewal, the fees provided in subsections (b) - (d) of this section shall be due and payable to the Board.
Figure: 22 TAC §102.1
[~~Figure:22 TAC §102.1~~]

(b) Pursuant to Texas Occupations Code §554.006, the Board shall assess a reasonable and necessary fee on dental licensure and renewal sufficient to permit the Texas State Board of Pharmacy to operate the prescription monitoring program described by Texas Health and Safety Code §§481.075, 481.076, and 481.0761. The Board shall assess the fee in accordance with the General Appropriations Act for the respective biennium applicable for the licensure or renewal period, and in compliance with any other applicable Texas law.

(c) Pursuant to Texas Government Code §2054.252, the Board shall assess a reasonable and necessary fee on all licensure/registration and renewal types sufficient to cover the cost of subscription fees to permit the Texas Department of Information Resources to implement the state internet portal Texas.gov. The Board shall assess the fee in accordance with Texas Department of Information Resources approved fee rates, and in compliance with any other applicable Texas law.

(d) Pursuant to Texas Occupations Code §254.010(b)(3), the Board shall assess a reasonable and necessary fee on dental, dental hygiene, and registered dental assistant licensure/registration and renewal types sufficient to permit the monitoring of disciplinary action taken against license and registration holders through reports filed with the National Practitioner Data Bank. The Board shall assess the fee in accordance with the approved fees announced by the U.S. Department of Health & Human Services for query and monitoring of practitioners.

(e) The Board shall make available a list of all applicable fees under subsections (a) - (d) of this section to licensees and registrants on the public website of the Board, and shall provide a list of applicable fees upon written request. The Board shall provide a statement of due and payable fees to each licensee and registrant in advance of the applicable renewal period for license or registration renewal.

(f) Failure to timely renew a license or registration may subject the licensee or registrant to disciplinary action for practice with an

expired license or registration, in addition to any late fees assessed by the Board for renewal of a license. For purposes of Board action, continuing to practice with an expired license or registration in excess of one hundred eighty days past the renewal date of the license or registration shall represent grounds for disciplinary action absent good cause shown by the licensee or registrant for failure to timely renew.

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 July 7, 2020.

TRD-202002795
Casey Nichols
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 305-9380

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CHAPTER 110. SEDATION AND ANESTHESIA

22 TAC §110.2

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §110.2, concerning the requirements for obtaining a sedation/anesthesia permit. This amendment would require applicants to complete an anesthesia jurisprudence assessment prior to obtaining a sedation/anesthesia permit. This rule is being proposed to comply with the requirements of Texas Occupations Code §258.1551.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment. The rule as proposed covers the same individuals currently subject to the existing 22 TAC §110.2, and the current Board rule does not specifically affect any geographic region of Texas. No expansion of applicably will occur by the adoption of this rule. Therefore, no new local economies will be affected by this rule amendment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule is necessary to implement legislation and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendments may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

This rule implements the requirements of SB 313 of the 85th Legislature and Texas Occupations Code §258.1551.

§110.2. Sedation/Anesthesia Permit.

(a) A dentist licensed under Chapter 101 of this title shall obtain an anesthesia permit for the following anesthesia procedures used for the purpose of performing dentistry:

(1) Nitrous Oxide/Oxygen inhalation sedation;

(2) Level 1: Minimal sedation;

(3) Level 2: Moderate sedation limited to enteral routes of administration;

(4) Level 3: Moderate sedation which includes parenteral routes of administration; or

(5) Level 4: Deep sedation or general anesthesia.

(b) A dentist licensed to practice in Texas who desires to administer nitrous oxide/oxygen inhalation sedation or Level 1, Level 2, Level 3 or Level 4 sedation must obtain a permit from the State Board of Dental Examiners (Board). A permit is not required to administer Schedule II drugs prescribed for the purpose of pain control or post-operative care.

(1) A permit may be obtained by completing an application form approved by the Board.

(2) The application form must be filled out completely and appropriate fees paid.

(3) Prior to issuance of a sedation/anesthesia permit, the Board may require that the applicant undergo a facility inspection or further review of credentials. The Board may direct an Anesthesia Consultant, who has been appointed by the Board, to assist in this inspection or review. The applicant will be notified in writing if an inspection is required and provided with the name of an Anesthesia Consultant who will coordinate the inspection. The applicant must make arrangements for completion of the inspection within 180 days of the date the notice is mailed. An extension of no more than ninety (90) days may be granted if the designated Anesthesia Consultant requests one.

(4) An applicant for a sedation/anesthesia permit must be licensed by and should be in good standing with the Board. For pur-

poses of this chapter "good standing" means that the dentist's license is not suspended, whether or not the suspension is probated. Applications from licensees who are not in good standing may not be approved.

(5) An applicant for a sedation/anesthesia permit must have passed the Chapter 110 (relating to Sedation and Anesthesia) component of the jurisprudence examination, within one year immediately prior to application.

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

Filed with the Office of the Secretary of State on July 7, 2020.

TRD-202002796
Casey Nichols
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 305-9380

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22 TAC §110.9

The State Board of Dental Examiners (Board) proposes this amendment to 22 TAC §110.9, concerning the requirements for renewing an anesthesia permit. This amendment would require permit holders to complete an anesthesia jurisprudence assessment once every five years. This rule is being proposed to comply with the requirements of Texas Occupations Code §258.1552.

FISCAL NOTE: W. Boyd Bush, Jr., Ed.D., Executive Director, has determined that for the first five-year period the proposed rule is in effect, the proposed rule does not have foreseeable implications relating to cost or revenues of the state or local governments.

PUBLIC BENEFIT-COST NOTE: W. Boyd Bush, Jr. has also determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of this rule will be the protection of public safety and welfare.

LOCAL EMPLOYMENT IMPACT STATEMENT: W. Boyd Bush, Jr. has also determined that the proposed rule does not affect local economies and employment. The rule as proposed covers the same individuals currently subject to the existing 22 TAC §110.9, and the current Board rule does not specifically affect any geographic region of Texas. No expansion of applicably will occur by the adoption of this rule. Therefore, no new local economies will be affected by this rule amendment.

SMALL AND MICRO-BUSINESS, RURAL COMMUNITY IMPACT STATEMENT: W. Boyd Bush, Jr. has determined that no economic impact statement and regulatory flexibility analysis for small businesses, micro-businesses, and rural communities is necessary for this rule.

GOVERNMENT GROWTH IMPACT STATEMENT: The Board has determined that for the first five-year period the proposed rule is in effect, the following government growth effects apply: (1) the rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation or elimination of employee positions; (3) the implementation of the proposed rule does not require an increase or decrease in future appropriations; (4) the proposed rule does not require an increase in fees paid to the agency; (5) the proposed rule does not create a new regulation; (6) the proposed rule does expand an existing regulation; (7) the proposed rule does not increase or decrease the number of individuals subject to it; and (8) the proposed rule does not positively or adversely affect the state's economy.

COST TO REGULATED PERSONS: This proposed rule is necessary to implement legislation and, therefore, is not subject to Tex. Gov't. Code §2001.0045.

Comments on the proposed amendments may be submitted to W. Boyd Bush, Jr., Ed.D., Executive Director, 333 Guadalupe Street, Suite 3-800, Austin, Texas 78701, by fax to (512) 305-9364, or by email to official_rules_comments@tsbde.texas.gov for 30 days following the date that the proposed rule is published in the *Texas Register.* To be considered for purposes of this rulemaking, comments must be: (1) postmarked or shipped by the last day of the comment period; or (2) faxed or e-mailed by midnight on the last day of the comment period.

This rule is proposed under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

This rule implements the requirements of SB 313 of the 85th Legislature and Texas Occupations Code §258.1552.

§110.9. Anesthesia Permit Renewal.

(a) The Board shall renew an anesthesia/sedation permit biennially if required fees are paid and the required emergency management training and continuing education requirements are satisfied. The Board shall not renew an anesthesia/sedation permit if, after notice and opportunity for hearing, the Board finds the permit holder has provided, or is likely to provide, anesthesia/sedation services in a manner that does not meet the minimum standard of care. If a hearing is held, the Board shall consider factors including patient complaints, morbidity, mortality, and anesthesia consultant recommendations.

(b) Fees. Biennial dental license renewal certificates shall include the biennial permit renewal, except as provided for in this section. The licensee shall be assessed a biennial renewal fee in accordance with the fee schedule in Chapter 102 of this title (relating to Fees).

(c) Continuing Education.

(1) In conjunction with the biennial renewal of a dental license, a dentist seeking to renew a minimal sedation, moderate sedation, or deep sedation/general anesthesia permit must submit proof of completion of the following hours of continuing education every two years on the administration of or medical emergencies associated with the permitted level of sedation:

(A) Level 1: Minimal Sedation - six (6) hours;

(B) Levels 2 and 3: Moderate Sedation - eight (8) hours; or

(C) Level 4: Deep Sedation/General Anesthesia - twelve (12) hours.

(2) The continuing education requirements under this section shall be in addition to any additional courses required for licensure. Advanced Cardiac Life Support (ACLS) course and Pediatric Advanced Life Support (PALS) course may not be used to fulfill the continuing education requirement for renewal of the permit under this section.

(3) Continuing education courses must meet the provider endorsement requirements of §104.2 of this title (relating to Providers).

(d) Anesthesia Jurisprudence Examination. [~~The Board shall develop and administer an online jurisprudence examination to determine a permit holder's knowledge of the Dental Practice Act, Board rules, and other applicable laws of this state relating to the administration of anesthesia.~~] A permit holder for nitrous oxide, level 1, level 2, level 3, or level 4 sedation/anesthesia must take and pass the online jurisprudence examination of Chapter 110 (relating to Anesthesia and Sedation), in conjunction with the jurisprudence examination requirement in §104.1 of this title (relating to Requirement), administered [~~developed~~] by the Board or an entity designated by the Board once every five years.

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

Filed with the Office of the Secretary of State on July 7, 2020.

TRD-202002797
Casey Nichols
General Counsel
State Board of Dental Examiners
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 305-9380

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 265. GENERAL SANITATION

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes the repeal of §§265.181 - 265.208 and new §§265.181 - 265.211, concerning Public Swimming Pools and Spas.

BACKGROUND AND PURPOSE

The purpose of the repeal and new sections in Chapter 265, Subchapter L is to comply with state legislation.

Senate Bill (S.B.) 1732, 81st Legislature, Regular Session, 2009, amended Texas Health and Safety Code, Chapter 341, by requiring safety standards at least as stringent as the Federal Virginia Graeme Baker Pool and Spa Safety Act.

S.B. 1324, 84th Legislature, Regular Session 2015, amended Texas Health and Safety Code, Chapter 341, by allowing the consumption of food and beverages in privately owned public pools and spas.

House Bill (H.B.) 1468, 85th Legislature, Regular Session, 2017, amended Texas Health and Safety Code, §1.005, by creating a category of a recreational water facility that would not be defined and regulated as a pool or spa but as an artificial swimming lagoon.

H.B. 2858, 86th Legislature, Regular Session, 2019, amended Texas Local Government Code, Chapter 214, by adopting the International Swimming Pool and Spa Code as the municipal swimming pool and spa code.

The proposal also serves as the four-year review of rules required by Texas Government Code §2001.039.

The new rules provide construction, sanitation, and operational requirements for public pools and spas in accordance with good public health engineering practices, intended to protect the health and safety of users, and to reduce to a practical minimum the possibility of drowning or of injury to users.

Existing facilities are not subject to the new requirements regarding engineering and construction. However, other requirements, such as water quality and user safety, apply to all facilities upon the effective date of the rules for this subchapter.

The term "pool and spa" refers to public pools and spas throughout this preamble.

SECTION-BY-SECTION SUMMARY

Proposed repeal of §§265.181- 265.208 removes outdated language. The updated language is incorporated into the new rules.

Proposed new §265.181 establishes the general provisions and application of the new rules.

Proposed new §265.182 defines terms used throughout the subchapter. A definition of "artificial swimming lagoon" is added to comply with H.B. 1468.

Proposed new §265.183 outlines plan submittal instructions and requires that certain new pools and spas and renovation of certain pools and spas be planned and designed by a licensed engineer.

Proposed new §265.184 describes the general construction requirements for new pools and spas and renovation requirements for existing pools and spas.

Proposed new §265.185 describes the requirements for construction or renovation of decks and deck equipment.

Proposed new §265.186 describes requirements for the construction and use of islands in pools and spas constructed on or after the effective date of the new rules for this subchapter.

Proposed new §265.187 describes the construction requirements for entry/exits in pools and spas.

Proposed new §265.188 describes the requirements for new public pools constructed with diving boards and for existing pools with diving boards that are renovated on or after the effective date of the new rules for this subchapter.

Proposed new §265.189 describes requirements for the installation of slides and other aquatic play features in pools and spas that are constructed or renovated on or after the effective date of the new rules for this subchapter.

Proposed new §265.190 describes the circulation systems requirements in pools and spas.

Proposed new §265.191 describes the filter requirements in pools and spas.

Proposed new §265.192 describes pump and motor requirements for pools and spas.

Proposed new §265.193 describes standards and requirements for suction outlet systems and return inlets in pools and spas constructed or renovated on or after the effective date of the rules for this subchapter. This section also implements S.B. 1732, related to safety equipment for public swimming pools and other artificial bodies of water.

Proposed new §265.194 describes standards and requirements for surface skimming and perimeter overflow or gutter systems

in pools and spas constructed or renovated on or after the effective date of the new rules for this subchapter. This section also implements S.B. 1732, related to safety equipment for public swimming pools and other artificial bodies of water.

Proposed new §265.195 describes standards and requirements for electrical systems at pools and spas constructed or renovated on or after the effective date of the new rules for this subchapter.

Proposed new §265.196 describes standards and requirements for lighting of pools and spas, and decks. This section includes requirements for security lighting at pools and spas, and facilities serving pools and spas constructed or renovated on or after the effective date of the new rules for this subchapter.

Proposed new §265.197 describes heater standards and installation requirements for pools and spas constructed on or after the effective date of the new rules for this subchapter and for heaters that are replaced at existing pools and spas. This section also includes provisions for the use of solar thermal water heaters.

Proposed new §265.198 describes provisions for pool and spa water supply. New provisions include requirements for testing and monitoring of water from wells that are not regulated by the Texas Commission on Environmental Quality (TCEQ), which are often used in remote locations.

Proposed new §265.199 describes requirements for pool and spa wastewater disposal.

Proposed new §265.200 describes requirements for the proper storage and use of pool and spa chemicals.

Proposed new §265.201 describes pool and spa safety requirements, required safety signs, and required rescue equipment.

Proposed new §265.202 describes lifeguard staffing and training, and rescue equipment and personal equipment requirements. This section also describes lifeguard monitoring and requirements for special rescue equipment necessary at pools and spas with certain aquatic activities.

Proposed new §265.203 clarifies fencing requirements for Class A, Class B, and Class C pools and spas, and fencing for pools and spas that fall under Texas Health and Safety Code, Chapter 757, Pool yard enclosures.

Proposed new §265.204 describes requirements for dressing and sanitary facilities at pools and spas constructed on or after the effective date of the new rules for this subchapter.

Proposed new §265.205 describes requirements for the operation and management of pools and spas and implements S.B. 1324, related to food and beverage consumption in certain swimming pools.

Proposed new §265.206 describes requirements for water quality, chemical levels, and water quality testing. This section includes the requirements for the use of electronic or automatic means of water quality monitoring and testing in pools and spas.

Proposed new §265.207 provides a means of applying for an alternate method of disinfectant from DSHS.

Proposed new §206.208 describes requirements for spas constructed on or after the effective date of the new rules for this subchapter.

Proposed new §265.209 provides special requirements for certain pools, including slide exit pools, wave pools, leisure rivers, movable floor pools, therapeutic pools and spas, and surf pools constructed on or after the effective date of the new rules for this subchapter.

Proposed new §265.210 addresses compliance, inspections, and investigations at pools and spas by local regulatory authorities and DSHS.

Proposed new §265.211 addresses enforcement of the rules in this subchapter by local regulatory authorities and DSHS.

FISCAL NOTE

Donna Sheppard, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rules will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of DSHS employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to DSHS;

(5) the proposed rules will create new rules;

(6) the proposed rules will repeal existing rules; and

(7) the proposed rules will not change the number of individuals subject to the rules.

DSHS has insufficient information to determine the proposed rules' effect on the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Donna Sheppard has also determined that the adverse impact on small businesses, micro-businesses, or rural communities required to comply with the sections as proposed is unknown. The rules may impose additional costs, but it is unknown the extent of changes required for them to comply, as pre-existing facilities are exempt from the rules concerning construction and design that would impose an economic cost unless engaging in repair or renovation of the pool. New businesses will have standard construction and operation requirements and safety standards that are consistent for all pools and spas.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, and the rules are necessary to implement legislation that does not specifically state §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Associate Commissioner, has determined that for each year of the first five years that the rules will be in effect, the public will benefit from adoption of the sections. The public

benefit anticipated from enforcing or administrating the sections is to better ensure the health and safety of residents of Texas.

Donna Sheppard has also determined that for the first five years that rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because pre-existing facilities are exempt from certain rules that would impose an economic cost. It has also been determined that for future public swimming pools and spas there is no anticipated economic costs to persons required to comply with the proposed rules because future facilities will have standard construction and operation requirements and safety standards that are consistent for all pools and spas.

REGULATORY ANALYSIS

DSHS has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

DSHS has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Katie Moore, Consumer Protection Division, Texas Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas 78714-9347; street address 8407 Wall Street, Austin, Texas 78754; or by email to PHSCPS@dshs.texas.gov. Please indicate "Comments on Chapter 265, Public Swimming Pools and Spa Rules" in the subject line.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the Texas Register. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted.

SUBCHAPTER L. STANDARDS FOR PUBLIC POOLS AND SPAS

25 TAC §§265.181 - 265.208

STATUTORY AUTHORITY

The repeals are authorized by Texas Health and Safety Code §341.002 which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and establish standards and procedures for the management and control of sanitation and for health protection measures; by Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001; and by Texas Government Code §2001.039, which requires that each state agency review and consider for readoption each of its rules every four years.

The repeals implement Texas Health and Safety Code, Chapters 341 and 1001; and Texas Government Code, Chapter 531.

§265.181. General Provisions.
§265.182. Definitions.
§265.183. Plans, Permits and Instructions for Post-10/01/99 Pools and Spas.
§265.184. General Construction and Design for Post-10/01/99 Pools and Spas.
§265.185. General Construction and Design for Pre-10/01/99 Pools and Spas.
§265.186. Decks, Entry/Exit, Diving Facilities, and Other Deck Equipment at Post-10/01/99 and Pre-10/01/99 Pools and Spas.
§265.187. Circulation Systems for Post-10/01/99 and Pre-10/01/99 Pools and Spas.
§265.188. Filters at Post-10/01/99 and Pre-10/01/99 Pools and Spas.
§265.189. Pumps and Motors at Post-10/01/99 and Pre-10/01/99 Pools and Spas.
§265.190. Suction Outlets and Return Inlets at Post-10/01/99 and Pre-10/01/99 Pools and Spas.
§265.191. Surface Skimming and Perimeter Overflow (Gutter) Systems for Post-10/01/99 Pools and Spas.
§265.192. Electrical Requirements for Post-10/01/99 and Pre-10/01/99 Pools, Spas, Pool Yards, and Spa Yards.
§265.193. Heating of Post-10/01/99 and Pre-10/01/99 Pools and Spas.
§265.194. Pool or Spa Water Supply for Post-10/01/99 and Pre-10/01/99 Pools and Spas.
§265.195. Drinking Water at Post-10/01/99 and Pre-10/01/99 Pools and Spas.
§265.196. Waste Water Disposal at Post-10/01/99 and Pre-10/01/99 Pools and Spas.
§265.197. Disinfectant Equipment and Chemical Feeders for Post-10/01/99 and Pre-10/01/99 Pools and Spas.
§265.198. Gas Chlorination for Post-10/01/99 and Pre-10/01/99 Pools and Spas.
§265.199. Specific Safety Features for Post-10/01/99 and Pre-10/01/99 Pools and Spas.
§265.200. Pool Yard and Spa Yard Enclosures for Post-10/01/99 and Pre-10/01/99 Pools and Spas.
§265.201. Dressing and Sanitary Facilities at Post-10/01/99 and Pre-10/01/99 Pools and Spas.
§265.202. Food, Beverages, and Containers at Post-10/01/99 and Pre-10/01/99 Pools and Spas.
§265.203. Operation and Management of Post-10/01/99 and Pre-10/01/99 Pools and Spas.
§265.204. Water Quality at Post-10/01/99 and Pre-10/01/99 Pools and Spas.
§265.205. Construction, Operation, and Maintenance of Post-10/01/99 and Pre-10/01/99 Spas.
§265.206. Construction, Operation, and Maintenance of Post-10/01/99 and Pre-10/01/99 Therapeutic Pools and Spas.
§265.207. Compliance, Inspections, and Investigations.
§265.208. Enforcement.

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 July 13, 2020.

TRD-202002877
Barbara L. Klein
General Counsel
Department of State Health Services
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 231-5719

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SUBCHAPTER L. PUBLIC SWIMMING POOLS AND SPAS

25 TAC §§265.181 - 265.211

STATUTORY AUTHORITY

The new rules are authorized by Texas Health and Safety Code §341.002 which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules and establish standards and procedures for the management and control of sanitation and for health protection measures; by Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001; and by Texas Government Code §2001.039, which requires that each state agency review and consider for readoption each of its rules every four years.

The new rules implement Texas Health and Safety Code, Chapters 341 and 1001; and Texas Government Code, Chapter 531.

§265.181. General Provisions.

(a) Scope and purpose. This subchapter provides minimum standards for the design, construction, renovation and maintenance of public swimming pools and spas, and bathhouses. The rules in this subchapter also establish minimum standards for public swimming pools and spas to ensure proper filtration, chemical balance, and maintenance of the water for the safety of the users, and to reduce to a practical minimum the possibility of drowning or injury to users. The rules in this subchapter are in addition to any municipal or federal laws applicable to public swimming pools and spas. This subchapter implements Texas Health and Safety Code, §341.064(g) authorized by Texas Health and Safety Code, §341.002, and the rules are considered to be good public health engineering practices.

(b) Application of the rules. Public swimming pools and spas shall be referred to as pools and spas throughout this subchapter.

(1) The rules will specify whether or not a particular provision applies to pools and spas constructed on or after the effective date of this subchapter or to all pools and spas regardless of the date of construction.

(2) Repairs to any pool, spa or related systems shall conform to those required for a new system whenever possible. Repairs shall not cause existing systems to become unsafe, unsanitary or overloaded.

(c) Date of construction. The date of construction of a pool or spa or a bathhouse is the date that a building permit for construction is issued or, if no building permit is required, the date that excavation or electrical service begins, whichever is earlier, in which case the owner or operator must produce adequate written documentation of that fact.

(d) Local regulatory authority. Pursuant to Texas Local Government Code, §214.103, the International Swimming Pool and Spa Code (ISPSC) is adopted as the municipal swimming pool and spa code for all construction, alteration, remodeling, enlargement, and repair of pools and spas. Regarding standards in this subchapter not addressed by the ISPSC, local regulatory authorities may, with the exception of department approved alternate methods of disinfectant set forth in §265.207 of this subchapter (relating to Request for Alternate Method of Disinfectant), adopt standards that vary from the standards in this subchapter; however, such standards shall be equivalent to or more stringent than the standards in this subchapter and shall be in accordance with good public health engineering practices.

§265.182. Definitions.

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

(1) Activity pool--A pool designed for casual water play ranging from simple splashing activity to the use of attractions placed in the pool, such as pad walks or floatation devices, for recreation.

(2) AED--Automated External Defibrillator. A device that automatically diagnoses the life-threatening cardiac arrhythmias of ventricular fibrillation and pulseless ventricular tachycardia and is able to treat those conditions by application of electricity which stops the arrhythmia, allowing the heart to re-establish an effective rhythm.

(3) Alternate method of disinfectant--A method of disinfection required to be approved by the Texas Department of State Health Services.

(4) Alternative communication system--Devices that alert multiple on-site staff when activated, such as pager systems, radios, or walkie-talkie communication systems. Used to notify either on-site emergency medical services (EMS), on-site medical staff, or on-site certified staff such as lifeguards, or a commercial emergency monitoring service.

(5) ANSI--American National Standards Institute.

(6) APSP--Association of Pool and Spa Professionals.

(7) ARC--American Red Cross.

(8) Artificial swimming lagoon--An artificial body of water used for recreational purposes with more than 20,000 square feet of surface area, an artificial liner, and a method of disinfectant.

(9) ASME--American Society of Mechanical Engineers.

(10) ASPSA--American Swimming Pool and Spa Association now known as PHTA.

(11) ASTM International--American Society of Testing Materials International

(12) ASTM F2376--Standard Practice for Classification, Design, Manufacture, Construction, and Operation of Water Slide Systems.

(13) Backflow prevention device--A device designed to prevent a physical connection between a potable water system and a non-potable source such as a pool or spa, or a physical connection between a pool or spa and a sanitary sewer or wastewater disposal system.

(14) Beach entry--A sloping entry starting above the waterline at deck level and ending below the waterline. Also called a zero-depth or sloped entry.

(15) Bonded--Permanent joining of metallic parts to form an electrically conductive path that ensures electrical continuity and the

capacity to conduct safely any current likely to be imposed to minimize the risk of electrocution.

(16) Broken stripe--A horizontal stripe that is at least 1-inch wide with uniform breaks in the stripe, with the breaks totaling not more than 75% of the length of the stripe and stripe breaks.

(17) BVM--Bag-Valve Mask. A handheld device used to provide positive pressure ventilation to persons who are not breathing adequately. Also known by its proprietary name, Ambu bag.

(18) Catch pool--A body of water located at the exit of one or more waterslide flumes. It is designed and intended to terminate the slide action of the waterslide user and to provide a means of exit to a deck or walkway area.

(19) Circulation equipment--Mechanical components that are a part of a recirculation system of a pool or spa. Circulation equipment includes pumps, hair and lint strainers, filters, valves, gauges, meters, heaters, surface skimmers, inlet/outlet fittings, and chemical feeding devices.

(20) Cleansing shower--A shower with hot and cold running water and soap that removes dead skin, sweat, dirt, and waste material from users.

(21) CPSC--United States Consumer Product Safety Commission.

(22) Cross-connection control device--A device that is designed to prevent a physical connection between a potable water system and a non-potable source such as a pool or spa, or a physical connection between a pool or spa and a sanitary sewer or wastewater disposal system.

(23) DCOF--Dynamic coefficient of friction. A measurement of frictional resistance of a surface one pushes against when already in motion.

(24) DCOF AcuTest--A test used to evaluate the slip resistance or DCOF of a tile surface under known conditions using a standardized sensor prepared according to a specific protocol.

(25) Deck--An area immediately adjacent to or attached to the pool or spa that is specifically constructed or installed for sitting, standing, or walking and can include the coping. The term "deck" does not include the sandy beach areas adjacent to the zero-entry access areas.

(26) Deep areas--Pool water areas where the depth of the water is more than five feet.

(27) Department--Texas Department of State Health Services.

(28) Depth--Vertical distance measured at three feet from the pool or spa wall or barrier from the bottom of the pool or spa to the design water level.

(29) Design water level--

(A) For a skimmer system, the midpoint of the operating range of the skimmers.

(B) For a gutter or perimeter overflow system, the top of the overflow rim of the gutter or overflow system.

(30) Disinfectant--Energy, chemicals, or a combination of both used to kill or irreversibly inactivate microorganisms such as bacteria, viruses, and parasites.

(31) Diving board--A flexible board secured at one end that is used for diving such as a spring board or a jump board.

(32) Diving platform--A stationary platform designed for diving.

(33) DPD--A chemical testing reagent (N, N-Diethyl-P-Phenylenediamine) used to measure the levels of free chlorine or bromine in water by yielding a series of colors ranging from light pink to dark red.

(34) Emergency monitoring service--A service that provides an emergency summoning device at pools and spas that is monitored 24 hours a day off-site by personnel trained to identify pool and spa-related emergencies, such as drownings. The service is capable of contacting local EMS, providing a precise location of the emergency call to local EMS, and has personnel trained to offer the caller instructions for assisting when possible.

(35) Exercise spa or swim spa--Exercise spas or swim spas are a variant of a spa in which the design and construction includes specific features and equipment to produce a water flow intended to allow recreational physical activity including swimming in place. Exercise spas and swim spas shall be referred to as spas in this subchapter.

(36) Facility--A pool, spa, interactive water feature or fountain, and restrooms, dressing rooms, equipment rooms, deck or walkways, beach entries, enclosure, and other appurtenances directly serving the pool or spa.

(37) FIFRA--The Federal Insecticide, Fungicide, and Rodenticide Act.

(38) Filter media--A finely graded material (for example, sand, diatomaceous earth, or polyester fabric) that removes filterable particles from the water.

(39) FINA--Fédération Internationale de Natation. The organization that administers international competition in aquatic sports.

(40) Floatation system--A combination of float solution holding vessel and treatment system for the immersion and floatation of a person or persons in a temperature-controlled environment. Also known as a sensory deprivation system or floatation chamber.

(41) Flume--A trough-like or tubular structure of a water slide that directs the path of travel and the rate of descent by the rider.

(42) gpm--Gallons per minute.

(43) Handhold--The portion of a pool or spa structure or specific element that is at or above the design waterline that users in the pool or spa grasp for support.

(44) Handrail--A support device intended to be gripped by a user for the purpose of resting or steadying, typically located within or at exits to the pool or spa or as part of a set of steps.

(45) Hyperchlorination--The intentional and specific raising of chlorine levels for a prolonged period of time to inactivate pathogens following a diarrheal release in a pool or spa.

(46) IAPMO SPS 4--International Association of Plumbing and Mechanical Officials Special Use Suction Fittings for Swimming Pools, Spas, and Hot Tubs (for Suction Side Automatic Swimming Pool Cleaners).

(47) ICC-SRCC--International Code Council-Solar Rating and Certification Corporation

(48) Island--A structure inside a pool where the perimeter is completely surrounded by the pool water and the top is above the surface of the pool.

(49) Jump board--A manufactured diving board that has a coil spring, leaf spring, or comparable device located beneath the board that is activated by the force exerted by jumping on the board's end.

(50) Ladder--A series of vertically separated treads or rungs connected by vertical rail members or independently fastened to an adjacent vertical pool or spa wall.

(51) Leisure river--A manufactured stream of water of near-constant depth in which the water is moved by pumps or other means of propulsion to provide river-like flow that transports users over a defined path that may include water features and play devices. Also known as a lazy river or current channel.

(52) Licensed electrician--A person licensed to perform electrical work on pools and spas in accordance with the Texas Electrical Safety and Licensing Act, Texas Occupations Code, Chapter 1305, and related rules.

(53) Licensed engineer--A person licensed to engage in the practice of engineering in the State of Texas in accordance with the Texas Engineering Practice Act, Texas Occupations Code, Chapter 1001, and related rules.

(54) Lifeguard--A person who supervises the safety and rescue of swimmers, surfers, and other water sports participants, and who has successfully completed and holds a current ARC, YMCA, or equivalent Lifeguard Certificate from an aquatic safety organization and a current First Aid Certificate and current cardiopulmonary resuscitation (CPR) certificate, which includes training in CPR for adults, infants, and children, use of an AED and BVM.

(55) Local regulatory authority--A county, municipality, or other political subdivision of the state having jurisdiction over pools and spas, and associated facilities.

(56) Maintained illumination--The value, in foot-candles or equivalent unit, below which the average illuminance on a specified surface is not allowed to fall. Maintained illumination equals the initial average illuminance on the specified surface with new lamps, multiplied by the light loss factor to account for reduction in lamp intensity over time.

(57) NCAA--National Collegiate Athletic Association.

(58) NEC--National Electrical Code.

(59) NEMA--National Electrical Manufacturers Association.

(60) NESC--National Electrical Safety Code.

(61) NFPA--National Fire Protection Association.

(62) NRPA--National Recreation and Parks Association.

(63) NSF--National Sanitation Foundation International.

(64) NSF 50 or NSF/ANSI Standard 50--Standard establishing minimum requirements for materials, design, construction and performance of equipment commonly included in the water circulation systems of residential and public swimming pools, spas or hot tubs.

(65) NSPF--National Swimming Pool Foundation. Now known as the Pool and Hot Tub Alliance.

(66) ORP--Oxidation Reduction Potential. The potential level of oxidation-reduction produced by strong oxidizing (sanitizing) agents in a water solution. Oxidation level is measured in millivolts by an ORP meter.

(67) Overflow system--Overflows, surface skimmers, and surface water collection systems of various design and manufacture for removal of surface water from the pool or spa.

(68) Perimeter gutter system (gutter)--Overflow trough in the perimeter wall of a pool that is a component of the circulation system or flows to waste.

(69) pH--A value expressing the relative acidic or basic tendencies of a substance such as water on a scale from 0 to 14, with 7.0 being neutral, values less than 7.0 being acidic, and values greater than 7.0 being basic.

(70) PHTA--Pool and Hot Tub Alliance. Formally APSP and NSPF.

(71) PIWF--Public interactive water feature and fountain. Any indoor or outdoor installation maintained for public recreation that includes water sprays, dancing water jets, waterfalls, dumping buckets, or shooting water cannons in various arrays for the purpose of wetting the persons playing in the spray streams. It may be a stand-alone PIWF, also known as a splash pad, spray pad, or wet deck, or may share a water supply, disinfection system, filtration system, circulation system, or other treatment system that allows water to co-mingle with a pool.

(72) Pool yard or spa yard--An area that has an enclosure containing a pool or spa.

(73) Public pool--Any man-made permanently installed or non-portable structure, basin, chamber or tank containing an artificial body of water that is maintained or used expressly for public recreation, swimming, diving, aquatic sports, or other aquatic activity. Public pools include but are not limited to activity pools, catch pools, lazy or leisure river pools, wave action pools, vortex pools, therapy pools, and wading pools. A public pool may be publicly or privately owned and may be operated by an owner, lessee, operator, licensee or concessionaire. A fee for use may or not be charged. The term does not include a residential pool, artificial swimming lagoon, floatation system or chamber, or a body of water that continuously recirculates water from a spring.

(A) Class A pool--Any pool maintained or used, with or without a fee, for accredited competitive events such as FINA, United States Swimming, United States Diving, NCAA, and National Federation of State High School Association events. A Class A pool may also be used for recreational swimming.

(B) Class B pool--Any pool maintained or used for public recreation and open to the general public with or without a fee.

(C) Class C pool--Any pool operated for and in conjunction with:

(i) lodging, such as hotels, motels, apartments, condominiums, or mobile home parks;

(ii) youth camps, property owner associations, private organizations, or clubs; or

(iii) schools, colleges, or universities while operated for academic or continuing education classes. The use of such a pool would be open to occupants, members or students, and their guests, but not to the public.

(74) Recessed treads--A series of vertically spaced cavities in the pool or spa wall creating tread areas for step holes.

(75) Regulatory authority--A federal or state agency or local regulatory authority having jurisdiction over pools and spas.

(76) Rehabilitate or remodel--To modify or remake a pool or spa in a similar but different manner, or to change the style, shape or form of a pool or spa.

(77) Renovation--To return a pool or spa that may still be operational and functional, but that is outdated or has faded, declined, or deteriorated, to its former or original state. This term includes remodeling or rehabilitating a pool or spa.

(78) Repair--To mend or restore to working order or operating condition a pool or spa, or the related equipment or appurtenances that were broken, damaged, worn, defective, or malfunctioning.

(79) Rescue tube--A piece of lifesaving equipment that is an essential part of the equipment that must be carried by lifeguards and that is used to make water rescue easier by helping support the victim's and rescuer's weight.

(80) Resident youth camp--A resident youth camp as described in the Texas Youth Camps Safety and Health rules, §265.11 of this chapter (relating to Definitions.)

(81) Residential pool or spa--A pool or spa that is located on private property under the control of the property owner or the owner's tenant and that is intended for use by not more than two resident families and their guests. It includes a pool or a spa serving only a single-family home or duplex.

(82) Return inlet or inlet--Aperture or fitting through which water under positive pressure returns into the pool or spa.

(83) Rinsing shower--A shower located on the pool or spa deck that is used to remove sand, dirt, sweat, and user hygiene products without the use of hot water or soap.

(84) Secchi disk--An 8-inch diameter disk with alternating black and white quadrants that is lowered in the pool and spa and is used to measure water turbidity and clarity.

(85) Self-closing and self-latching device--A device or mechanism that causes a gate to automatically close without human or electrical power after it has been opened, and to automatically latch without human or electrical power when the gate closes.

(86) Service animal or assistance animal--A canine that is specially trained or equipped to help a person with a disability and that is used by a person with a disability in accordance with the Texas Human Resources Code, Chapter 121.

(87) Shallow areas--Pool water areas where the depth of the water is five feet or less.

(88) Skimmer--A device installed in the pool or spa that permits the removal of floating debris and surface water to the filter. A skimmer is not considered a suction outlet for purposes of this subchapter.

(89) Slide--A recreational feature with a flow of water and an inclined flume or channel by which a rider is conveyed downward into a pool.

(A) Drop slide--A slide that drops bathers into the water from an elevated height into water.

(B) Pool slide--A slide having a configuration as defined in the Code of Federal Regulations, Chapter II, Title 16, Part 1207 by CPSC or is similar in construction to a playground slide that allows users to slide from an elevated height to a pool. This includes children's (tot) slides and all other non-flume slides that are mounted on a pool deck or within the basin of a pool.

(C) Waterslide--A slide that runs into a landing pool or runout through a fabricated channel with flowing water.

(90) Slip resistant--A surface that has been treated or constructed to significantly reduce the chance of slipping.

(91) Slope break--Point where the slope of the pool floor changes to a greater slope.

(92) Spa--A body of water intended for the immersion of persons in temperature-controlled water circulated in a closed system and not intended to be drained and refilled after each use. The term includes a swim spa or exercise spa.

(93) Steps, stairs, and recessed steps--A riser or tread or a series of risers or treads extending down from the deck and terminating at the pool or spa floor. Recessed steps have the risers recessed into the pool wall.

(94) Suction outlet--A submerged fitting, fitting assembly, cover or grate, and related components that provide a localized low-pressure area for the transfer of water from a pool or spa. Submerged suction outlets are referred to as main drains.

(95) Surf pool--A pool, with less than 20,000 square feet of water surface area, in which waves are generated and dedicated to the activity of surfing on a surfboard or analogous surfing device commonly used in the ocean and intended for sport. A surf pool is intended for the sport of surfing as opposed to general play activities in wave pools.

(96) Swimout--An underwater seat area that is placed completely outside of the perimeter shape of the pool.

(97) TCEQ--Texas Commission on Environmental Quality.

(98) TDLR--Texas Department of Licensing and Regulation.

(99) Therapeutic pool or spa--A pool or spa that is operated exclusively for therapeutic purposes, such as physical therapy, and is under the direct supervision and control of licensed or certified medical personnel.

(100) Turnover rate--The period of time, usually in hours, required to circulate a volume of water equal to the pool or spa capacity.

(101) UL--An independent testing laboratory (formerly Underwriters Laboratories).

(102) Underwater ledge--A narrow shelf projecting from the side of a vertical structure.

(103) Underwater seat--An underwater ledge that is placed completely inside the perimeter shape of the pool, generally located in the shallow end of the pool.

(104) USCG--United States Coast Guard.

(105) Vanishing edge--A pool-wall structure and adjacent pool deck that is designed in such a way that the top of the pool wall and adjacent deck are not visible from certain vantage points in the pool or from the opposite side of the pool. Water from the pool flows over the edge and is captured and reused through the normal pool circulation system. Also referred to as an infinity edge, negative edge, or zero edge.

(106) VGBA--The Virginia Graeme Baker Pool and Spa Safety Act. A federal law that requires all public pools and spas to be fitted with suction outlets that meet the ANSI/APSP-ICC-16 standard.

(107) Vortex pool--A circular pool equipped with a method of transporting water in the pool for the purpose of propelling users at speeds dictated by the velocity of the moving stream of water.

(108) Wading pool--A pool with a maximum water depth that is no greater than 18 inches. A wading pool can contain a PIWF.

(109) Water lounge--A horizontal area of a pool that may be slightly sloped and that adjoins the pool wall at a depth of 2 inches to 12 inches and is used for seating and play. A water lounge is also known as a tanning ledge or sun shelf.

(110) Wave pool--A pool, with less than 20,000 square feet of water surface area, designed to simulate breaking or cyclic waves for purposes of general play. A wave pool is intended for general play as opposed to a surf pool that is intended for sport.

§265.183. Plans and Instructions.

(a) Plans for new construction of pools and spas. The department may review plans for pools and spas in order to ensure compliance with construction requirements. If the department intends to review plans it will notify the owner/operator in writing.

(b) Licensed engineer required.

(1) Design, construction, or renovation of Class A and Class B pools and spas, therapeutic pools and spas, surf pools, wave pools, and pools with a movable bottom, drop slide, or waterslide constructed on or after the effective date of this subchapter shall be planned and designed by a licensed engineer.

(2) Design and construction of Class C pools and spas constructed on or after the effective date of this subchapter shall be planned and designed by a licensed engineer if the pool or spa has a diving board, climbing wall, slide, movable bottom, interactive water feature or fountain, or any aquatic play feature that meets the definition of "Amusement Ride" in Texas Occupations Code, Chapter 2151 (the Amusement Ride Safety Inspection and Insurance Act), or is one of the following:

(A) a therapeutic pool or spa; or

(B) a surf pool or wave pool.

(3) Renovation of Class A and Class B pools and spas constructed before the effective date of this subchapter shall be planned and designed by a licensed engineer. Renovation of Class C pools and spas constructed before the effective date of this subchapter shall be planned and designed by a licensed engineer if the pool or spa has a diving board, climbing wall, slide, movable bottom, interactive water feature or fountain, or any aquatic play feature that meets the definition of "Amusement Ride" in Texas Occupations Code, Chapter 2151 (the Amusement Ride Safety Inspection and Insurance Act), or is one of the following:

(A) a therapeutic pool or spa; or

(B) is a surf or wave pool.

(c) Operational Instructions. Upon completion of construction of a pool or spa, the owner shall obtain from the pool or spa builder complete written operational instructions for the pool or spa. Written instructions shall include items such as procedures for filtration, backwash, cleaning, and operation of all chemical feed devices, clean filter pressures, normal operating pressures, and pressure differential(s) that indicate the need for filter cleaning and general maintenance of the pool and spa.

§265.184. General Construction and Design for Pools and Spas.

(a) Structural design and materials for pools and spas. Construction design and materials used in construction or renovation of pools and spas shall comply with the requirement of this section as well as other requirements expressly stated in this subchapter.

(b) Non-toxic, durable, and sound materials for pools and spas. Pools and spas shall be constructed of materials that:

(1) are nontoxic to humans and the environment;

(2) are impervious and enduring;

(3) will withstand design stresses; and

(4) will provide a watertight structure with a smooth and easily cleanable surface without cracks, or joints, excluding structural joints, or that will provide a watertight structure to which a smooth, easily cleaned surface or finish is applied or attached.

(c) User contact material surfaces. Material surfaces that come in contact with the user shall be finished, so that they do not constitute a cutting, pinching, puncturing or abrasion hazard under casual contact and intended use.

(d) Accepted practice for pools and spas. The structural design and materials for pools and spas shall be in accordance with generally accepted industry engineering practices and methods prevailing at the time of original construction unless otherwise stated in this subchapter.

(e) NSF Standard 50. Where equipment for a pool or spa such as pumps, filters, skimmers, chemical feeders, and any other equipment, falls within the scope of NSF Standard 50, such equipment shall meet the standard as confirmed by a testing laboratory, except as otherwise noted in §265.193 of this subchapter (related to Suction Outlet Systems (Suction Outlets) and Return Inlets for Pools and Spas). Conformity with standards noted above shall be evidenced by the listing or labeling of such equipment by such a laboratory or by separate documentation.

(f) Prohibition of earth material.

(1) Earth shall not be permitted as an interior finish in a pool or spa. Clean sand or similar material if used in a beach environment:

(A) shall only be used over an impervious surface;

(B) shall be designed to perform in such an environment; and

(C) shall be controlled so as not to adversely affect the proper circulation, filtration, treatment system, maintenance, safety, sanitation, and operation of the pool or spa.

(2) When sand or similar material is used, positive upflow circulation through the sand shall be provided as necessary to ensure sanitary conditions are maintained at all times.

(g) Interior color of pools and spas.

(1) The colors, patterns, or finishes of a pool or spa interior shall not obscure the existence or presence of objects or surfaces within the pool or spa.

(2) For pools and spas constructed prior to the effective date of this subchapter interior surfaces shall be a light enough color so that an 8-inch black disk or Secchi disk on the pool or spa floor at the deepest point of the pool or spa can be clearly and immediately seen by an observer standing on the deck at a point closest to the disk.

(3) For pools and spas constructed on or after the effective date of this subchapter interior surfaces and finishes shall be at least 6.5 on the Munsell color value scale.

(4) Lane markings, floors of Class A pool diving wells, step and edge markings, water line tiles, and depth change indicator tiles

shall be in darker colors or in colors in contrast to the pool and spa finish and surface.

(h) Areas subject to freezing. Where constructed in areas subject to freezing, pools and spas and appurtenances shall be designed to protect against damage due to freezing.

(i) Hydrostatic relief. A hydrostatic relief valve, plug, or a more extensive hydrostatic system shall be installed to prevent ground water pressure from displacing or otherwise damaging a pool or spa.

(j) Interior surface footing. The surfaces within a pool or spa intended to provide footing for users shall be slip resistant. The roughness or irregularity of such surfaces shall not cause injury to feet during normal use.

(k) General shape. This subchapter is not intended to regulate the perimeter shape of pools or spas. It is the designer's responsibility to consider the effect a given shape will have on the health and safety of the users.

(l) Dimensional variations. Dimensions for pools and spas may vary in limited areas where access for persons with disabilities has been provided, as long as the general safety of all users is maintained. The design shall comply with the applicable requirements for persons with disabilities under federal, state, and local fair housing and disability access laws.

(m) Entanglement or entrapment avoidance. Pools shall be constructed without protrusions, extensions, means of entanglement, or other obstructions in a pool or spa that may cause the entrapment or injury of the user or interfere with proper operation.

(n) Construction tolerances for pools and spas constructed on or after the effective date of this subchapter.

(1) Construction tolerances for Class A pools shall be determined by the sanctioning authority that provides the accreditation of the pool for competitive events.

(2) For all other pools and spas designed by a licensed engineer, construction tolerances shall be in accordance with Figure 25 TAC §265.184(n)(2) or with the construction plan submitted by the design engineer.

Figure: 25 TAC §265.184(n)(2)

(o) Maximum user load. The maximum user load in a pool or spa shall be based upon the following:

(1) The maximum number of users in Class A pools being used for competitive events shall be determined by the sanctioning authority under which the events are being held.

(2) Maximum number of users in Class A pools not being used for competitive events, and Class B and Class C pools and spas are set forth in Figure 25 TAC §265.184(o)(2).

Figure: 25 TAC §265.184(o)(2)

(3) The maximum number of users may be lowered but must not exceed the number that is determined in accordance with paragraphs (1) or (2) of this subsection, as applicable.

(4) Pool and spa equipment sizing including the circulation system, deck area, and any other equipment or utility used to maintain the pool or spa shall be based upon the maximum number of users determined in accordance with paragraphs (1) or (2) of this subsection, as applicable.

(5) Maximum number of users in waterslide landing pools and surf pools at any given time shall be established by the slide and surf pool manufacturer. For purposes of this paragraph, a waterslide landing pool can be either a separate pool located at the exit of one or more waterslide flumes or the area of a pool that is located at the exit of one or more waterslide flumes.

(p) Walls joining floors in pools and spas constructed on or after the effective date of this subchapter. Walls shall intersect with the floor at an angle or a transition profile. Where a transitional profile is provided at water depths of 3 feet or less, a transitional radius shall not exceed 6 inches, shall be tangent to the wall, and may be tangent or intersect the floor. Wall to floor radiuses may encroach on tread unobstructed surface areas.

(q) Floor slopes in pools and spas constructed on or after the effective date of this subchapter. All pool floor slopes shall drain and be uniform within the different activity areas of the pool. Floor slopes in Class A pools shall be determined by the authority that provides the accreditation of the pool for competitive events. All other pool floor slopes shall meet the following requirements:

(1) The slope of the floor in water less than 5 feet shall not exceed 1 foot in 10 feet to the point of the first slope change.

(2) The slope of the floor in water five feet deep or more. shall not exceed one foot in three feet.

(3) The slope of the floor may vary in limited areas where access for persons with disabilities has been provided.

(r) Visual separation for pools and spas. Any area of a pool, excluding steps and ramps, that is less than 3 feet in depth shall be visually set apart from deeper areas of the pool by a minimum 4-inch wide tile band, pointed line, or similar means of contrasting color across the floor of the pool.

(s) Vanishing edge in a pool or spa constructed on or after the effective date of this subchapter. The vanishing edge overflow trough, basin, or capture drain is not a skimmer and does not replace the number of required skimmers in pools constructed on or after the effective date of this subchapter. A vanishing edge in a pool shall:

(1) not exceed more than 50% of the entire perimeter of the pool or of the spa unless the entire pool or spa is surrounded by a deck meeting the requirements of §265.185 of this subchapter (relating to Decks and Deck Equipment for Pools and Spas);

(2) not be required to have skimmers when 100% of the entire pool or spa is a vanishing edge;

(3) not have any part of the vanishing edge at a distance exceeding 15 feet from the deck; and

(4) be designed to overflow into a trough, basin, or capture drain.

(t) Underwater seats and benches. Underwater seats and benches in pools and spas constructed or renovated on or after the effective date of this subchapter shall:

(1) have the horizontal surface not greater than 20 inches below the waterline;

(2) have a minimum seating width of 10 inches projecting from the wall at least 24 inches in width;

(3) be located fully outside of the diving water envelope in a pool with diving equipment;

(4) be visually set apart with a permanent solid or broken stripe 1-inch wide on the top surface along the leading edge of the bench and is a contrasting color to the surface to which it is applied;

(5) have a slip-resistant surface; and

(6) shall not be used as the required entry and exit access.

(u) Water lounges in pools and spas. Water lounges shall be designed to be used as a lounge or sunning area and must not be designed to be used as wading pools. Water ledges shall:

(1) be a minimum of 20 inches wide and provide a minimum of 10 square feet of horizontal surface over a distance of not less than 3 feet;

(2) be at a depth of 2 to 12 inches below the design water level;

(3) be visually set apart with a permanent solid or broken stripe 1-inch wide, on the top surface along the leading edge of the bench and is a contrasting color to the surface to which it is applied;

(4) have a slip resistant surface;

(5) be located fully outside of the diving water envelope in a pool with diving equipment; and

(6) be located in shallow areas of the pool only.

(v) Underwater toe ledges. Underwater toe ledges in pools and spas constructed or renovated on or after the effective date of this subchapter shall:

(1) be slip resistant;

(2) only be provided in water 5 feet deep or greater and at least 4 feet below the design water level;

(3) be visually set apart with a permanent solid or broken stripe 1-inch wide, on the top surface along the leading edge of the bench and is a contrasting color to the surface to which it is applied; and

(4) have a minimum horizontal tread depth of 4 inches and a maximum uniform horizontal tread depth of 6 inches.

(w) Wading pools.

(1) Wading pools, including wading pools containing a PIWF or fountain shall have a maximum water depth of 18 inches.

(2) Wading pools containing a PIWF that are constructed on or after the effective date of this subchapter and all wading pools constructed on or after October 1, 1999, shall:

(A) be separate and physically set apart from beginner or shallow water areas by at least 15 feet or by a pool yard enclosure meeting the requirements in §265.203 of this subchapter (relating to Pool Yard and Spa Yard Enclosures) for Class C pools and spas;

(B) be separate and physically set apart from deep water areas by at least 35 feet or by a pool yard enclosure meeting the requirements in §265.203 of this subchapter for Class C pools and spas; and

(C) maintain clear visibility through the barrier.

(3) Wading pools constructed on or before October 1, 1999, are exempt from the distance and barrier requirements for wading pools.

(4) For wading pools constructed or renovated on or after the effective date of this subchapter the following shall apply:

(A) At the perimeter wall of the wading pool, the vertical distance from the deck or walkway to the bottom of the pool or to perimeter seating bench underwater shall not be greater than 18 inches. The vertical distance from the bottom of the pool to the deck or walk may be reduced and brought to zero at the shallowest point.

(B) The slope of zero level deck entries shall not exceed 1 foot in 12 feet.

(C) Floors of wading pools shall be uniform, sloped to drain with a maximum slope of 1 foot in 12 feet and shall be slip resistant.

(5) Wading pools constructed or renovated on or after the effective date of this subchapter shall not have submerged suction outlets (main drains). Skimmers or overflow gutters shall be installed and shall accommodate 100% of the circulation system flow rate.

(x) Bulkheads. The bulkhead position shall be maintained such that it cannot encroach on any required clearances of other features such as diving boards. If a bulkhead is operated with an open area underneath, users shall be prevented from swimming underneath the bulkhead.

§265.185. Decks and Deck Equipment for Pools and Spas.

(a) Accessibility requirements for pool and spa decks. Entrances and exits, including hand and grab rails, walkways, and decks, shall comply with applicable requirements for access to aquatic recreation facilities for persons with disabilities under federal, state, and local fair housing and disability access laws.

(b) Concrete decks. Concrete that is used as a deck material shall be installed in accordance with the American Concrete Institute ACI Standard 302.1R-15, "Guide for Concrete Floor and Slab Construction", or in accordance with the requirements established by the design engineer, and in accordance with local building codes, as applicable.

(c) Decks other than concrete decks. Decks, other than concrete decks, shall be designed and installed in accordance with good public health engineering practices, and, when applicable, by a method required by a local regulatory authority. This includes the design and quality of the subbase, deck material used, reinforcing, and joints.

(d) Deck renovation or repair. Renovation or repair of decks shall be in accordance with the requirements of this subchapter.

(e) Deck slip resistance. Decks, ramps, coping, and steps shall be slip-resistant. Cleanable special features in or on decks such as markers, brand insignias, and similar materials shall be slip-resistant and shall not cause injury during normal use.

(f) Pool and spa decks and circulation paths. Pool and spa decks and circulation paths for pools and spas constructed or renovated on or after the effective date of this subchapter shall comply with the following requirements.

(1) A continuous and unobstructed circulation path shall be provided in conformance with the Americans with Disabilities Act (ADA) requirements for an accessible route.

(2) Wing walls or peninsulas with widths greater than 18 inches shall be considered part of the pool or spa deck but cannot be accounted for in calculating the pool perimeter.

(3) Pool or spa deck may serve as part of the circulation path.

(4) The deck width, which can include flush coping, must meet the following requirements.

(A) All Class A pool deck widths shall meet the standards of the appropriate sanctioning body that regulates the type of competition to be held.

(B) Decks between pools, spas, or any combination of pools and spas, constructed on or after the effective date of this subchapter shall have a minimum width of 6 feet.

(C) Decks of Class B pools constructed on or after September 1, 2004, shall have a minimum width of 6 feet.

(D) All Class C pool and spa decks constructed on or after the effective date of this subchapter shall have minimum width of 6 feet.

(5) Pool and spa decks shall be flush with the pool or spa walls or coping except where special conditions exist, such as elevated beam or parapet, raised transfer walls, or where otherwise permitted in this subchapter. Wood, wood composite, and indoor or outdoor carpet decks, with the exception of artificial turfs that are designed for use at aquatic facilities, are waterproof, cleanable, and do not support biologic growth, shall not be allowed within the distance specified in paragraph 4 of this subsection.

(6) Up to 35% of the deck for Class B and Class C pools may be replaced with other structures including diving rocks and diving ledges that meet the requirements in §265.188(b)(10) of this subchapter (relating to Diving Facilities for Pools), however, in no case shall other structures restrict emergency access, be improperly used as diving platforms, or create other safety or sanitary hazards.

(7) In pools and spas constructed on or after the effective date of this subchapter, unobstructed deck a minimum of 4 feet in width shall be provided for access around diving equipment, diving boards, diving rocks and diving ledges, special feature stairways such as a waterslide, lifeguard stands, ADA access equipment and structural columns.

(8) Decks shall be sloped to effectively drain to perimeter areas or to deck drains.

(9) For pools and spas constructed on or after the effective date of this subchapter drainage shall remove pool and spa splash water, deck cleaning water, and rainwater without leaving standing water deeper than 1/8 inch, 20 minutes after cessation of the addition of water to the deck. Deck slopes shall meet the requirements in Figure 25 TAC §265.185(f)(9).
Figure: 25 TAC §265.185(f)(9)

(10) The maximum gap between pool decks and adjoining decks or walkways, including joint material shall be not greater than 3/4 inch. The difference in vertical elevation between the pool deck and the adjoining circulation path shall not be greater than 1/4 inch.

(11) Isolation joints that occur where pool coping meets the deck shall be water tight. Joints shall be installed to protect the coping and its mortar bed from damage. Joints in a deck shall be provided to minimize visible cracks outside the control joints due to shrinkage or movement of the slab. Areas where decks join existing concrete work shall be provided with a joint to protect the pool from damage caused by relative movement.

(12) The edges of decks shall be radiused, tapered, or otherwise designed to eliminate sharp corners.

(13) Step risers for decks at pools and spas constructed on or after the effective date of this subchapter shall be uniform and have a height not less than 3-3/4 inches and not greater than 7-1/2 inches. The tread distance from front to back shall be not less than 11 inches.

(14) Deck steps at pools and spas constructed on or after the effective date of this subchapter having three or more risers shall be provided with a handrail.

(15) Valves installed in or under decks shall be accessible for operation, service, and maintenance. Where access through the deck walking surface is required, an access cover shall be provided for the opening in the deck. Such access covers shall be slip resistant and secured.

(16) Hose bibs with backflow prevention equipment shall be provided for rinsing the entire deck and shall be located not farther than 150 feet apart. Water powered devices, such as water-powered lifts, shall have either a dedicated hose bib water source or valve.

(g) Landscaping. Loose plant material or bedding, including planters, shall not be permitted on pool or spa decks constructed on or after the effective date of this subchapter.

§265.186. Islands in Pools and Spas Constructed on or After the Effective Date of This Subchapter.

(a) An island not more than 18 inches in width along the entire length of the island and not designed for walking on, shall have no stairs, ladders or bridges to the island that can be accessed by users.

(b) An island designed to be walked on by lifeguards shall be a minimum of 18 inches in width along the entire length of the island.

(c) Any island not designed or intended for walking on by pool users shall have signs stating "No Entry" in letters minimum of 2 inches in height.

(d) An island designed for pool and spa users shall be accessible by bridge, ramp, ladder or stairway from the pool.

(e) All bridges spanning a pool, or any other structure not intended for interactive play that span a pool, shall have a minimum clearance of 7 feet from the bottom of the pool to any bridge or structure overhead.

(f) Any bridge or ramp shall have a minimum 42-inch high barrier on both sides of the bridge.

(g) The island shall have a demarcation tile line on the perimeter of the island that is a minimum of 4 inches in height.

§265.187. Pool and Spa Entry/Exits.

(a) Two entry/exits required. With the exception of waterslide landing pools, waterslide runouts, surf pools, and wave pools, pools shall have a minimum of two entry/exits located to serve both ends of the pool. If the pool has a shallow area and a deep area at least one entry/exit shall be located in the shallow end and one located in the deep end.

(b) Entry/exit locations for specific pools and spas. Entry/exit locations for specific pools constructed on or after the effective date of this subchapter shall be in accordance with Figure 25 TAC §265.187(b).
Figure: 25 TAC §265.187(b)

(c) Entry/exit structures and devices for persons with disabilities not counted. Pool or spa lifts, transfer walls, and transfer systems that provide for pool or spa entry and exit for persons with disabilities shall not be counted as a required means of entry or exit.

(d) Entry/exit in water less than 24 inches in depth. Where pools or spas, excluding wading pools, have areas with water depths of 24 inches or less at the pool or spa wall, such areas shall be considered a required entry/exit.

(e) Distances between entry/exits. A means of entry/exit in pools shall be provided and shall consist of pool stairs, a swimout, ramp, or beach entry and shall be located no further than 75 feet of travel distance apart from any other entry/exit.

(f) Single entry/exit. Pools or spas where the entry/exit extends at least 75% of the length of the longest wall in areas of the pool or spa not more than 3-1/2 feet deep are not required to comply with subsection (e) in this section if:

(1) the depth of the pool does not exceed 5 feet; and

(2) the pool perimeter deck extends around the pool such that any area of the pool can be accessed by a non-telescoping reaching pole.

(g) Entry/exit in pools. A means of entry/exit in the deep end of the pool shall be provided and shall consist of one of the following:

(1) steps or stairs;

(2) ladder;

(3) grab rails with recessed treads;

(4) ramps or beach entry; or

(5) a swimout with a step meeting the requirements in subsection (n) of this section.

(h) Deep water entry/exit in pools greater than 30 feet wide. Pools constructed or renovated on or after the effective date of this subchapter that are greater than 30 feet in width shall be provided with an entry/exit on each side of the deep area of the pool. The entry/exits in the deep area of the pool shall be located not more than 82 linear feet apart as measured along the coping.

(i) Entry/exit in pools with diving areas. Where the pool is designed for use with diving equipment, any entry/exit, pool stairs, ladders, underwater benches, special features and other accessories shall be located outside of the diving envelope.

(j) Slip resistant surface. Steps, ladders, and recessed treads shall have slip-resistant surfaces.

(k) Stairs in pools and spas. Stairs in pools constructed on or after the effective date of this subchapter and extending into the pool in either shallow or deep water, including recessed pool stairs, shall comply with the following:

(1) Step treads shall not be less than 24 inches at the leading edge. Each tread shall have an unobstructed surface area of not less than 240 square inches and an unobstructed horizontal depth of not less than 10 inches at the centerline.

(2) Step risers, except for the bottom riser, shall have a uniform height of not greater than 12 inches measured at the centerline. The bottom riser height is allowed to taper to the floor and may vary due to potential cross slopes with the pool floor but may not exceed the maximum allowable riser height.

(3) The vertical distance from the pool coping, deck, or step surface to the uppermost tread shall not be greater than 12 inches.

(4) In pools constructed on or after the effective date of this subchapter where stairs are located in water depths greater than 48 inches, the lowest tread shall not be less than 48 inches below the deck and shall be recessed in the pool wall.

(5) Underwater steps shall have a horizontal solid or broken stripe at least 1-inch wide on the top surface along the front leading edge of each step that is plainly visible to persons on the deck and is in a color contrasting the background on which it is applied. The color shall be permanent in nature and shall be slip resistant.

(6) A handrail shall be provided in pools for which a lifeguard is required or provided under this subchapter. When provided in pools and spas, handrails shall comply with the following:

(A) Handrails, if removable, shall be installed in such a way that they cannot be removed without the use of tools.

(B) Handrails shall be constructed of corrosion-resistant materials.

(C) Handrails for use by persons with disabilities shall comply with applicable federal, state and local requirements for access by persons with disabilities.

(7) In pools and spas constructed or renovated after the date of this subchapter, handrails shall meet the following requirements:

(A) The top of the gripping surface of handrails shall be 34 inches to 38 inches above the ramp or step surface as measured at the nosing of the step or finished surface of the slope.

(B) The leading edge of handrails for stairs, pool entries and exits shall be located not greater than 18 inches from the vertical face of the bottom riser.

(C) The outside diameter or width of handrails shall be not less than 1-1/4 inches and not greater than 2 inches.

(D) Handrails for use by persons with disabilities shall comply with applicable federal, state and local requirements for access by persons with disabilities.

(8) For pools or spas with perimeter gutter systems, the gutter may serve as a step if the gutter has a grating or cover and conforms to all construction and dimensional requirements in this subchapter.

(l) Recessed treads in pools and spas constructed or renovated after the effective date of this subchapter. Recessed treads in pools and spas constructed or renovated on or after the effective date of this subchapter shall meet the following requirements:

(1) Recessed treads shall have a minimum depth of not less than 5 inches and a width of not less than 12 inches.

(2) The vertical distance between the pool coping edge, deck or step surface and the uppermost recessed tread shall not be greater than 12 inches.

(3) Recessed treads at the centerline shall have a uniform vertical spacing of not less than 7 inches and not more than 12 inches.

(4) Recessed tread shall be designed to be slip resistant, easily cleaned, and to drain into the pool.

(m) Ladders in pools and spas constructed or renovated on or after the effective date of this subchapter. Ladders constructed or renovated on or after the effective date of this subchapter shall be constructed of corrosion resistant materials and shall be anchored securely to the deck. Ladders in pools and spas shall comply with the following:

(1) Two handrails shall be provided for each ladder, one on each side of the ladder with a clear distance between ladder handrails of not less than 17 inches and not greater than 24 inches.

(2) Ladder treads shall have a uniform horizontal depth of not less than 2 inches. There shall be a uniform distance between ladder treads not less than 7 inches and not greater than 12 inches, and ladder treads shall be slip-resistant.

(3) The top tread of a ladder shall be located not greater than 12 inches below the top of the deck or coping.

(4) Wall clearance between the pool wall and the ladder shall be not less than 3 inches and not greater than 6 inches.

(n) Swimouts. Swimouts constructed on or after the effective date of this subchapter shall be located completely outside of the water current or wave action of the pool or spa and can be located in shallow or deep water and shall comply with the following:

(1) The horizontal surface shall be unobstructed and have a horizontal depth of not less than 11 inches.

(2) Each tread shall have an unobstructed surface area of not less than 240 square inches.

(3) Where a swimout is used as an entry/exit, it shall be provided with a step that meets pool stair requirements for stairs in subsection (k) of this section.

(o) Beach entry, zero-depth entry, and sloping entries in pools and spas. For purposes of this subchapter, beach entries, zero-depth entries, and sloping entries will be referred to as beach entries. Beach entries in pools constructed or renovated on or after the effective date this subchapter shall comply with the following:

(1) The slope of beach entries used as a pool entry shall not exceed 1:10.

(2) Where benches are used in conjunction with beach entries, the vertical riser height shall not exceed 12 inches.

(3) Where steps are used in conjunction with beach entries, the steps must comply with subsection (k) of this section.

(4) Trench drains shall be used along beach entries at the waterline to facilitate surface skimming and may be flat or follow the slope of the entry.

(p) Starting platforms in pools. In pools constructed on or after the effective date of this subchapter, starting platforms shall be located at a water depth of not less than five feet or shall meet the requirements of the sanctioning authority that provides accreditation of the pool for competitive events. In pools renovated on or after the effective date of this subchapter, starting platforms intended for non-sanctioned competitive swimming events shall be located in water not less than 4-1/2 feet. Starting platforms at all pools regardless of the date of construction shall comply with the following requirements:

(1) Starting platforms in Class A pools shall be installed in accordance with the appropriate sanctioning body that regulates the type of competition to be held.

(2) Starting platforms shall have slip resistant tread surfaces.

(3) Starting platforms shall be installed and secured per the manufacturer's instructions.

(4) Starting platforms shall only be used during official competition or when there is direct supervision by the team coach or other qualified instructor.

(5) Starting platforms shall be removed or secured to prevent inadvertent use when the use of the starting blocks is not directly supervised.

§265.188. Diving Facilities for Pools.

(a) Competitive diving pool construction. Pools designed with platform diving or springboard diving facilities intended for competitive diving events shall comply with the pool dimension design requirements of the sanctioning authority that provides accreditation of the pool for competitive diving events such as FINA, the United States Swimming Association, the United States Diving Association, the National Federation of State High Schools Association or the NCAA.

(b) Non-competitive diving pool construction. Pools constructed or renovated on or after the effective date of this subchapter that are designed for non-competitive diving shall comply with the following:

(1) Diving stands higher than 21 inches measured from the deck to the top of the butt end of the board or platform shall have steps with 2 handrails or a ladder with 2 handrails. The steps or ladder treads shall be self-draining, corrosion resistant, non-slip and designed to support the maximum expected load.

(2) Diving stands or platforms that are 1 meter, 3.4 feet, or higher above the pool deck shall be protected with guard rails that are at least 30 inches above the board, extending at least to the edge of the water along with intermediate rails.

(3) Diving stands or platforms that are at a height greater than 5 feet shall have a manufacturer's designed or recommended fall protection guard on each side of the diving stand or platform. The installation of the guard shall be in accordance with manufacturer's instructions.

(4) All diving equipment shall be installed in accordance with the manufacturer's specifications.

(5) A label shall be permanently affixed to the diving equipment or jump board in a readily visible location and shall include the following:

(A) The minimum diving water envelope required for each diving board and diving stand combination.

(B) Manufacturer's name and address.

(C) Manufacturer's identification and date of manufacture.

(D) Maximum allowable weight of the user.

(6) The diving equipment manufacturer shall provide diving equipment use instructions.

(7) Supports, platforms, stairs, and ladders for diving equipment shall be designed to carry the anticipated loads.

(8) Pools with non-competitive diving boards or platforms shall comply with the following dimension requirements in subparagraphs (A) and (B) of this paragraph represented in subparagraphs (C) and (D) of this paragraph, except that non-competitive pools with 1 meter or 3-meter diving boards or platforms may instead comply with the FINA competitive diving pool and diving board or diving platform requirements.

(A) Figure 25 TAC §265.188(b)(8)(A), Diving Board Height and Dimensions.
Figure: 25 TAC §265.188(b)(8)(A)

(B) Figure 25 TAC §265.188(b)(8)(B) Minimum Dimensions of Components Related to Diving Wells by Diving Board Height.
Figure: 25 TAC §265.188(b)(8)(B)

(C) Figure 25 TAC §265.188(b)(8)(C) Diving Board or Platform Longitudinal Section.
Figure: 25 TAC §265.188(b)(8)(C)

(D) Figure 25 TAC §265.188(b)(8)(D) Diving Board or Platform Cross Section: Front View.
Figure: 25 TAC §265.188(b)(8)(D)

(9) Non-competitive pools with diving boards or diving platforms constructed before the effective date of this subchapter shall comply with either the FINA competitive diving pool and diving board or diving platform requirements or with paragraph (8) of this subsection.

(10) Diving or jumping rocks and ledges shall be designed by a licensed engineer and must comply with the requirements for decks in §265.185(f) of this subchapter (relating to Decks and Deck Equipment).

§265.189. Slides and other Aquatic Play Features.

(a) Proper installation of a slide or other aquatic play feature. A slide or other aquatic play feature, such as a climbing wall, floating amusement island, zip line, or anchored floats, shall be installed according to manufacturer's instructions or in accordance with the design engineer's specifications.

(b) Slide or aquatic play feature design requirements. A slide or other aquatic play feature that is designed and constructed or renovated on or after the effective date of this subchapter and that is not a pre-manufactured slide or aquatic play feature, shall be planned and designed by a licensed engineer.

(c) An aquatic play feature or slide that meets the definition of "Amusement Ride" in Texas Occupations Code, Chapter 2151 (the Amusement Ride Safety Inspection and Insurance Act) shall comply with that chapter.

(d) Any feature that meets the definition of a "slide" in the Consumer Product Safety Commission's Safety Standard for Swimming Pool Slides as published in Title 16 Code of Federal Regulations, Part 1207, shall comply with those standards in addition to the requirements in this section.

§265.190. Circulation Systems for Pools and Spas.

(a) General circulation requirements for pools and spas. A circulation system consisting of pumps, piping, return inlets and outlets, filters and other necessary equipment shall be provided for the complete circulation of the water.

(b) Filtering systems for wading pools and spas. Wading pools and spas constructed on or after the effective date of this subchapter shall have separate and independent filtering systems.

(c) Turnover times for pools and spas.

(1) For pools and spas constructed on or after the effective date of this subchapter, the circulation equipment shall be sized to turn over the entire pool or spa water capacity as specified in Figure 25 TAC §265.190(c)(1). The circulation system shall be designed to provide the required turnover rate based on the maximum pressure and flow rate recommended by the manufacturer of the filter with clean filter media. The total volume of the pool or spa shall include water in the surge or balance tank.
Figure: 25 TAC §265.190(c)(1)

(2) For pools and spas constructed before the effective date of this subchapter, the circulation equipment shall be sized to turn over the entire pool or spa water capacity in accordance with the pool and spa turnover rate requirements in effect at the time the pool or spa was constructed. When a pool or spa is renovated, to the extent possible, turnover times shall comply with the requirements of this section.

(d) Circulation system operation at pools and spas. Circulation systems shall circulate treated and filtered water for 24 hours a day unless the recirculation rate is reduced below the minimum required design values when the pool is unoccupied. The flow turndown system shall be designed as follows:

(1) the system flowrate shall not be reduced more than 25% lower than the minimum design requirements and may be reduced only when the pool is unoccupied; and

(2) water clarity is maintained as required, no algae are present, and disinfectant levels and pH are maintained as required in §265.206 of this subchapter (related to Water Quality at Pools and Spas).

(e) Off season circulation system operation. When an outdoor pool or spa is not in use for an extended period of time (such as off season), clarity shall be maintained. Circulation rates shall be permitted to be reduced provided that acceptable water clarity as required in §265.206 of this subchapter is maintained.

(f) Unfiltered water and total volume. Unfiltered water such as water that may be withdrawn from and returned to the pool or spa by a pump separate from the filtration systems, such as for slides, shall not factor into the turnover time.

(g) Servicing circulation components. Pool and spa circulation system components that require replacement or servicing shall be provided with access for inspection, repair, or replacement and shall be installed in accordance with the manufacturer's specifications.

(h) Equipment anchorage. Pool and spa equipment and related piping shall be installed in accordance with the manufacturer's instructions.

(i) Piping and fittings. Plastic pipe and fittings used in circulation systems in pools and spas constructed or renovated on or after the effective date of this subchapter shall be nontoxic and shall be able to withstand the design operating pressures and conditions of the pool or spa. Plastic pipe shall be listed and labeled in compliance with NSF 14 and one of the standards listed in Figure 25 TAC §265.190(i).
Figure: 25 TAC §265.190(i)

(j) Fittings. Suction outlet fitting assemblies and manufacturer-components certified in accordance with ANSI/APSP/ICC-16, skimmers and manufacturer-provided components of skimmers, and gutter overflow grates and fittings installed above or outside of the overflow point of the pool or spa are not required to meet the standards listed in Figure: 25 TAC §265.190(i). All other fittings used in circulation systems shall be listed and labeled in compliance with one of the standards in Figure 25 TAC §265.190(j).
Figure: 25 TAC §265.190(j)

(k) Joints. Joints shall be made in accordance with manufacturer's instructions.

(l) Piping subject to freezing. Piping subject to damage by freezing shall have a uniform slope in one direction and shall be equipped with valves for drainage or shall be capable of being evacuated to remove water. Pool or spa piping shall be adequately supported and designed to prevent entrapment of air, water, or dirt. Provision shall be made for expansion or contraction of pipes.

(m) System draining. Equipment shall be designed and fabricated to drain the water from the equipment, together with exposed face piping, by removal of drain plugs, manipulating valves, or by other methods. Drainage shall be in accordance with manufacturer's specifications.

(n) Pressure and vacuum gauges. Pool and spa circulation shall be equipped with the following:

(1) a pump suction (vacuum or combination vacuum/pressure) gauge installed according to manufacturer's instruction and located on the suction side of the pump;

(2) a filter inlet pressure gauge installed in the area of greatest pressure;

(3) a filter outlet gauge; and

(4) a flow measuring device, certified, listed and labeled to NSF/ANSI Standard 50, designed for pools and spas, NSF Standard 60, or NSF Standard 61 located to show the rate of flow through the filter. The flow rate measuring device shall indicate gpm and shall be selected and installed to be accurate within plus or minus 10 percent of actual flow.

(o) Instructions and schematic. Written operation and maintenance instructions shall be provided for the circulation system of the pool or spa. Exposed piping shall be labeled to identify the piping function and direction of flow. For pools and spas constructed on or after the effective date of this subchapter, a complete, easily readable schematic of the entire recirculation system shall be openly displayed in the mechanical room or available to maintenance and inspection personnel.

(p) Hydrostatic pressure test. Air pressure testing of pool and spa circulation systems is prohibited. In pools and spas that are constructed on or after the effective date of this subchapter, the circulation system piping, other than that integrally included in the manufacture of the pool or spa, shall be subjected to a hydrostatic pressure test of 25 pounds per square inch performed before concrete operations with the pressure held until the pool shell is in place.

(q) Piping labeled. All pools and spas shall be labeled to identify the piping function and direction of flow. The name of the liquid or gas and arrows indicating the direction shall be permanently indicated on the pipe by labelling or other method regardless of the date of construction.

§265.191. Filters for Pools and Spas.

(a) Filters required. Filtration shall be required for all pools and spas that recirculate water.

(b) Certified filters and media. All pool and spa filters and filter media, including alternative filter media, shall be certified, listed, and labeled to NSF/ANSI 50. Filters shall use the appropriate filter media within size specifications as recommended by the filter manufacturer and NSF/ANSI 50.

(c) Filter design. Filters shall have a flow rating equal to or greater than the design flow rate of the circulation system. Filters shall be designed and installed so that filtration surfaces can be inspected and serviced.

(d) Internal pressure. For pressure-type filters a means shall be provided to allow the release of internal pressure.

(1) Filters incorporating an automatic means of internal air release as the principal means of air release shall have one or more lids that provide a slow safe release of pressure as part of the design and shall have a manual air release in addition to an automatic release.

(2) The following statement shall be posted in letters at least 1/2 inch in height, in a conspicuous location, and within the areas of the air release: "DO NOT START THE SYSTEM AFTER MAINTENANCE WITHOUT FIRST PROPERLY REASSEMBLING THE FILTER AND SEPARATION TANK AND OPENING ALL AIR RELEASE VALVES."

(3) A separation tank used in conjunction with a filter tank, shall have a manual method of air release or a lid that provides for a slow release of pressure as it is opened.

(e) Filter and separation tank instructions. Filters and separation tanks for pools and spas shall have operation and maintenance instructions permanently installed on the filter or separation tank.

(f) Observable waste discharge. Pools and spa filters shall be provided with a readily observable free fall or sight glass installed on the waste discharge line in order that the filter washing progress may be observed. Sight glasses must be readily removable for cleaning.

(g) Backwashing. Pool and spa filters designed to be backwashed shall be backwashed and maintained according to manufacturer's instructions.

§265.192. Pumps and Motors for Pools and Spas.

(a) Safe pump operation. A pump for a pool or spa shall not be operated if the owner or operator of the pool or spa knows or should know in the exercise of ordinary care that the drain grate, suction outlet, or any suction outlet cover is missing, broken or loose. If such a condition exists, the pool or spa shall be closed immediately and remain closed until a proper repair or replacement has been made.

(b) Pump design and installation. The pump design, construction and installation of the pump and component parts shall be installed according to manufacturer's instructions and be listed with UL.

(c) Performance. A pump shall be provided for circulation of the pool and spa water. The pump shall be capable of providing the flow required for filtering the pool or spa water and filter cleaning, if applicable, against the total dynamic head developed by the complete system.

(d) Pump intake protection. A cleanable strainer, skimmer basket, or screen shall be provided for pools and spas, upstream or as an integral part of circulation pumps, to remove solids, debris, hair, and lint on pressure filter systems.

(e) Pump and motor location. Pumps and motors shall be accessible for inspection and service in accordance with the manufacturer's specifications.

(f) Isolation valves. Isolation valves (also known as shutoff valves) shall be installed on the suction side and discharge sides of pumps that are below the waterline. Such valves shall be accessible to service personnel.

(g) Motor performance. Motors shall comply with UL 1004-I, UL 1081, CSA C22.2 No. 108 or the relevant motor requirements of UL 1563 or CSA C22.2 No. 218.1, and Department of Energy minimum energy efficiency ratings as applicable.

(h) Operation and overload protection. Pump motors shall be capable of operating the pump under full load with a voltage variation of plus or minus 10% from the nameplate rating. Motors shall have thermal or current overload protection, either built in or in the line starter, to provide locked rotor and running protection.

§265.193. Suction Outlet Systems (Suction Outlets) and Return Inlets for Pools and Spas.

(a) Suction outlet system design. A suction outlet system shall be designed to protect against suction entrapment, evisceration, and hair entanglement or entrapment hazards in accordance with ANSI/APSP-16, American National Standard for Suction Entrapment Avoidance in Swimming Pools, Wading Pools, Spas, Hot Tubs and Catch Basins.

(b) Wading pool suction outlets.

(1) A wading pool or any pool having a depth of 24 inches or less that does not contain a PIWF and that is constructed or renovated on or after the effective date of this subchapter shall not have fully submerged suction outlets (main drains). Skimmers or overflow gutters shall be installed and shall accommodate 100% of the circulation system flow rate.

(2) A wading pool or any pool having a depth of 24 inches or less containing a PIWF and that is constructed on or after the effective date of this subchapter may install two or more main drains. These main drains shall comply with VGBA and ANSI/APSP/ICC requirements for Suction Entrapment Avoidance in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Catch Basins, and shall be placed where they are inaccessible by users.

(c) Skimmers not suction outlets. For purposes of this section, skimmers are not considered to be suction outlets.

(d) Closure when a cover is missing, broken or loose. If the cover or grate on a suction outlet including a vacuum outlet is missing, broken, or loose the pool or spa shall be closed immediately and shall remain closed until a proper repair is made or a replacement is installed.

(e) Fully submerged suction outlets (main drains) not required. Fully submerged suction outlets are not required. When fully submerged suction outlets are not installed, surface skimming or overflow systems shall be designed and permitted to provide 100% of the circulation flow rate.

(f) Field fabricated suction outlets and sumps. Field fabricated suction outlet covers, or grates, sump, fasteners, and assemblies shall be designed and certified by a licensed engineer. Field built sumps shall be constructed in accordance with the suction outlet fitting assembly manufacturer's instructions or, as may be site specific, designed by a licensed engineer.

(g) Single points of suction. Pools and spas constructed or renovated on or after the effective date of this subchapter shall not have a single fully submerged suction outlet (main drain).

(h) Dual outlets and three or more outlets. Pools and spas constructed or renovated on or after the effective date of this subchapter shall have dual or three or more suction outlets that are designed, constructed, manufactured, and installed in accordance with ANSI/APSP/ICC.

(1) The distance between dual VGBA-compliant suction outlets, as measured from center to center of the suction outlet cover or grate, shall be no less than three feet.

(2) The flow rate through a fitting, cover, or grate shall not exceed the approved flow rate for that fitting, cover, or grate when one suction fitting in a suction outlet system is blocked.

(3) No means of isolating suction outlets is permitted that could allow one suction outlet to serve as the sole source of water to a pump.

(4) A single pipe to a pump suction inlet that serves two or more suction outlets may have a valve to shut off the flow to the pump.

(i) Compliance with ANSI/APSP 16. Submerged suction outlets, including covers or grates, sump, fasteners, and assemblies shall be certified, listed, and labeled to the requirements of ANSI/APSP-16.

(j) Suction vacuum release systems. Pools and spas constructed prior to the effective date of this subchapter, that have single points of suction (single submerged suction outlet) are required to install a Suction Safety Vacuum Release System (SVRS) and Automatic Pump Shut-off System (APSS) that meets the following requirements:

(1) When used, SVRS and APSS devices shall be tested and certified by a third-party test lab accredited by the International Laboratory Accreditation Cooperation as conforming to ASME/ANSI A112.19.17, ASTM F 2387 or any successor standards recognized by the U.S. Consumer Product Commission.

(2) For substantially varying environmental conditions, including freezing temperatures, extreme heat, salt spray and humidity the suitability of a SVRS or APSS must be confirmed with the manufacturer prior to installation and use.

(3) Licensed engineers or certified installers shall confirm suitability with the SVRS or APSS manufacturer prior to installation and use and that the SVRS or APSS is not being installed in an incompatible configuration such as with the use of check valves, hydrostatic relief valves, skimmers, solar systems, elevated or submerged pump suction, multilevel bodies of water, water features, or two or more suction outlets.

(k) Vacuum outlets. Vacuum outlets in pools and spas shall comply with IAPMO SPS 4 and be provided with a cover that automatically closes and automatically latches and cannot be opened by pool and spa users. The vacuum outlet cover must be installed according to manufacturer's instructions and be no greater than 12 inches below the water level. The vacuum piping shall be equipped with a valve to remain in the closed position when not in use. Vacuum outlets in skimmers are not required to have a separate cover. If the vacuum outlet cannot be equipped with an automatic closure and latch, the vacuum outlet shall be permanently sealed.

(l) Skimmer equalizer lines.

(1) For pools and spas constructed on or after the effective date of this subchapter skimmer equalizer lines shall not be installed.

(2) Skimmers shall be vented to the atmosphere through openings in the lid.

(3) Pools and spas constructed prior to the effective date of this subchapter with skimmers having equalizers shall comply with all submerged suction outlet requirements in ANSI/APSP/ICC.

(m) Maximum suction system flow rate. The maximum system flow rate in suction systems shall be determined in accordance with the ANSI/APSP/ICC-7 and ANSI/APSP-16 in effect at the date of construction.

(n) Return water velocity. The water velocity in return lines of pools and spas constructed on or after the effective date of this subchapter shall not exceed 8 feet per second except:

(1) the feet per second velocity between the pump strainer and filter shall meet the manufacturer's requirements; and

(2) the 8 feet per second velocity is not required to be met in water jets, spray nozzles, and wall nozzle returns.

(o) Return inlets and fittings. A pool or spa constructed or renovated on or after the effective date of this subchapter shall have return fittings that are provided and arranged to facilitate a uniform circulation of water and maintain a uniform sanitizer residual and pH throughout the entire pool and spa.

(1) A pool shall be provided with a minimum of one return inlet for every 300 square feet of pool surface area, or fraction thereof.

(2) A spa shall have a minimum of one return inlet for every 150 square feet of surface area with a minimum of 2 inlets per spa.

(3) Floor inlets shall be flush with the floor of the pool or spa.

(4) Return inlets shall be designed to not constitute a hazard to the user.

(5) Wall return inlets must not project more than 1 inch beyond the pool or spa wall surface and must be submerged at least 12 inches below the design water level.

§265.194. Pool and Spa Surface Skimming and Perimeter Overflow (Gutter) Systems.

(a) Surface skimming system required. A surface skimming system shall be provided for pools and spas. Surface skimming systems shall be listed and labeled in accordance with NSF 50. Where installed, surface skimming systems shall be designed and constructed to create a skimming action on the pool water surface when the water level in the pool is within operational parameters.

(b) UL listing for spa skimmers. Skimmers that are an integral part of a spa that has been listed and labeled with UL 1563 shall not be required to be listed and labeled in accordance with NSF 50.

(c) Surface skimming systems in certain pools. Installation of surface skimming systems is not required for the following pools if the pools are planned and designed by a licensed engineer:

(1) wave action pools;

(2) activity pools;

(3) catch pools;

(4) run out slide pools;

(5) leisure river; or

(6) vortex pools.

(d) Skimming system sizing. Skimming systems shall be designed to maintain effective skimming action throughout the pool or spa and to handle 100% of the water flow through the surface skimmers. Where automatic surface skimmers are used the following shall apply:

(1) In pools, one skimmer shall be provided for every 500 square feet of pool surface area or fraction thereof.

(2) In spas, one skimmer shall be provided for every 150 square feet of spa surface area or fraction thereof.

(e) Perimeter overflow (gutter) coverage. Where a gutter type surface skimming system is used as the sole surface skimming system, the system shall extend around not less than 50 percent of the pool or spa perimeter.

(f) Pool gutter system surge capacity. Where perimeter surface skimming systems are used, they shall be connected to a circulation system with a system surge capacity of not less than 1 gallon for each square foot of water surface except the surge capacity may be less than 1 gallon if the maximum user load capacity calculated in accordance with Figure 25 TAC §265.184(o)(2) (related to Maximum Number of Users in Class A Pools Not Being Used for Competitive Events and Class B and Class C Pools and Spas) is lowered. The capacity of the perimeter overflow system and related piping may be considered as a portion of the surge capacity.

(g) Spa gutter system surge capacity. Where a gutter system surface skimming system is used in a spa it shall be connected to the circulation system with a system surge capacity of not less than 2 gallons for each square foot of spa surface.

(h) Skimmer covers and equalizers. Skimmer covers located on a walking surface shall be securely seated, slip-resistant, of sufficient strength to withstand normal use, and not constitute a tripping hazard. For pools and spas constructed on or after the effective date of this subchapter skimmer equalizer lines shall not be installed.

(i) Automatic makeup water. Automatic makeup water supply equipment shall be provided to maintain continuous skimming in pools and spas constructed on or after the effective date of this subchapter.

§265.195. Electrical Requirements for Pools and Spas.

(a) Electrical equipment and lines. Electrical equipment and lines at pools and spas constructed or renovated after the effective date of this subchapter shall comply with:

(1) the NEC adopted by TDLR at the time of construction or renovation of the pool or spa; or

(2) the local electrical code to the extent the local electrical code is more restrictive than the NEC; and

(3) electrical requirements for aquatic facilities in accordance with NFPA 70.

(b) Licensed electrician. A pool or spa electrical system shall be installed, maintained, repaired or replaced by a licensed electrician in accordance with the Texas Electrical Safety and Licensing Act, Texas Occupations Code, Chapter 1305 and related rules.

(c) National testing and listing of electrical equipment. Electrical equipment for pools and spas shall be approved and listed for use in pools and spas by a nationally recognized electrical testing laboratory, such as UL, at the time of installation.

(d) Manufacturer's instructions for installation of electrical equipment. Electrical equipment and related electrical components for pools and spas shall comply with the manufacturer's installation instructions.

(e) Ground fault circuit interrupters (GFCIs) required. All electrical outlets in the pool or spa yard and in dressing or sanitary facilities serving a pool or spa shall be protected with a GFCI. Each electrical line to an underwater light in a pool or spa shall be protected with a GFCI located in the circuit breaker for the light at the breaker box or in an outlet through which the power for the light passes.

(f) GFCI compliance with the NEC. All GFCIs and circuit breakers shall comply with the NEC. Other electrical equipment, including pumps, must be grounded and bonded in accordance with the NEC. Pumps shall be both internally and externally grounded.

(g) Bonding. Pools and spas shall be bonded in accordance with the NEC or with UL 1563 as applicable.

(h) Plastic coated rebar. Plastic coated or epoxy coated rebar in pools or spas is prohibited.

(i) Indoor aquatic facilities and interior chemical storage spaces. For purposes of compliance with the NEC, an indoor aquatic facility and interior chemical storage spaces shall be considered a wet and corrosive environment.

(j) Wet and corrosive chemical storage. Electrical conduit shall not enter or pass through an interior chemical storage space, except as required to service devices integral to the function of the room, such as pumps, vessels, controls, lighting and safety devices.

(k) Sealed and inert. Where required, the electrical conduit in an interior chemical storage space shall be sealed and made of materials that will not interact with any chemicals in the chemical storage space.

(l) Protected lighting. Lamps, including fluorescent tubes, installed in interior chemical storage spaces shall be protected against breakage with a lens or other cover, or otherwise protected against release of hot materials.

(m) Overhead wiring and lines. Overhead wiring and power lines shall be elevated over the indoor or outdoor pool or spa in compliance with the NEC and NESC.

(n) Service personnel electrical disconnects. Electrical disconnects for pools and spas intended to protect service personnel shall be accessible to service personnel, located within sight of the pool and spa equipment and located at least 5 feet away from the inside walls of a pool or spa. Each disconnecting means shall disconnect all ungrounded conductors to the equipment it serves. If electricity to equipment is supplied through a line that plugs into an outlet and if the line may be disconnected by removing the plug from the outlet, a separate disconnect switch is not required for that equipment.

(o) Emergency shutoff switch required for spas only.

(1) An emergency shutoff switch shall be provided to disconnect power to circulation and jet system pumps and air blowers in a spa.

(2) Emergency switches shall be accessible to users, located within sight of the spa and located not less than 5 feet, but not greater than 10 feet from the inside walls of the spa.

(3) A sign notifying users of the location of the spa emergency shutoff switch shall be posted in a location that is visible from the spa and that meets the requirements in §265.208(e) of this subchapter (relating to Certain Requirements for Spas).

(4) For spas constructed or renovated on or after the effective date of this subchapter, the emergency shutoff switch, when activated, shall produce an audible alarm rated at not less than 80 decibel sound pressure level and illuminate a light near the spa that will operate continuously until the shutoff switch is operated that deactivates the alarm and the light. A sign notifying users that the spa should not be used when the alarm sounds, and the light is illuminated shall be provided and posted in a location that is visible from the spa meeting the requirements in §265.207(e) of this subchapter (relating to Request for Alternate Method of Disinfectant).

§265.196. Lighting Requirements for Pools and Spas Constructed or Renovated on or After the Effective Date of this Subchapter.

(a) Artificial lighting required. When a pool or spa is open for use during periods of low natural illumination, pools and spas shall provide artificial lighting. At a minimum artificial lighting shall be provided 30 minutes before sunrise and 30 minutes after sunset or until the pool is closed.

(b) Lighting provided for pools and spas.

(1) Lighting shall be provided to illuminate all areas of the pool and spa, including all suction outlets on the bottom of the pool or spa such that the suction outlets shall be visible and that the pool water is transparent and free from cloudiness.

(2) Illumination shall be sufficient to enable a lifeguard or other persons standing on the deck or sitting on a lifeguard stand adjacent to the pool edge to determine if a pool user is lying on the bottom of the pool or spa.

(3) The conditions in paragraphs (1) and (2) of this subsection are met when all suction outlets are visible from the edge of the deck at all times when artificial lighting is illuminated. When an eight-inch diameter disk or Secchi disk is placed at the bottom of the pool in the deepest point, it shall be visible from the edge of the pool deck at all times when artificial lighting is illuminated.

(c) Pool and spa deck lighting required. Overhead or underwater lighting, or both, shall be provided to illuminate the pool and deck areas. The lighting shall be listed and labeled and shall be installed in accordance with the NFPA 70 and the current NEC.

(d) Lighting levels required. Any combination of overhead and underwater lighting may be used to provide maintained illumination at the required lighting levels.

(1) Outdoor pools: Not less than 10 horizontal foot-candles (10 lumens per square foot or 108 lux) at the pool water surface.

(2) Indoor pools: Not less than 30 horizontal foot-candles (30 lumens per square foot or 323 lux) at the pool water surface.

(3) Deck area: Not less than 10 horizontal foot-candles (10 lumens per square foot or 108 lux) at the walking surface of the deck.

(e) Underwater lighting requirements in pools and spas. Underwater lighting shall provide not less than 8 horizontal foot-candles (8 lumens per square foot or 86 lux) at the pool water surface area. Where fixtures and lamps are rated in watts, not less than a total wattage of 1/2 watt/ft^2 of pool water surface for incandescent underwater lighting is required.

(f) Outdoor pool and spa underwater lighting exception. Where outdoor pools and spas are open for use from 30 minutes before sunset to 30 minutes after sunrise, or during periods of low illumination, underwater lighting may be excluded where:

(1) maintained illumination surface lighting levels are a minimum of 15 horizontal foot-candles (15 lumens per square foot or 161 lux); and

(2) all portions of the pool, including the bottom and main drains, are readily visible without glare.

(g) Dimmable or color changing lighting. Dimmable or changing color lighting shall not be used for underwater lighting.

(h) Emergency illumination. Pools, spas, and pool yards that operate during periods of low illumination shall be provided with emergency lighting that will automatically turn on to permit evacuation of the pool and securing of the area in the event of power failure.

(1) Emergency lighting facilities shall be arranged to provide initial illumination that is not less than 0.1 foot-candle (0.1 lumen per square foot or 1 lux) measure at any point on the water surface and at any point on the walking surface of the deck, and not less than an average of 1 foot-candle (1 lumen per square foot or 11 lux).

(2) At the end of the emergency lighting time duration, the illumination level shall be not less than 0.06 foot-candle (0.06 lumen per square foot or 0.65 lux) measured at any point on the water surface and at any point on the walking surface of the deck, and not less than an average of 0.6 foot-candle (0.6 lumen per square foot or 6.46 lux).

(3) A maximum-to-minimum illumination uniformity ratio of 40 to 1 shall not be exceeded.

(i) Security lighting. Where security lighting is provided, it shall be sufficient to illuminate the pool at all times during periods of low illumination or when the pool or spa is closed. Security lighting may be overhead lighting, underwater lighting, or a combination of both.

(j) Lighting levels of the pool or spa, regardless of the date of construction, may be reduced for scheduled special events such as movies, holiday events, or similar activities.

(k) Lighting for pools and spas constructed before the effective date of this subchapter. Pools and spas constructed before the effective date of this subchapter shall comply with the pool and spa lighting requirements in effect at the time the pool or spa was constructed. When a pool or spa is renovated, to the extent possible, lighting shall comply with the requirements of subsections (a) - (k) of this section.

§265.197. Heaters.

(a) Installation and replacement of heaters. Pools and spas constructed on or after the effective date of this subchapter and pre-existing pools and spas replacing heaters shall comply with the following requirements.

(b) Accessible on-off switch required. Electric power to heaters shall be controlled by a readily accessible on-off switch that is an integral part of the heater, mounted on the exterior of the heater or external to and within 3 feet of the heater.

(1) Operation of the switch shall not change the setting of the heater thermostat.

(2) Switches shall be in addition to a circuit breaker for the power to the heater.

(c) Gas fired heaters. Gas fired heaters shall not be equipped with continuously burning ignition pilots.

(d) Heated pool and spa cover requirements. Cover requirements for outdoor heated pools and spas.

(1) Outdoor heated pools and outdoor permanent spas shall have a vapor-retardant cover or other vapor-retardant means that is as effective as a cover.

(2) Where more than 70 percent of the energy for heating, computed over an operating season, is from a heat pump or solar energy source, covers or other vapor-retardant means shall not be required.

(e) Heaters and hot water storage tanks. Heaters and hot water storage tanks shall be listed and labeled in accordance with Figure 25 TAC §265.197(e).
Figure: 25 TAC §265.197(e)

(f) Heater sized. Heaters shall be sized in accordance with the manufacturer's specifications.

(g) Installation of heaters. Heaters, except solar thermal water heaters, shall be installed in accordance with the manufacturer's specifications and the International Fuel Gas Code, International Mechanical Code, International Energy Conservation Code, and NFPA 70 (NEC).

(1) A means shall be provided to monitor water temperature.

(2) A means to prevent public access to heater controls is required. Public access to heater controls is prohibited.

(h) Solar thermal water heaters. Solar thermal water heaters shall be installed in accordance with the International Mechanical Code. Solar thermal collectors and panels shall be listed and labeled in accordance with ICC 901/SRCC 100 or ICC 900/SRCC 300. Collectors and panels shall be permanently marked in a post-installation readily viewable location with manufacturer's name, model number, and serial number.

(i) Heater circulation system. Water flow through the heater bypass piping, back-siphonage protection, and the use of heat sinks shall be in accordance with the heater manufacturer's specifications. Where required by the manufacturer, heaters shall be installed with an automatic device that will ensure that the pump continues to run after the heater shuts off for the time period specified by the manufacturer.

(j) Special requirements for fuel-fired and electric appliances for spas. Components provided for water temperature controls shall be suitable for the intended application and shall be in compliance with the following.

(1) Water temperature regulating controls shall comply with UL-873 or UL 372. A means shall be provided to indicate the water temperature in the spa; or

(2) Water temperature regulating controls that are integral to the heating appliance and listed in accordance with the end use appliance standard shall be considered in compliance with this subsection.

(k) Water temperature limiting controls. Controls limiting water temperature in a pool or spa shall comply with UL 873 or UL 372. Water temperature at the heater outlets shall not exceed 140°F.

(l) Maximum spa water temperature. The maximum water temperature of a spa shall not exceed 104°F.

(m) Registration with TDLR. All pool and spa heaters with an input of 200,000 British thermal units (btu) or more shall be registered and installed in accordance with the requirements of TDLR.

§265.198. Pool or Spa Water Supply and Drinking Water for All Pools and Spas.

(a) Water supply. For all pools and spas, the initial fill water and make-up water used to maintain the water level and water used as a vehicle for sanitizers or other chemicals, for pump priming, or for other additions shall be from a public water system as defined by 30 TAC §290.38 (relating to Definitions) or from a water well that complies with the requirements of subsection (d) of this section.

(b) Water distribution system. All portions of the water distribution system shall be protected against backflow and back siphonage using a high hazard preventer such as a reduced-pressure-principle backflow preventer meeting the requirements of the American Society of Sanitary Engineering Standard 1013 2013, as amended, and approved for use in potable water systems possibly subjected to back siphonage or high back pressure or an air gap designed to ASME Standard A112.1.2.

(c) Over-the-rim spouts. Over-the-rim spouts shall be located under a diving board, adjacent to a ladder, or otherwise shielded so as not to create a hazard. The open end of the spout shall have a secured soft pliable end and shall not protrude more than 2 inches beyond the edge of the pool. The open end shall be separated from the water by an air gap of not less than 1.5 pipe diameters measured from the pipe outlet to the rim.

(d) Private water supply. If the water supply providing water to the pool or spa does not meet the TCEQ definition of a public water system, that water supply shall comply with the following requirements.

(1) Water pressure system shall:

(A) be designed to maintain a minimum pressure of 35 pounds per square inch (psi) at all points within the distribution network at flow rates of at least 1.5 gallons per minute per connection;

(B) be designed to maintain a minimum pressure of 20 psi under combined fire and drinking water flow conditions when the system is intended to provide firefighting capability; and

(C) maintain a minimum distribution pressure not less than 20 psi at any time.

(2) Coliform testing of the well water shall be performed each month the pool or spa is open for use. Records of any bacteriological tests shall be kept on site for three years and made available during inspection.

(3) Chemical analysis shall be for the secondary constituent levels set out by 30 TAC §290.118 (relating to Secondary Constituent Levels).

(A) Water samples for chemical analysis obtained from the entry point to the distribution system shall be submitted to a laboratory certified by the TCEQ once every 3 years.

(B) Records of all chemical testing shall be kept on site for three years and made available during inspection.

(d) Drinking water provided. At least one drinking water fountain or other source of drinking water such as bottled water, shall be provided and available for pool and spa users at all times the pool or spa is open for use. Glass containers shall not be allowed on a deck, in the pool or spa, or anywhere within the pool/spa enclosure.

(1) The drinking water is not required to be chilled.

(2) The drinking water is not required to be located in the pool or spa yard.

(3) When the drinking water is not located in the pool or spa yard, a sign shall be posted so that it is visible to users that informs the users of the location of the drinking water.

(e) Hose bibs. Hose bibs in the pool or spa yard shall be protected with a vacuum breaker.

§265.199. Wastewater Disposal for Pools and Spas.

(a) Filter backwash wastewater disposal. Filter backwash and drainage water that is not reused in the pool or spa shall be discharged or disposed of in accordance with the requirements of the TCEQ or local regulatory authority.

(b) No direct connection. No direct mechanical (hard) connection shall be made between the pool or spa, the drains, the chemical treatment equipment, or the system of piping and the sanitary sewer system, septic system, or other wastewater disposal system.

(c) Pool and spa backwash. Backwash water and draining water shall be discharged through an air gap formed by positioning the discharge pipe opening at least two pipe diameters above the overflow level of any barriers that could cause flooding and submergence of the discharge opening or by other means in accordance with TCEQ requirements. Splash screening barriers are permitted as long as the barriers do not destroy air gap effectiveness.

(d) Wastewater post treatment. Where necessary, filter backwash water and drainage water shall be treated either chemically or through the use of settling tanks to eliminate or neutralize chemicals, diatomaceous earth, and other contaminants in the water that exceed discharge limits set by TCEQ or the local regulatory authority.

(e) Other wastewater or drainage water disposal facilities or lines. The location of other wastewater disposal facilities or lines shall meet applicable standards of 30 TAC, Chapter 307, Texas Surface Water Quality Standards, Chapter 308, Criteria and Standards for the National Pollutant Discharge Elimination System, Chapter 311, Watershed Protection, and Chapter 315, Pretreatment Regulations for Existing and New Sources of Pollution, or local regulatory authority.

§265.200. Disinfectant Equipment and Chemical Feeders.

(a) Disinfectant agent. Pool and spa water shall be continuously disinfected by a disinfectant agent, chlorine or bromine, with a residual that can be easily measured by simple and accurate field tests.

(b) Environmental Protection Agency (EPA) registration. A sanitizer, disinfectant, or other chemical used to treat the water shall be EPA-registered under the FIFRA for use in pools and spas.

(c) Chlorine gas prohibited. Use of compressed chlorine gas is prohibited.

(d) Training and protection. Personnel responsible for the operation of the disinfectant agent and other potentially hazardous chemicals, whether it is the trained and certified operator, or someone assigned to maintain a pool or spa when the trained and certified operator is not on site, shall be properly trained and provided with appropriate protective equipment and clothing, including rubber gloves and goggles, safety information, and safety data sheets. Safety data sheets covering all chemicals for which personnel are responsible shall be kept onsite and be readily available.

(e) Application of disinfectant in a pool or spa. Automated controllers that adjust chemical feed based on demand or manually, or remotely managed controllers for pool and spa disinfection and pH control shall be installed.

(1) Disinfection equipment shall be selected and installed so that continuous and effective disinfection can be achieved under all conditions.

(2) Disinfectant feed systems shall have the capacity to maintain up to 5 parts per million (ppm) (or equivalent bromine level) in outdoor pools and spas and up to 3 ppm chlorine (or equivalent bromine level) in indoor pools and spas under all conditions of intended use.

(f) Hand distribution of chemicals. Hand distribution of disinfectant chemicals, chemicals used to adjust pH, or algaecides is prohibited when users are in the pool or spa. Before users are allowed to reenter the pool or spa following hand distribution of disinfectant chemicals, chemicals used to adjust pH, or algaecides the following shall apply:

(1) tests of disinfectant levels and pH shall be performed;

(2) the tests shall be performed 30 minutes after hand distribution; and

(3) no one may reenter the pool or spa until the disinfectant levels and pH are checked and are found to be within the required range for disinfectant level and pH.

(g) Bulk chemical tanks. All chemical bulk and day tanks shall be clearly labeled to indicate the tank's contents.

(h) Chemical storage areas.

(1) Disinfectant agents, other chemicals, and feed equipment shall be stored so that pool and spa users do not have access.

(2) Dry chemicals shall be stored off the floor or in waterproof containers in a dry room and protected against flooding or wetting from floors, walls and ceiling.

(3) Chlorine compounds shall not be stored in the same storage room or storage area as petroleum products.

(i) Chemical feeders. Chemical feeders for pools and spas shall meet NSF Standard 50 and shall operate in a manner that does not invalidate the NSF 50 rating for the system and system equipment. Chemical feeders shall:

(1) be installed, maintained, and operated in accordance with the manufacturer's instructions;

(2) be installed so that the solution is introduced downstream from the filter and heater and, when possible, at a point lower than the heater outlet fitting or according to manufacturer's instructions;

(3) incorporate failure-proof features so that the chemical cannot feed into the pool or spa, the pool or spa piping system, or water supply system, or into the pool and spa enclosure area if equipment or power fails; and

(4) if the system has chemical feed pumps, be wired so they cannot operate unless there is adequate return flow to properly disburse the chemical in the pool or spa and be regulated to ensure constant feed with varying supply or back pressure.

§265.201. Safety Features for Pools and Spas.

(a) Handholds and coping. Where the depth of the water below the design waterline of a pool or spa exceeds 42 inches and there is no seat or bench, swimout-installed handholds along the perimeter shall be provided.

(b) Handholds in wave action pools or leisure rivers. Handholds shall not be required for wave action pools, surf pools, and leisure rivers.

(c) Location and placement of handholds. Handholds shall be located not more than 12 inches above the design waterline and horizontally spaced not greater than 4 feet apart.

(d) Handhold type. Handholds can include one or more of the following:

(1) top of pool deck or coping;

(2) secured rope;

(3) rail;

(4) rock;

(5) ledge;

(6) ladder; or

(7) stair step.

(e) Safety float lines and floor markings.

(1) For Class A pools not being used for competitive events:

(A) A rope and float line shall be provided between 1 and 2 feet on the shallow water side of the 5-foot depth. The floats shall be spaced at not greater than 7-foot intervals; and the floats shall be secured so they will not slide or bunch up. The stretched rope and float line shall be of sufficient size and strength to offer a good handhold and support loads normally imposed by users.

(B) Rope and float lines shall be securely fastened to wall or deck anchors made of corrosion-resisting materials and of the type that is recessed or removable and shall have no projection that will constitute a hazard when the line is removed.

(2) Class B pools that are over 5 feet deep shall comply with the following:

(A) The transition point of the pool from the shallow area to the deep area of the pool shall be visually set apart with a 4-inch minimum width row of floor tile or other permanent method using a color contrasting with the bottom.

(B) A rope and float line shall be provided meeting the requirements of paragraph (1)(A) and (B) of this subsection.

(3) For Class C pools that are over 5 feet deep:

(A) The transition point of the pool from the shallow area to the deep area of the pool shall be visually set apart by a 4-inch minimum width row of floor tile or other permanent method using a color contrasting with the bottom.

(B) A rope and float line may also be used in addition to the transition line and shall meet the requirements of paragraph (1)(A) and (B) of this subsection.

(4) Certain pools exempted. Wave pools, surf pools, and waterslide landing pools are not required to provide a safety rope on the shallow side of the change in floor slope.

(5) Where an activity pool constructed on or after the effective date of this subchapter or an activity pool constructed prior to effective date that is being renovated has a user accessible depth greater than 5 feet, the floor shall be visually set apart with a 4-inch minimum width row of floor tile or other permanent method using a color contrasting with the bottom just above the 5-foot water depth.

(f) Depth markers in pools constructed or renovated on or after October 1, 1999. Depth markers in pools constructed, renovated, or that are replacing depth markers on or after October 1, 1999, shall meet the following.

(1) Depth markers shall be permanent, and can consist of metal tiles or letters, ceramic tiles, and engraved concrete with letters and numbers filled with Lithichrome enamel paint or an equivalent paint. The numbers and letters shall be not less than 4 inches in height, shall be clearly marked in a color contrasting to the background on which they are applied, and located on the deck and the vertical wall of the pool at:

(A) the minimum and maximum water depths;

(B) on both sides and at each end of the pool; and

(C) at all points of slope change.

(2) Depth markers shall be installed at water depth increments not to exceed 2 feet and shall be spaced at intervals not to exceed 25 feet and shall comply with the following:

(A) Depth markers shall have units of measurement in feet, fractions of a foot, or inches. The depth markers must be spelled out in "feet" or "inches" or abbreviated as "FT" or "IN".

(B) Depth markers may also use units of measurement in meters. The depth markers must be spelled out in "meters" or abbreviated as "M."

(3) Depth markers shall indicate the actual pool depth within ± 3 inches at normal operating water level where measured 3 feet from the pool wall or at the tangent point where the cove radius meets the floor, whichever is deeper.

(4) Depth marker positions.

(A) Depth and unit markers on the pool wall shall be positioned in the top 4-1/2 inches of the pool wall just under the coping and be positioned to be read by a user while in the pool.

(B) Depth and unit markers on decks shall be slip resistant, placed within 18 inches of the water's edge, and positioned to be read while standing on the deck facing the water.

(C) Deck depth markers shall not be placed on the deck above entry/exits including steps, ladders, recessed treads, water lounges, and beach entries of the pool.

(5) Sidewall depth and unit markers shall not be required of a beach entry pool on the beach entry.

(6) Vanishing edge and overflow gutter pool depth markers shall comply with the following:

(A) On roll out gutter pools or other pools without a vertical wall that does not have at least 3 inches of pool wall above the operating water level, the depth markers and any unit markers shall be readable from the pool and shall be placed in the first 6 inches of deck, or on a vertical wall or fence, if one exists, within 10 feet of the water's edge. If there is no practical location for installation of vertical depth markers, no depth or unit markers shall be required in those areas.

(B) On vanishing edge pools, depth markers and any unit markers shall not be required on that portion of the vanishing edge that has no pool wall above the design water level and shall not be required on that portion of the vanishing edge that is inaccessible to patrons on the deck Sidewall and deck markers must be installed on the vanishing edge immediately at the end of the vanishing edge in the top 4.5 inches of the pool.

(7) Depth markers are not required on wave pool or surf pool decks.

(g) Depth markers for spas. Spa depth markers shall comply with the following:

(1) Depth markers shall be permanent with numbers and letters not less than 4 inches in height and shall be clearly marked in a color contrasting to the background on which they are applied both on the deck and on the vertical wall of the spa.

(2) There shall not be less than two depth markers for each spa, regardless of spa size and shape.

(3) Depth markers shall be spaced at not more than 25-foot intervals and shall be uniformly located around the perimeter of the spa.

(4) Deck depth markers shall be positioned to be read while standing on the deck and shall be slip resistant.

(5) Depth markers shall have units of measurement in feet, fractions of a foot, or inches. The depth markers must be spelled out in "feet" or "inches" or abbreviated as "FT" or "IN".

(6) Depth markers may also use units of measurement in meters. The depth markers must be spelled out in "meters" or abbreviated as "M".

(h) Movable bottom pool and spa depth markers. Pools or spas with movable floors shall have a sign indicating movable floor and varied water depth. The posted water depth shall be the water level to the floor of the pool or spa measured vertically 3 feet from the wall of the pool or spa. A sign shall be posted to inform the user that the pool or spa has a varied depth and refer to the sign showing the current depth.

(i) Deck "NO DIVING" markers for pools.

(1) The warning words "NO DIVING" and the international symbol for no diving shall be clearly marked on the pool deck with contrasting colors and letters at least 4 inches high. The warning shall be placed at least every 25 feet or fraction thereof, around the pool where the water depth is 5 feet or less. At least two warnings including the "NO DIVING" and the international no diving symbol, shall be provided at the extreme ends of the minimum depth and at the extreme ends of the maximum depth at 6 feet on each side of the pool or on each of the longer dimensional sides of the pool. These warnings shall be slip-resistant. The warning "NO DIVING" and the international no diving symbol on the deck shall be within 18 inches of the water's edge and positioned to be read while standing on the deck facing the water. The international no diving symbol consists solely of a diver's profile in a circle with a 45-degree slash through the diver and may be red and/or black on a light background.

(2) If a permanent structure above the pool deck is within 5 feet of the water's surface, the international no diving symbol and the warning "NO DIVING" in contrasting colors and letters at least 4 inches high, shall be permanently affixed to the structure so that such warnings are visible to persons who may attempt to use the structure for diving. The international no diving symbol and the warning are not required on diving boards or diving platforms, ADA-compliant chair lifts, slide flumes, lifeguard stands, bridges, or waterwalks.

(3) Deck "NO DIVING" markers and international symbol for no diving shall not be placed on the deck above entry/exits, including steps, ladders, recessed treads, water lounges, and beach entries of the pool.

(4) Deck "NO DIVING" markers and the international symbol for no diving are not required for spas.

(5) "NO DIVING" markers are not required on the interior tile line of a pool or spa.

(j) Signs for pools.

(1) Signs shall be in the pool yard, securely mounted as applicable, and readily visible to the pool user. Signs shall be posted within the pool yard unless otherwise stated within this subchapter.

(2) Sign panels shall be durable for the weather conditions and shall be resistant to damage from guests. The message surface shall be clean and smooth and shall readily accept paint or precut lettering adhesives.

(3) Pictograms should be included whenever possible. When pictograms are included on the signs they shall always be accompanied by text indicating the same message. Pictograms shall be designed to illustrate one clear and specific meaning to all individuals.

(4) Theming or artwork applied to signs shall not invade the message panel. Signs shall have a distinct border.

(5) Multiple signs may be used, or the messages may be combined on one sign.

(6) Safety signs for pools constructed on or after the effective date of this subchapter or safety signs that are replaced at pools constructed prior to the effective date shall be in compliance with Figure 25 TAC §265.201(j)(6).
Figure: 25 TAC §265.201(j)(6)

(7) In areas of Texas where a majority of citizens are non-English speaking, in addition to signs in English, signs and other written warnings or information required by these standards may be posted in the predominant language.

(k) Instructional signs for pools such as wave pools, slide pools, and other pools. requiring additional instructions or information. Instructional signs in pools and spas constructed, renovated, or rehabilitated on or after the effective date of this subchapter shall be provided and inform guests of specific instructions for the use of the ride. Instructional signs shall be located along the queue approaching the ride dispatch area. Lettering shall be a minimum of 1-inch in height. Signs for waterslides shall indicate riding instructions, warnings, and requirements in accordance with the manufacturer's recommendations and be posted at the waterslide entry.

(l) Ring buoy, throw rope, and reaching pole. A pool shall have at least one ring buoy with throwing rope and a reaching pole for every 2000 square feet of pool surface area up to 6000 square feet. If the pool has over 6000 square feet of surface area an additional ring buoy, throw rope, and reaching pole shall be provided for each additional 4000 square feet of surface area or fraction thereof.

(1) The reaching pole shall be light, strong, non-telescoping, and at least 12 feet long. The pole shall be constructed of fiberglass or other material that does not conduct electricity and shall have a body hook or shepherd's crook with blunted ends attached. The reaching pole shall be in the immediate vicinity of the water and accessible to users.

(2) The throwing rope shall be 1/4-inch to 3/8-inch in diameter, with a length at least two-thirds the maximum width of the pool. A USCG-approved ring buoy shall be attached to the throwing rope.

(m) Emergency summoning device. The pool or spa shall have a minimum of one emergency telephone, emergency monitoring contact device, or alternative communication system that is capable of immediately summoning emergency services and that is readily accessible, within 200 feet of the water, and is functioning at all times the pool or spa is open for use. Where a pool or spa has a seasonal operation schedule, the emergency summoning device shall be functioning 24 hours a day during the entire season the pool or spa will be in use. Clear operating instructions for the emergency summoning device shall be provided.

(1) A fixed location telephone, emergency monitoring device, or alternative communication system shall be visible, have no obstruction to access, and have some method of identification that enables the telephone or other device or system to be easily identified by users.

(2) A telephone or emergency monitoring device shall not be answered by an on-site office. The alternative communication sys-

tem shall not be answered by an on-site office unless the alternative communication system complies with paragraph (5) of this subsection.

(3) A telephone shall be capable of making calls to 911 dispatch or to an emergency service.

(4) An emergency monitoring contact device, when activated, shall directly connect to a 24-hour monitoring service, or directly to 911 dispatch or to emergency medical services.

(5) An alternative communication system that contacts an on-site office may be used if the pool is in a remote area with limited or delayed emergency medical services response times, and there are employees on-site that are trained and certified or licensed to perform emergency medical intervention when the pool or spa is open for use.

(6) A cell phone that is mounted in the pool yard for public use and labeled as the emergency phone may be used if the cell phone is activated by a service provider.

(7) A sign shall be posted above the emergency summoning device, whether it is a phone, emergency monitoring device, or alternative communication device with the precise location of the pool or spa such as an address, building number, GPS location, or other location identifying information in letters a minimum of 1-inch in height.

§265.202. Lifeguard Personnel Requirements and Standards at Pools.

(a) Lifeguards required. Pools and spas shall be required to meet the operational standard that is most applicable to their respective use. For example, a pool or spa that is being operated as a Class C pool or spa, but is also made available to the public, with or without a fee, shall meet Class B lifeguard standards. A minimum of two lifeguards shall be provided at:

(1) Class A pools during competitive events;

(2) Class B pools at all times the Class B pool is open;

(3) any pool where a user enters the water from any height above the deck or wall, including from diving boards, diving platforms, drop slides, waterslides, starting platforms, zip lines, or climbing walls that are open for use;

(4) any wave or surf pool; or

(5) any pool while it is being used for the recreation of youth groups, including youth camps, visiting childcare groups, or visiting school groups.

(b) Closing diving boards, diving platforms, drop slides, waterslides, starting platforms, zip line or climbing wall. A diving board, diving platform, drop slide, waterslide, starting platform, zip line, climbing wall, or any other structure that allows entry from any height above the deck will be considered open unless there is a lock or chain, or other method used to prevent access to these structures and a sign is posted on the entry to these structures stating that they are closed.

(c) Lifeguards at spas. Lifeguards are not required at spas.

(d) Lifeguard staffing plan required. A staffing plan specifying the number of on-duty lifeguards shall be prepared by the pool operator, lifeguard supervisor, or pool owner and shall be sufficient to provide adequate supervision and close observation of all users at all times. A copy of the plan shall be available on site and be provided to a department or local regulatory authority inspector upon request.

(e) Surveillance area. Each lifeguard shall be given an assigned surveillance area commensurate with ability and training. The lifeguard shall be capable of viewing the entire assigned surveillance area.

(f) Other duties shall not distract. Lifeguards conducting surveillance of users shall not be assigned duties that would distract the lifeguard's attention from proper observation of the users, or that would prevent immediate assistance to persons in the water.

(g) Lifeguard rotation required. When lifeguards are provided or required, a rotation procedure for lifeguards is required. Lifeguards shall have sufficient break time from guarding activities as recommended by ARC or equivalent aquatic safety organization.

(h) Lifeguard training and drills. When lifeguards are provided or required, alertness and response drills and any other training shall be provided as follows:

(1) A pre-season training program.

(2) A continual "in-service" program totaling a minimum of 60 minutes for every 40 hours of employment by a lifeguard or other aquatic safety personnel.

(3) Review of the Centers for Disease Control and Prevention standards for responding to formed-stool contamination, diarrheal-stool contamination, vomit contamination, and contamination involving blood.

(4) Performance audits as recommended by the ARC, Young Men's Christian Association, or by an equivalent aquatic safety organization.

(5) Facility Emergency Action Plans for events such as submersions, suspected spinal injury, medical emergencies, thunderstorms, missing persons, bad weather, or chemical exposure.

(i) Emergency action plan. Any pool or spa emergency action plan shall contain the following:

(1) a list of emergency phone numbers and contacts, including the trained and certified operator;

(2) the location of the first-aid kit and other rescue equipment such as the AED, BVM, and backboard;

(3) a response plan for inclement weather such as thunderstorms, lightning, or high winds, including evacuation areas; and

(4) a plan following the Centers for Disease Control and Prevention standards for responding to formed-stool contamination, diarrheal-stool contamination, vomit contamination, and contamination involving blood.

(j) Lifeguard records. All training shall be reviewed as necessary and kept current. Lifeguard records shall be kept on site or shall be made available to the department or local regulatory authority within 3 business days of the inspection. The following records pertaining to lifeguards shall be kept 3 years:

(1) each lifeguard's certification including the expiration date; and

(2) records of the most current training, including date, length of training, training topic(s), trainer name(s), and attendees.

(k) Lifeguard access to safety equipment. Lifeguards shall have access to safety equipment including:

(1) an Occupational Safety and Health Administration (OSHA)-compliant, minimum 24-unit first aid kit housed in a durable weather-resistant container that is fully stocked and ready for use. The kit shall include disease transmission barriers and cleaning kits meeting OSHA standards;

(2) at least one backboard equipped with a head immobilizer and with sufficient straps to immobilize a person to the backboard,

in locations sufficient to affect a two-minute response time to an incident; and

(3) at least one portable AED and one BVM kept in a secure location that can be easily and quickly accessed by lifeguards or other trained personnel.

(l) Platforms or stands for lifeguards only are required where water depth is greater than 5 feet and shall have a protective umbrella or sunshade high enough to give lifeguards a complete and unobstructed view of the assigned area of surveillance for the lifeguards.

(m) Personal lifeguard equipment. Each lifeguard shall be provided with the following personal equipment:

(1) uniform attire that readily identifies the lifeguard as a staff member and a lifeguard;

(2) a rescue tube with attached rope or strap;

(3) personal protective devices including a resuscitation mask with one-way valve and non-latex, non-powdered, single use disposable gloves worn as a hip pack or attached to the rescue tube; and

(4) a whistle or other signaling device for communicating to users, other lifeguards, or staff.

§265.203. Pool Yard and Spa Yard Enclosures.

(a) Fence or barrier required. All pool yards and spa yards shall be completely enclosed by a fence, wall, or equivalent barrier. An enclosure can surround multiple pools and spas within an aquatic facility.

(b) Enclosures for Class A and Class B pools and spas and resident youth camp pools and spas. Enclosures for Class A and Class B pools and spas and resident youth camp pools and spas shall meet the following requirements.

(1) Class A and B pools and spas and pools and spas at resident youth camps shall have an enclosure consisting of a fence, portion of a building, wall or other durable enclosure or an equivalent structure.

(2) A building that serves as part of the enclosure shall have doors or gates that open into the pool or spa yard only if:

(A) any doors or gates between the building and the pool or spa yard are for entry into a storage room, restroom, shower room, dressing room, or mechanical room adjacent to the pool or spa; and

(B) the room does not have any door or gate openings to the outside of the pool or spa yard enclosure.

(3) The enclosure, including doors and gates, shall:

(A) have a minimum effective perpendicular height of at least 6 feet as measured from the ground surface on the outside of the fence;

(B) have no openings in the enclosure, either through or under it, which would allow passage of a 4-inch sphere;

(C) have no horizontal mid-rail and be designed and constructed so that it cannot be readily climbed; and

(D) have all doors, gates, and windows in the enclosure directly and continuously supervised by staff at the pool during hours of operation or locked to prevent unauthorized entry.

(4) Gates and doors of Class A and Class B pool and spa enclosures. Gates and doors of Class A and Class B pool and spa enclosures shall be capable of being locked and shall be locked if the pool or spa is not open for use. The gate or door shall be locked if the pool or spa is closed for repairs, hazards, weather related hazards, adding chemicals by hand, or any other condition that warrants closure of the pool or spa.

(c) Enclosures for pools and spas subject to Texas Health and Safety Code, Chapter 757. A pool or spa that is subject to Texas Health and Safety Code, Chapter 757, shall have an enclosure as required in Chapter 757.

(d) Enclosures for all other Class C pools and spas. A Class C facility not subject to Texas Health and Safety Code, Chapter 757 shall have an enclosure that complies with this subsection and subsection (h) of this section, referring to indoor pool and spa enclosures, of this section.

(1) The pool or spa yard enclosure shall consist of one or a combination of a fence, portion of a building, wall, or other durable enclosure. The enclosure shall comply with the following:

(A) The enclosure must have a minimum perpendicular height of at least 48 inches as measured from the ground surface on the outside of the enclosure.

(B) Openings in or under the enclosure shall not allow the passage of a 4-inch diameter sphere.

(C) Planters, light poles, and site furnishings shall not be permitted within 36 inches, measured horizontally, from the outside of the enclosure. Tree limbs shall be kept trimmed to prevent a tree or the limbs of the tree to be used by children to climb over the enclosure.

(D) Chain link fencing material is prohibited for pools and spas constructed on or after the effective date of this subchapter.

(E) The enclosure shall have no horizontal mid-rail and be designed and constructed so that it cannot be readily climbed. The distance between horizontal members of a fence that is 48 inches in height shall be no less than 45 inches.

(F) Windows that are capable of being opened are not allowed as a part of a pool or spa enclosure unless those windows are above the required enclosure height. Doors or gates of a building that are capable of being opened are not allowed as part of an enclosure unless:

(i) the doors or gates between the building and pool yard or spa yard are for entry into a storage room, restroom, shower room, dressing room, or mechanical room adjacent to the pool or spa;

(ii) the room does not have any door or gate openings to the outside of the pool yard or spa yard enclosure; or

(iii) the pool or spa yard is indoor and complies with the requirements of subsection (h) of this section.

(2) Gates and doors of the pool or spa enclosure subject to this subsection shall:

(A) be equipped with self-closing and self-latching devices meeting the definition in §265.182(85) of this subchapter (relating to Definitions), that are designed to close and keep the gate or door securely closed and latched at all times the gate or door is not in use;

(B) open outward away from the pool or spa;

(C) have hand activated door or gate opening hardware located at least 3-1/2 feet above the deck or walkway. Pools and spas constructed or that renovate the pool/spa fence and gates on or after the effective date of this subchapter shall have the gate opening hardware only on the pool/spa side of the gate and the gate and fence shall have

no openings greater than 1/2 inch within 18 inches of the door or gate opening hardware;

(D) be capable of being locked and be locked if the pool or spa is not open for use; and

(E) be locked if the pool or spa is closed for repairs, hazards, weather related hazards, adding chemicals by hand, or any other condition that warrants closure of the pool or spa.

(e) Entry into pool yard or spa yard. Pool yard and spa yard enclosures shall be constructed so that all persons will be required to pass through an enclosure gate or door in order to gain access to the pool or spa. All gates and doors exiting a pool yard shall open into a public area or walkway accessible by all users of the pool or spa.

(f) Propping open gates prohibited. No gate or door into a pool yard or spa yard shall be propped open or remain propped open unless an agent, employee, or contractor of the owner is present and doing construction, maintenance, or repair work in the pool yard or spa yard or on its enclosure that reasonably requires the gate to be propped open.

(g) Service gates or doors. Service gates or doors, used only by service personnel such as chemical delivery services, facility maintenance services, and lawn and landscaping services are not required to be self-closing and self-latching. Service gates and doors shall not be used as a user entry or exit and shall be kept securely closed and locked when not in actual use by service personnel.

(h) Enclosures for pools and spas in a building. For pools and spas that are in a building, the interior or exterior building walls may be designated as the enclosure.

(1) Entry/exit gates or doors into the pool or spa located in a building shall comply with the requirements for entry/exit gates and doors for Class A, Class B, or Class C pool and spa gates and doors in subsections (b), (c), and (d) of this section as applicable.

(2) Elevator doors are not to be used as entry/exits into the pool or spa yard when the pool or spa is inside a building or accessed from the interior of a building.

(3) Where separate indoor and outdoor pools and spas are located at the same site a door or gate may be provided between them if they comply with all the requirements in subsections (b), (c), and (d) of this section for Class A, Class B, and Class C pool and spa gates and doors, as applicable, except that if the gate or door between the indoor and outdoor pool or spa does not provide an exit from the pool or spa yard, that gate or door may open inward into the outdoor pool or spa yard.

§265.204. Dressing and Sanitary Facilities at Pools and Spas (Bathhouses).

(a) Fixture design. Fixtures at dressing and sanitary facilities shall be designed so that the fixtures are readily cleanable.

(b) Fixture installation. Fixtures at dressing and sanitary facilities shall be installed in accordance with plumbing codes in effect at the time the fixtures are installed.

(c) Cleaning of sanitary facilities. Dressing and sanitary facilities shall be cleaned as necessary to maintain sanitary conditions at all times.

(d) Ventilation of sanitary facilities. Adequate ventilation shall be provided in dressing and sanitary facilities to prevent objectionable odors.

(e) Dressing and sanitary facilities at Class A, Class B and Class C pools and spas. Class A, Class B, and Class C pools and spas constructed before the effective date of this subchapter shall provide dressing and sanitary facilities in accordance with the requirements in place at the time of construction. Dressing and sanitary facilities shall be provided for Class A, Class B, and Class C pools and spas constructed or renovated on or after the effective date of this subchapter and must comply with the following requirements.

(1) Separate dressing and sanitary facilities for men and women shall be provided. The rooms shall be well lit, drained, and ventilated, in accordance with good public health engineering practices in place at the time of construction. They shall be planned and developed so that sanitation is maintained. An appropriate number of dressing rooms that can accommodate families are allowed.

(2) Partitions between portions of the dressing room area, screen partitions, shower, toilet, and dressing room booths shall be constructed of durable material not subject to damage by water and shall be designed so that waterway is provided between partitions and floor to permit thorough cleaning of the walls and floor areas with hoses and brooms.

(3) An adequate number of hose bibs and a hose of adequate length shall be provided for washing down all areas of the dressing facility interior. Adequate cross-connection control devices, approved by TCEQ or the local regulatory authority shall be provided. When not in use, hoses shall be stored in such a manner as to prevent a trip hazard.

(4) Floors in dressing rooms and sanitary facilities shall have a smooth, easy-to-clean, impervious-to-water, slip-resistant surfaces. The floors shall have a minimum dynamic coefficient of friction at least equal to the requirements of ANSI A137.1 as measured by the DCOF AcuTest.

(5) Lavatory, shower, and toilet facilities shall be located to encourage use of the sanitary facilities by users of the pool or spa.

(6) Cleansing showers and lavatories shall be provided with hot and cold running water.

(7) Sanitary napkin receptacles. Sanitary napkin receptacles shall be provided in each water closet compartment for females and in the area of showers for female use only.

(f) Number of fixtures at Class A, Class B, and Class C pools and spas constructed on or after the effective date of this subchapter. The number of fixtures at Class A, Class B, and Class C pools and spas constructed on or after the effective date of this subchapter shall comply with Figure 25 TAC §265.204(f) and shall be based upon the total user loads found in Figure 25 TAC 265.184(o)(2) Maximum number of users in Class B and Class C pools.

Figure: 25 TAC §265.204(f)

(g) Sanitary facilities at apartments, hotels, condominiums, or motels. Sanitary facilities for pools and spas in apartments, hotels, condominiums, or motels are not required to have the following:

(1) cleansing or rinsing showers;

(2) dressing rooms;

(3) toilets;

(4) urinals unless the facility has toilets for persons using the pool or spa;

(5) hand drying towels unless the facility has a lavatory;

(6) baby changing table unless a lavatory with a faucet and soap are provided; or

(7) a lavatory unless a faucet and soap are provided and there is proper wastewater disposal.

(h) Cleansing showers not required. Cleansing showers are not required at homeowners' association (HOA) or property owner's association (POA) pools and spas.

(i) Additional requirements for all sanitary facilities. Where sanitary facilities are required or provided they shall comply with the following:

(1) Soap dispensers with liquid or powdered soap shall be provided at each lavatory. The dispenser shall be metal or plastic, with no glass permitted.

(2) When provided, mirrors shall be shatter resistant.

(3) Toilet paper holders and toilet paper shall be provided at each toilet.

(4) Covered waste receptacles shall be provided in the toilet area or dressing room areas.

(5) Single-use hand drying towels or hand drying devices shall be provided near the lavatory.

§265.205. Operation and Management of Pools and Spas.

(a) Required operator certification. All Class A, Class B, and Class C pools and spas shall be maintained under the supervision and direction of a properly trained and certified operator.

(1) The operator is not required to be on site at all times the pool or spa is open.

(2) The operator may be responsible for multiple pools and spas and shall ensure any on-site staff is properly trained in day-to-day pool and spa operations and maintenance.

(3) The trained and certified operator's name and contact information shall be made available to on-site staff, such as lifeguards, and to property management companies, or property managers, and shall be made available at the request of the department or a local regulatory authority.

(b) Operator training and certification. Operator training and certification can be obtained by completion of one of the following courses or their equivalent:

(1) the NRPA, "Aquatic Facility Operator;"

(2) the PHTA, "Certified Pool Operator;"

(3) the ASPSA, "Licensed Aquatic Facility Technician;" or

(4) an equivalent course which requires testing and provides certification that is approved by the local regulatory authority.

(c) Operational standard for all pools and spas. Pools and spas shall be required to meet the operational standard that is most applicable to their respective use. For example, a pool or spa that is being operated as a Class C pool or spa, but is also made available to the public, with or without a fee, shall meet Class B operational standards.

(d) Water clarity standards for pools and spas. The water in a pool or spa shall be clear such that the bottom is clearly visible while the water is static at all times the pool or spa is open or available for use. Visual occlusion by sediment or other matter shall be checked before opening and periodically, as necessary, while the pool or spa is in use. The pool or spa shall be open for use only if the bottom and the main drains, when present, are clearly visible.

(e) Off season water quality. When an outdoor pool or spa is not in use for an extended period time, such as off-season, clarity shall be maintained, and algae growth shall be prevented; however, other water quality parameters as required in §265.206 of this subchapter (relating to Water Quality at Pools and Spas), do not need to be maintained. Other methods may be used to maintain pools and spas during extended periods of non-use if approved by local regulatory officials in writing and water clarity is maintained.

(f) Off season pool and spa safety. When a pool or spa is not in use after seasonal operation, while under construction, renovation, or for any reason, the facility shall not be allowed to give off objectionable odors, become a breeding site for insects, or create any other nuisance condition or hazard.

(g) Domestic animals prohibited at pools and spas. Domestic animals and other pets shall not be allowed within a pool or spa enclosure area or in the pool or spa. Service animals shall be allowed on the deck and within the pool enclosure, but not in the pool. Pools and spas must comply with the provisions set forth in 28 CFR §36.302(c) concerning service animals.

(h) Actual water level at pools and spas. The actual water level in pools and spas shall be maintained within the design operating water level range of the rim, gutter, or skimmer system. When the water level is below the operating water level range of the pool or spa rim, gutter, or skimmer system, the pool or spa shall be closed.

(i) Use of personal floatation devices (PFD). No person shall be prohibited from the use of a USCG-approved PFD in a pool or spa.

(j) Proper use and protection from chemicals in pools and spas. Personnel in charge of maintaining a pool or spa, whether it is the trained and certified operator, or someone assigned to maintain a pool or spa when the operator is not on site, shall be properly trained in accordance with §265.200 of this subchapter (relating to Disinfectant Equipment and Chemical Feeders).

(1) The use of chemicals at pools and spas shall be according to the chemical manufacturer's directions.

(2) No chemical shall be used in a way that violates the manufacturer's instructions for the chemical feed system or NSF 50 certification of that chemical feed system.

(k) Food and beverages. Food and beverages may be consumed in the pool or spa only if it is privately owned and operated. Consumption of food and beverages in a pool or spa that is not privately owned and operated is prohibited.

(l) Glass containers prohibited. Food and beverages shall be served only in non-breakable containers. Glass containers shall not be allowed on a deck, in the pool or spa, or anywhere within the pool/spa enclosure.

(m) Covered trash receptacles required. Covered trash containers shall be provided where food and beverages are allowed or served.

§265.206. Water Quality at Pools and Spas.

(a) Environmental Protection Agency (EPA) registration. A sanitizer, disinfectant, or other chemical used to treat the water shall be EPA-registered for use in pools and spas under the Federal Insecticide, Fungicide, and Rodenticide Act and shall be a pesticide as defined by the EPA.

(b) Required chemical levels. Water quality for a pool or spa shall meet the following criteria when the pool or spa is open for use. The water quality parameters in Figure 25 TAC §265.206(b) shall apply to both pools and spas unless otherwise indicated.
Figure: 25 TAC §265.206(b)

(c) Cyanuric acid. Cyanuric acid shall not be used in any indoor pool or spa or in therapy pools.

(d) Water clarity. Water clarity shall be sufficient such that an eight-inch black disk or Secchi Disk on the floor at the deepest part of the pool can be clearly and immediately seen by an observer on the water surface above the disk or by someone standing on the deck closest to the disk.

(e) Reliable means of water testing required. A reliable means of testing for pH, free and total (combined) chlorine, bromine, cyanuric acid (when used) alkalinity, and calcium hardness, shall be provided at the pool or spa when the pool or spa is open for use.

(f) DPD chemical test. Free available chlorine levels and bromine levels shall be determined by the use of the DPD method.

(g) ORP reading frequency. ORP readings shall be recorded at the same time sanitizer and pH tests are performed where in-line ORP meters are used.

(h) Storage of test kits and reagents. Test kits and reagents shall be stored according to the manufacturer's instructions and protected from extreme heat and cold and from exposure to water, chemicals, petroleum products or any other element or environment that could adversely affect the efficacy of water quality test results.

(i) Testing reagent accuracy. Testing reagents shall be changed at frequencies recommended by the manufacturer to ensure accuracy of the tests.

(j) Chemical balance. Water in the pool or spa shall be chemically balanced. Testing methods to determine the chemical balance of the water in the pool or spa, such as the Langelier Saturation Index, shall be conducted at a minimum, every 10 days while the pool or spa is open.

(k) Testing frequency and record keeping when pools and spas are open for use.

(1) When Class A and Class B pools and spas are open, they shall be tested for disinfectant levels, and pH every 2 hours. If a system is used to automatically control disinfectant and pH, testing for disinfectant level and pH shall be made at least once per day and a reading of the automatic control device shall also be made. Cyanuric acid levels shall be measured once each week.

(2) Class C pools and spas that have on-site staff, such as lifeguards, shall be tested for disinfectant levels and pH a minimum of 3 times a day. If a system is used to automatically control disinfectant and pH, testing for disinfectant level and pH shall be made once a day and a reading of the automatic control device shall also be made. Cyanuric acid levels shall be measured once per week.

(3) Class C pools and spas that do not have on-site staff, such as lifeguards, shall be tested for disinfectant levels and pH a minimum of one time a day. If a system is used to control disinfectant and pH electronically, and the system has the ability to transmit the mV level, or free chlorine level and pH to the trained and certified operator once a day, sanitizer level and pH shall be measured once a week using a test kit. A reading of the automatic control device shall also be recorded. Cyanuric acid levels shall also be measured once per week.

(4) Other required tests for pools and spas. Tests for alkalinity, calcium hardness, and chemical balance shall be performed every 30 days or as often as is necessary to maintain required water quality parameters and water clarity.

(5) Records of all testing of the pool and spa water shall be maintained at least 2 years and be available or made available upon request by the department or local regulatory authority. Records of testing can be kept on-site or off-site. If records are stored off-site they must be provided within 7 business days.

(l) Cyanuric acid levels shall not exceed 50 ppm. Whenever cyanuric acid levels exceed 50 ppm, the level must be reduced to 50 ppm or less and the sanitizer level, pH, and cyanuric acid levels must be measured once a day until the cyanuric acid level drops to 50 ppm or less.

§265.207. Request for Alternate Method of Disinfectant.

(a) Application. Pursuant to Texas Health and Safety Code, §341.064(b-1), an owner or operator may apply to use an alternate method of disinfectant.

(b) Submission. A completed application for use of an alternate method of disinfectant must be submitted to the department's Consumer Protection Division, no later than 180 days before the opening of the pool or spa. The application shall include:

(1) the type and level of primary disinfectant;

(2) the type and level, where applicable, of any supplemental method of water treatment;

(3) the method for and equipment used for storing, delivering, and measuring primary disinfectant levels and supplemental water treatment levels;

(4) data supporting the effectiveness of the primary disinfectant and supplemental method of water treatment in maintaining required water quality;

(5) descriptions of any specialized equipment, application methods, or other water treatment methods that may differ from the requirements in §265.206 of this subchapter (relating to Water Quality at Pools and Spas);

(6) a proposed testing schedule for determining levels of biological and chemical levels as specified by the department to ensure the health and safety of the public;

(7) a detailed drawing or map of the pool that indicates swimming areas and non-swimming areas; and

(8) any additional information the department requires to make its decision.

(c) Decision. The department shall approve or reject a request to use an alternate method of disinfectant no later than 90 days after the completed application is submitted.

(d) Additional information. If the department requires additional information to make its decision, the application is not considered completed for purposes of subsections (b) and (c) of this section until the department receives the additional information as requested.

§265.208. Certain Requirements for Spas.

(a) Spas and Exercise Spas constructed or installed on or after the effective date of this subchapter. For purposes of this subsection, spas and exercise spas shall be referred to as spas. The maximum water depth for spas shall be 4 feet as measured from the design water level. The maximum water depth for exercise spas shall not exceed 6 feet 6 inches.

(1) Where multilevel seating is provided, the maximum water depth of any seat or sitting bench shall be 28 inches as measured from the design water line to the deepest point in the spa, except for spas designed for special purposes and approved by the local regulatory authority.

(2) Spa decks shall be a minimum of 4 feet wide. Continuous and unobstructed deck shall be provided a minimum of 50% around the spa perimeter. The deck may include the coping.

(b) Emergency shutoff switch required for spas only.

(1) An emergency shutoff switch shall be provided to disconnect power to circulation and jet system pumps and air blowers in a spa.

(2) Emergency switches shall be accessible to users, located within sight of the spa and located not less than 5 feet, but not greater than 10 feet from the inside walls of the spa.

(3) A sign notifying users of the location of the spa emergency shutoff switch shall be posted in a location that is visible from the spa and that meets the requirements in subsection (e) of this section.

(4) For spas constructed or renovated on or after the effective date of this subchapter, the emergency shutoff switch, when activated, shall produce an audible alarm rated at not less than 80 decibel sound pressure level and illuminate a light near the spa that will operate continuously until the shutoff switch is operated that deactivates the alarm and the light. A sign notifying users that the spa should not be used when the alarm sounds, and the light is illuminated shall be provided and posted in a location that is visible from the spa meeting the requirements in subsection (e) of this section.

(c) Air induction system. An air induction system, when provided, shall prevent water back up that could cause electrical shock hazards and shall be properly sized in accordance with the manufacturer's sizing specification. Air intake sources shall not permit the introduction of toxic fumes or other contaminants.

(1) The air induction system shall be installed in accordance with the NEC and any federal, state, or local codes, and shall be accessible for inspection or service.

(2) If an air blower or other means of introducing air is provided, a manually operated timer switch located so as to require the exiting of the spa to reset shall be provided. Such a timer shall operate the spa blower and booster pump and shall automatically shut the blower and booster pump off in 15 minutes or when manually switched to the off position.

(d) Break-resistant thermometer. A break-resistant thermometer (plus or minus 1- degree Fahrenheit tolerance) that is designed for use in a spa environment shall be available for patrons and staff to monitor spa temperature.

(e) Required spa signs. Signs for spas shall be securely mounted and readily visible to spa users and shall be inside the spa enclosure as required in Figure 25 TAC §265.208(e) Required Spa Signs. The signs can be combined on one sign or posted individually.
Figure: 25 TAC §265.208(e)

§265.209. Additional Requirements for Aquatic Activity Devices and Specific Pools.

(a) Waterslides. Waterslides constructed on or after the effective date of this subchapter shall be planned and designed by a licensed engineer and shall be in conformance with ASTM F2375-17a and ASTM F2461-16e1. Waterslides shall be installed in accordance with the manufacturer's instructions or in accordance with the design engineer's specifications.

(b) Flumes. Flumes constructed on or after the effective date of this subchapter shall be made of inert, nontoxic, smooth, and easily cleaned surfaces. All flume valleys and dips shall have proper drainage, safety measures that ensure a rider cannot fall from the flume, and a means of egress in the event the ride malfunctions or a rider stops on the slide.

(c) Exit into landing pools. Waterslides constructed on or after the effective date of this subchapter shall be designed with an exit system which shall provide safe entry into the landing pool or waterslide runout. The waterslide exit system shall be in accordance with the manufacturer's recommendations or the design engineer's specifications and ASTM F2376-17a.

(d) Landing pools. Landing pools constructed on or after the effective date of this subchapter that provide steps or recessed steps with handrails instead of exit ladders shall install the steps at the opposite end of the landing pool from the flume exit. The steps shall be provided with a handrail. The steps and handrail shall be offset from the slide. If the waterslide flume ends in a pool, the landing area shall be divided from the rest of the pool by a float line, wing wall, peninsula or other similar feature to prevent collisions with other bathers.

(e) Slide runouts. Waterslide runouts shall be designed in accordance with the slide manufacturer's recommendations or the design engineer's requirements and ASTM F2376-17a.

(f) Drop slide pools. For drop slide pools constructed on or after the effective date of this subchapter, the landing area of a drop slide shall be in accordance with the slide manufacturer's recommendations or the design engineer's requirements and ASTM F2376-17a. Steps shall not infringe on the landing area of a drop slide.

(g) Wave pools. For wave pools constructed on or after the effective date of this subchapter, access to a wave pool shall be a beach entry with the exception of an allowable Americans with Disabilities Act (ADA) designated entry point.

(1) Recessed steps shall not be allowed along the walls of the wave pool.

(2) Wave pools shall be fitted with a rope and float line located to restrict access to the caisson wall if required by the wave pool equipment manufacturer. Safety rope and float lines typically required at the shallow to deep water transition shall not apply to wave pools.

(3) A minimum of two emergency shutoff switches to disable the wave action shall be provided, one on each side of the wave pool.

(4) Deck depth markers are not required at wave pools.

(5) Caisson barriers shall have no openings that would allow passage of a 4-inch sphere and shall be provided for all wave pools.

(h) Leisure rivers. Leisure rivers constructed on or after the effective date of this subchapter shall comply with the following:

(1) Handrails for steps, and propulsion jets for leisure rivers shall not protrude into the leisure river.

(2) Obstructions such as landscaping, walls, or bridges shall be allowed provided they do not impact lifeguarding, sight lines, or rescue operations.

(3) Bridges spanning a leisure river shall have a minimum clearance of both 7 feet from the bottom of the leisure river and 4 feet above the water surface to any structure overhead.

(4) Depth markers are required at all entry/exits to the leisure river but not along leisure rivers, in the landscape, where there is no deck, or in the channel.

(5) Leisure rivers may have limited entry/exit access to the water for users and do not require an entry/exit every 75 feet along the leisure river.

(i) Movable floor pools. Pools with movable floors constructed on or after the effective date of this subchapter shall be planned and designed by a licensed engineer and shall comply with the following:

(1) The use of starting platforms in the area of a movable floor shall be prohibited when the water depth is shallower than 5 feet.

(2) When a movable floor is installed into a diving pool, diving shall be prohibited if the dimensions of the pool do not meet the requirements in §265.188 of this subchapter (relating to Diving Facilities for Pools).

(3) The surface of a movable pool floor shall be slip-resistant if it is intended for installation in water depths less than 5 feet.

(4) Use of the moveable floor portion of the pool shall not be open to users when the floor is being raised or lowered.

(j) Therapeutic pools and spas. Therapeutic pools and spas constructed on or after the effective date of this subchapter shall be constructed and operated in accordance with the requirements for pools and spas in this subchapter except that:

(1) therapeutic pools and spas that contain 1,000 or less gallons shall have a water turnover rate at 30 minutes or less; and

(2) therapeutic pools that have design characteristics that vary from this chapter shall be planned and designed by a licensed engineer.

(k) Surf pools.

(1) Surf pools shall be fitted with a float line located to restrict access to the caisson wall if required by the surf pool equipment manufacturer.

(2) Wave caisson barriers shall be provided for all surf pools and shall have no opening that would allow passage of a 4-inch sphere. Surf pools using forced air to generate waves shall not be required to have caisson barriers unless recommended by the manufacturer.

(3) Safety rope and float lines required at the shallow to deep water transition shall not apply to surf pools.

(4) In addition to the requirements for lifeguards in §265.202 of this subchapter (relating to Lifeguard Personnel Requirements and Standards at Pools), lifeguards shall be provided with any equipment necessary to reach the deepest area of the surf pool during an emergency. The equipment shall be accessible to all lifeguards, clearly labeled as "For Lifeguard Use Only" and shall be available at all times the surf pool is open and used for surfing.

(5) No surfer shall enter the surf pool unless:

(A) tethered to the surf board;

(B) wearing a USCG approved PFD; or

(C) a lifeguard is in the surf pool in the surfing area directly supervising surfing activity.

(6) Non-surfing users shall not be allowed to enter the wave areas of the surf pool over 5 feet of depth while waves are being generated unless they are wearing a USCG approved PFD.

(7) Surf pools constructed or renovated on or after the effective date of this subchapter shall comply with the following:

(A) Access to a surf pool shall be at the shallow or beach entry end with the exception of an allowable ADA designated entry point.

(B) A minimum of two emergency shutoff switches capable of immediately stopping wave generation shall be provided, shall be clearly marked as emergency shutoffs, and shall be readily accessible to lifeguards.

§265.210. Compliance, Inspections, and Investigations.

(a) A department or local regulatory authority shall have the right to enter at all reasonable times any area or environment, including a building, storage, equipment room, bathhouse, or office to inspect and investigate for compliance with this subchapter, to review records, to question any person, or to locate, identify, and assess the condition of the pool or spa.

(b) Advance notice or permission for entry is not required.

(c) A department or local regulatory authority shall not be impeded or refused entry during its official duties by reason of any company policy.

(d) It is a violation of this subchapter for a person to interfere with, deny, or delay an inspection or investigation conducted by a department or a local regulatory authority.

§265.211. Enforcement.

(a) If a person violates Texas Health and Safety Code, §341.064, or this subchapter, the department or local regulatory authority may, in accordance with Texas Health and Safety Code §341.092, institute a civil suit in district court for the assessment of civil penalties, injunctive relief, or both.

(b) A person who violates Texas Health Safety Code, §341.064, or this subchapter may also be subject to a criminal penalty under Texas Health and Safety Code, §341.091.

(c) If the pool or spa closes, either voluntarily or by court order, public access to the pool or spa shall be restricted and a notice posted notifying the public that the pool or spa is closed until further notice.

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 July 13, 2020.

TRD-202002878
Barbara L. Klein
General Counsel
Department of State Health Services
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 231-5719

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER C. TEXAS MEDICAL LIABILITY INSURANCE UNDERWRITING ASSOCIATION

28 TAC §§5.2001 - 5.2006

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §§5.2001 - 5.2006, concerning the Texas Medical Liability Insurance Underwriting Association (JUA) Plan of Operation (Plan). These amendments are proposed because two trade associations named in the Plan to select members to the JUA Board of Directors have merged, making the current rule outdated.

EXPLANATION. The Texas Legislature formed the JUA in 1975 to be the residual market for medical liability insurance. The JUA is governed by a board of directors composed of nine members who are representatives from various industry groups and public members. Insurance Code §2203.052(a)(1) provides that five of the nine members of the board must be representatives of insurers, elected by association members.

Section 5.2002(d)(2)(B) fulfills that requirement, in part, by requiring that the Property Casualty Insurers Association of America (PCI) and the American Insurance Association (AIA) each select a member. PCI and AIA merged into the American Property Casualty Insurance Association (APCIA) effective January 1, 2019. To address the change, at their meeting on February 27, 2020, the JUA board voted to replace PCI and AIA with APCIA and the National Association of Mutual Insurance Companies (NAMIC). The amendments to §5.2002(d)(2)(B) will allow APCIA to appoint one member and NAMIC to appoint another, so the number of board members remains at nine.

Also, this proposal updates several statutory references, makes changes for agency style, and adds the option for a foreign insurer to be a board member. A "foreign insurer" is an insurer that is licensed to do business in Texas but is domiciled in another state.

Section 5.2001.

This section is amended to update statutory citations and make other nonsubstantive edits for current agency style by removing the use of "shall" and replacing it with a clearer word.

Section 5.2002.

Section 5.2002(d)(2)(B) is amended to allow APCIA to appoint one member and NAMIC to appoint another, so the number of board members remains at nine.

Section 5.2002(d)(C)(ii) is amended to add an option for one board member slot to be filled either by an insurer who is not a member of the listed trade associations or by a foreign insurer. This will add flexibility in choosing board members.

Section 5.2002 is also amended to update statutory citations and make other nonsubstantive edits to update the language to current agency style. This includes removing "shall" and replacing it with a clearer word, capitalizing "Commissioner," and editing for plain language.

Section 5.2003.

This section is amended to update statutory citations and make other nonsubstantive edits to update the language to current agency style by replacing "shall" with a clearer word, capitalizing "Commissioner," and editing for plain language.

Section 5.2004.

Section 5.2004(a)(2)(B) is amended to provide a more specific statutory citation.

This section also has nonsubstantive edits to update the language to current agency style, including capitalizing "Commissioner" and revising punctuation.

Section 5.2005.

This section is amended to replace the word "shall" with "must" and capitalize "Commissioner" to conform with current agency style.

Section 5.2006.

This section is amended to update statutory citations, remove "shall" and replace it with a clearer word, and capitalize "Commissioner" to conform with current agency style.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director of the Property and Casualty Lines Division, 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 sections, 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 are not involved in enforcing or complying with the proposed amendments.

Ms. Baker does not anticipate a measurable effect on local employment or the local economy because of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Baker expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules conform to Insurance Code Chapter 2203 and that the necessary stakeholders are adequately represented in governing the residual medical liability insurance market.

Ms. Baker expects that the proposed amendments will not increase the cost of compliance with Insurance Code §2203.052, because they do not impose requirements beyond those in the statute. Insurance Code §2203.052 requires that five of the nine members of the board of directors represent insurers. The changes to replace PCI and AIA with APCIA and NAMIC serve to maintain the board at nine members. As a result, any cost associated with the rules does not result from the enforcement or administration of the proposed amendments.

The change to allow the option of choosing a foreign insurer does not impose costs because it does not impose a new requirement. It simply adds flexibility to the composition of the board.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI 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. The proposed amendments update provisions in the Plan that the JUA must follow and the JUA is not a small or micro business. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare an economic impact statement or a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a cost on regulated persons. The rule amendments assist the JUA and its members to effectively administer the organization and ensure that the board remains at nine members. The costs imposed to members of the JUA by the rule would not change. Even if the substantive amendments incur a cost to a regulated person, they are exempted from the requirements under Government Code §2001.0045(b), because the proposed amendments to §5.2002(d)(2)(B) and §5.2002(d)(C)(ii) are necessary to implement Insurance Code §2203.052.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rules:

- 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. TDI has determined that no private real property interests are affected by this proposal and that 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. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on August 24, 2020. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

To request a public hearing on the proposal, submit a request before the end of the comment period, separately from any comments, to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The request for public hearing must be separate from any comments and received by the department no later than 5:00 p.m. central time, on August 24, 2020. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes amendments to §§5.2001-5.2006 under Insurance Code §§2203.053, 2204.054, and 36.001.

Insurance Code §2203.053(a) provides that the JUA operates under a plan of operation adopted by the Commissioner.

Insurance Code §2203.054 provides that amendments to the Plan must be approved by the Commissioner or made at the direction of the Commissioner.

Insurance Code §36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Sections 5.2001-5.2006 implement Insurance Code Chapter 2203 and Article 21.49-3 §§2, 11, 12, 13.

§5.2001. Definitions.

(a) Words defined in the Insurance Code [~~the Act~~]. Unless the context clearly dictates the contrary, words defined in [~~the~~] Insurance Code Chapter 2203 and Insurance Code Article 21.49-3, §2, and not specifically defined in this section [~~these sections shall~~] have the same definition when used in this subchapter as they have in the Insurance Code [~~Act~~].

(b) Words defined in this subchapter [~~the sections~~]. The following words and terms, when used in this subchapter, [~~shall~~] have the following meanings unless the context clearly indicates otherwise:

(1) Act--The Texas Medical Liability Insurance Underwriting Association Act, codified as [~~the~~] Insurance Code Chapter 2203 and Insurance Code Article 21.49-3, §§2,11, 12, and 13.

(2) Application--An application for medical liability insurance and general liability insurance issued in connection with medical liability insurance.

(3) Association--Texas Medical Liability Insurance Underwriting Association.

(4) Board of directors--The board of directors of the Texas Medical Liability Insurance Underwriting Association.

(5) Chairman of the board--The chairman of the board of directors of the Texas Medical Liability Insurance Underwriting Association.

(6) Charter member of the association--An insurer authorized to write and engaged in writing, in [~~within the State of~~] Texas on a direct basis, automobile liability and/or liability other than automobile insurance at any time between January 1, 1975, and the effective date of the Act.

(7) Commissioner--Commissioner of Insurance.

(8) Department--Texas Department of Insurance.

(9) Member--An insurer required to be a member of the association by Insurance Code §2203.055 [~~the Act, §3~~], or, where the context indicates, any duly authorized agent or representative of such insurer. "Members" means [~~shall mean~~] more than one member.

(10) Secretary--The secretary of the Texas Medical Liability Insurance Underwriting Association.

(11) Treasurer--The treasurer of the Texas Medical Liability Insurance Underwriting Association.

(12) Vice chair or vice chair of the board--The vice chair of the board of directors of the Texas Medical Liability Insurance Underwriting Association.

§5.2002. Operation of the Texas Medical Liability Insurance Underwriting Association.

(a) Membership. The association is governed [~~created~~] by Insurance Code Chapter 2203 [~~the Act~~]. Any insurer authorized to write and engaged in writing any insurance, the writing of which requires the [~~such~~] insurer to become a member of the association under Insurance Code §2203.055, will [~~pursuant to §3 of the Act, who becomes authorized to write and engages in writing such insurance after the effective date of the Act shall~~] become a member of the association on the first day of January immediately following the date the [~~such~~] insurer started [~~engaged in~~] writing such insurance. The [~~, and the~~] determination of the [~~such~~] insurer's participation in the association will [~~shall~~] be made as of the date of such membership in the same manner as for all members of the association. Any member that [~~which~~] ceases to be authorized to write or that [~~which~~] ceases to engage in the writing of any insurance that [~~which~~] would require such insurer to become a member of the association will [~~shall~~] remain a member of the association until midnight of December 31 next following the date the [~~such~~] insurer ceases to be authorized to write or ceases to write such insurance, and the [~~such~~] insurer's participation in the association will [~~shall~~] cease as of that time; provided, however, that each member must [~~shall~~] participate in any financial deficit of the association for all calendar years subsequent to December 31, 1976, during which the insurer was a member of the association, whenever

such deficit is determined. The member must [~~shall~~] be charged or credited in due course with its proper share of all expenses or losses and any recoupment or reimbursement allocable to the member. If [~~In the event that~~] a member is merged or consolidated with another insurer, the continuing insurer will [~~shall~~] become a member of the association in place of the merged or consolidated member, provided that such member will [~~shall~~] be deemed to have become a member of the association on the date the merged or consolidated member became a member and provided, further, that such member will [~~shall~~] pay no initial expense fee.

(b) Expense fees.

(1) Initial expense fee. Each member must [~~shall~~] pay to the association an initial expense fee of $100. All members of the association must [~~shall~~] pay such fees on or before the date they become members of the association.

(2) Annual expense fee. In addition to the initial expense fee, each member must [~~shall~~] pay to the association an annual expense fee in an amount to be determined by the board of directors and approved by the Commissioner [~~commissioner~~]. All members of the association must [~~shall~~] pay such annual expense fee on or before the first of January for each year during which the association exists.

(3) Remedy for failure to pay fees. If any member fails [~~shall fail~~] or refuses [~~refuse~~] to pay either the initial expense fee or the annual expense fee after receipt of written notice by the association that such fee is due and payable, then such member will [~~shall~~] be subject to the same remedies as provided in §5.2003(d)(4) of this title [~~chapter~~] (relating to Property and Casualty Insurance) for the failure of the [~~such~~] member to pay any assessment levied by the association.

(4) Use of fees. All expense fees paid to the association will [~~shall~~] be used in such manner as the board of directors may from time to time direct in accordance with this subchapter.

(c) Meetings of members.

(1) Notice of meetings. Written or printed notice stating the place, date, hour, subjects of the meeting, and the purpose or purposes for which the meeting is called, must [~~shall~~] be delivered not less than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chair of the board of directors, the secretary, or other person calling the meeting, to each member entitled to vote at such meeting. Public notice of meetings must [~~shall~~] be given as required by [~~the~~] Government Code [~~,~~] Chapter 551.

(2) Meetings.

(A) Annual meeting. The annual meeting of the members must [~~shall~~] be held not later than the 30th day of September of each year at an hour and place to be determined by the board of directors for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the election of directors is not held on the day designated for any annual meeting of the members, the board of directors must [~~shall~~] cause the election to be held at a special meeting of the members as soon as may be convenient after the annual meeting.

(B) Special meetings. The board of directors, the chair of the board of directors, or 20% of the members may call a special meeting of the members and designate any place as the place of the special meeting.

(3) Quorum. Fifty members, represented by person or by proxy, is [~~shall constitute~~] a quorum at a meeting of the members. If less than 50 members are represented at a meeting, a majority of the members represented may adjourn the meeting from time to time without further notice. At the next meeting after adjournment at which a quorum is present or represented any business may be transacted at the meeting as originally notified. The members represented at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough persons to leave less than a quorum.

(4) Voting.

(A) Each member is [~~shall be~~] entitled to one vote at the annual meeting and each special meeting.

(B) A member may vote by proxy executed in writing by the member. No proxy will be [~~shall be~~] valid after the next annual meeting after the date of its execution unless otherwise provided in the proxy. Each proxy is [~~shall be~~] revocable.

(C) Each member's vote may be voted by such officer, agent, or proxy as the bylaws of such member may authorize or, in the absence of such authorization, as such member may determine.

(D) Voting on any question or in any election may be by voice vote or by show of hands unless the presiding officer orders [~~shall order~~], or any member demands [~~shall demand~~], that voting be by written ballot.

(5) Rules. To the extent applicable, Robert's Rules of Order [~~shall~~] govern the conduct of and procedure at all meetings of the members.

(d) Directors.

(1) Selection. At each annual meeting of members or as otherwise provided in subsection (c)(2) of this section, the members must [~~shall~~] elect five directors from [~~among~~] member companies for the categories set forth in paragraph (2)(B) and (C) of this subsection. Four directors must [~~shall~~] be selected in the manner set forth in paragraph (2)(D) - (F) of this subsection. Directors take office on October 1 of each year and will [~~shall~~] hold office until the next election of directors or until a successor has been selected and qualified.

(2) Membership.

(A) The number of the directors of the association must [~~shall~~] be nine.

(B) Three directors to be elected in accordance with paragraph (1) of this subsection must [~~shall~~] be elected by the members and [~~shall~~] be separate members of the association representing each of the following:

(i) the American Property Casualty Insurers Association [~~a single representative from either the National Association of Independent Insurers or the Alliance of American Insurers, at the choice of the Property Casualty Insurers Association of America~~];

(ii) the National Association of Mutual Insurance Companies [~~American Insurance Association~~]; and

(iii) the Insurance Council of Texas.

(C) Two directors must [~~shall~~] be elected by the members and must [~~shall~~] be:

(i) a member insurer organized under the laws of and domiciled in [~~the State of~~] Texas; and

(ii) a member insurer that is either (or both):

(I) not a member of those associations described in subparagraph (B) of this paragraph, or

(II) an insurer that is not domiciled in Texas.

(D) One director must [~~shall~~] be a physician who is appointed by the Texas Medical Association or its successor.

(E) One director must [~~shall~~] be a representative of hospitals appointed by the Texas Hospital Association or its successor.

(F) Two directors must [~~shall~~] be members of the public to be appointed by the Commissioner [~~commissioner~~].

(G) No director may [~~shall~~] fill more than one seat on the board of directors, and no member affiliated by ownership, management, or control may [~~shall~~] simultaneously occupy seats on the board of directors. No later than 60 days before [~~prior to~~] the annual meeting, the board of directors must [~~shall~~] select a nominating committee of three member companies. The three directors who will [~~shall~~] represent the organizations set forth in subparagraph (B) of this paragraph must [~~shall~~] be nominated by the nominating committee. The two directors described in subparagraph (C) of this paragraph must [~~shall~~] be nominated by any member of the association by submitting the nominee's name to the nominating committee. To [~~In order to~~] be eligible for selection to the board of directors by the members, a member must be nominated at least 30 days before [~~prior to~~] the annual meeting at which such directors are selected.

(3) Term of office. Unless removed in accordance with this subchapter, each director will [~~shall~~] hold office until the next election of directors or until a successor has been selected and qualified.

(4) Regular meetings. A regular meeting of the board of directors must [~~shall~~] be held with notice as provided for in this subsection, immediately after and at the same place as the annual meeting of the members. The board of directors may provide, by resolution, the time and place for the holding of additional regular meetings with notice to the directors at least 10 days before each regular meeting as provided in this subsection.

(5) Notice of regular or special meeting. Notice of any regular or special meeting must [~~shall~~] be given at least 10 days before [~~prior to~~] the meeting. The association must [~~shall~~] provide notice by personal delivery, mail, electronic, or other means to each director. If mailed, notice will [~~shall~~] be deemed to be delivered when deposited in the United States mail, addressed with postage prepaid. If the notice is by other reasonable means, the association must [~~shall~~] maintain a written record of the method of notification. Any director may waive notice of any meeting. The attendance of a director at a meeting is [~~shall constitute~~] a waiver of notice of the meeting, except where a director attends a meeting for the express purpose of objection to the transaction of any business because the meeting is not lawfully called or convened.

(6) Special meetings. Special meetings of the board of directors may be called by the chair of the board, or at the request of any two directors. The person or persons who call [~~authorized to call~~] special meetings of the board of directors may fix any place that is accessible to the public as the place for holding any special meeting of the board of directors called by them.

(7) Statement of purpose of meeting required. The business to be transacted at, and the purpose of, any regular or special meeting of the board of directors must [~~shall~~] be specified in the notice, or waiver of notice, of the meeting, and in the notice required by [~~the~~] Government Code [~~,~~] Chapter 551.

(8) Quorum. A majority of [~~the~~] directors is [~~shall constitute~~] a quorum for the transaction of business at any meeting of the board of directors. Action taken by a majority of [~~the~~] directors present at a meeting at which a quorum is present will [~~shall~~] be the act of the board of directors. If at any meeting of the board of directors there is less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum is obtained, and no further notice need be given other than by announcement at the meeting which will [~~shall~~] be adjourned.

(9) Presumption of assent. A director of the association who is present at the meeting of the board of directors at which action on any matter is taken is [~~shall be~~] presumed to have assented to the action taken unless the director's dissent is entered in the minutes of the meeting, or unless a written dissent to the [~~such~~] action is filed with the person acting as secretary of the meeting before the adjournment. The [~~Such~~] right to dissent is not [~~shall not be~~] available to a director who voted in favor of the [~~such~~] action.

(10) Compensation. By resolution of the board of directors, the directors and members of committees of the association may be paid their expenses, if any, of attendance at each meeting of the board of directors, or each meeting of a committee of the association. No other payment may [~~shall~~] be made to directors other than that provided in this paragraph except that nothing in this subchapter may [~~shall~~] be construed as preventing any director from receiving compensation for serving the association in any other capacity.

(11) General powers. The board of directors must [~~shall~~] manage the business and affairs of the association subject to the supervision and control, at all times, of the Commissioner [~~commissioner~~] and the department as set forth in this subchapter and in the Act. Included among the powers of the board of directors, but not in limitation thereof, are the following:

(A) to purchase or otherwise acquire for the association any property, rights, or privileges that [~~which~~] the association is authorized to acquire;

(B) to remove any officer summarily for cause, or without cause and, in their discretion, from time to time to dissolve the powers and duties of any officers and to confer the powers and duties upon any other person;

(C) to appoint and remove or suspend such subordinate officers, agents, employees, or representatives as they may deem necessary and to determine their duties, and fix, and from time to time change, their salaries or remuneration, and to require security as and when they think fit;

(D) to confer upon any officer of the association the power to appoint, remove, and suspend subordinate officers or employees;

(E) to determine who may [~~shall~~] be authorized on the association's behalf to make and sign bills, notes, acceptances, endorsements, checks, releases, receipts, contracts, and other instruments;

(F) to delegate any of the powers of the board of directors in relation to the ordinary business of the association to any standing or special committee, or to any officers or agent (with power to subdelegate) upon such terms as they think fit;

(G) to contract, from time to time, with one or more members for single or multi-year terms, to act as servicing carriers to perform all policy functions of the association, including, without limitation to, underwriting, issuance of policy, coding and premium accounting, settlement of claims to conclusion, and reporting to the association, as may be directed by the association, subject to provisions of law and this subchapter, upon the terms and for the consideration expressed. Such contracts may not become effective until the contracts have been approved by the department;

(H) to approve expenses and levy assessments, including preliminary assessments for initial expenses necessary to commence operations, and assessments to defray losses and expenses;

(I) to establish necessary facilities;

(J) to enter into commission arrangements with agents regarding the sale of medical liability insurance through the association;

(K) to promulgate reasonable and objective underwriting standards;

(L) to either or both accept and refuse the assumption of reinsurance from its members, and cede and purchase reinsurance, [;] provided, however, that the [~~such~~] reinsurance is [~~shall be~~] governed by rules promulgated by the Commissioner [~~commissioner~~]; and

(M) to direct the collection, administration, investment, and valuation of the stabilization reserve funds consistent with the Act and this subchapter.

(12) Committees.

(A) The board of directors, by resolution or resolutions passed by a majority of the board of directors, may designate one or more committees, each committee to consist of two or more of the directors of the association that [~~which~~], to the extent provided in the resolution or resolutions, will [~~shall~~] have and may exercise the powers of the board of directors in the management of the business and affairs of the association. The committee or committees will [~~shall~~] have the [~~such~~] name or names as may be determined from time to time by appropriate resolution. All [~~such~~] committees must [~~shall~~] keep regular minutes of their proceedings and report the minutes to the board of directors when required.

(B) The chair may appoint the members of the committees as may be appropriate to carry out the business of the association.

(C) The delegation to a committee of authority consistent with this section may [~~shall~~] not operate to relieve the board of directors, or any director, of any responsibility imposed upon the board of directors or director by law.

(13) Removal. Any person serving as a director may be removed from a position as director either with or without cause at any special meeting of members if notice of intention to remove the director has been stated as one of the purposes of the meeting. This paragraph may [~~shall~~] not be construed to allow the removal of any member from the board of directors.

(14) Vacancies.

(A) A director position is [~~shall be~~] considered vacant upon the resignation of the member serving as director.

(B) Any vacancy occurring in the board of directors may be filled at the next meeting of the board of directors following the occurrence of such vacancy. Subject to the provisions of paragraph (2) of this subsection, such vacancy must [~~shall~~] be filled by the affirmative vote of a majority of the remaining directors though less than a quorum. A director elected to fill a vacancy must [~~shall~~] be elected for the unexpired term of its predecessor.

(15) Executive committee. The board of directors, by resolution or resolutions passed by a majority of the board of directors, may designate an executive committee to consist of a chair, a vice chair, a secretary, a treasurer, and the immediate past chair, provided the immediate past chair is a director. The general manager must [~~shall~~] be an ex officio member of the executive committee. To the extent provided in the resolution or resolutions, the executive committee has [~~shall have~~] and may exercise the powers of the board of directors in the management of the business and affairs of the association. The executive committee must [~~shall~~] keep regular minutes of its proceedings and report the minutes to the board of directors. The delegation authority consistent with this section does [~~shall~~] not operate to relieve the board of directors, or any director, of any responsibility imposed by law upon the board of directors or any director.

(e) Officers.

(1) Number. The officers of the association are [~~shall be~~] the chair of the board of directors, the vice chair of the board of directors, the secretary, the treasurer, and other officers as the Commissioner [~~commissioner~~] may desire, all of whom are [~~shall be~~] elected by the board of directors. No two offices may be held by the same person except for the offices of secretary and treasurer.

(2) Election and term of office. The officers of the association are [~~shall be~~] elected annually by the board of directors at the first meeting of the board of directors held after each annual meeting of the members or as soon as practical following the annual meeting. Each officer must [~~shall~~] hold office until a successor has been duly elected and qualified or until the officer's resignation, death, or removal.

(3) Removal and vacancies. Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever, in its judgment, the best interests of the association would be served or otherwise in accordance with this subchapter, but such removal is [~~shall be~~] without prejudice to the contract rights, if any, of the person so removed. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the board of directors for the unexpired portion of the term.

(4) Chair of the board. The chair of the board must [~~shall~~] preside at all meetings of the members and at all meetings of the directors, appoint and discharge employees and agents of the association subject to the approval of the directors, fix the compensation of employees and agents, make and sign contracts and agreements in the name of the association, and appoint committees. The chair of the board must [~~shall~~] ensure that the books, reports, statements, and certificates are properly kept, made, and filed, if necessary, and the chair of the board must [~~shall~~] generally do and perform all acts incident to the office of chair of the board or that [~~which~~] may be authorized or required by law, by this subchapter, or by the board of directors, not inconsistent with this subchapter.

(5) Vice chair of the board. The vice chair, elected by the board of directors, has [~~shall have such~~] powers and must [~~shall~~] perform [~~such~~] duties as [~~shall be~~] assigned to the vice chair, not inconsistent with this subchapter.

(6) Secretary. The secretary must [~~shall~~]:

(A) keep the minutes of the members and of the board of directors' meetings in one or more books provided for that purpose;

(B) provide all notices as required by the provisions of this subchapter. In case of the secretary's absence or refusal or neglect to give the required notice, notice may be given at the direction of the chair of the board of directors, or of the members upon whose request the meeting is called;

(C) be custodian of the association's records;

(D) keep a register of the post office address of each member;

(E) annually determine each member's participation in the association in the manner required by the Act and this subchapter and [~~shall~~] keep a register of each member's percentage of participation; and

(F) in general, perform all duties incident to the office of secretary and such other duties as from time to time may be delegated to the secretary by the chair of the board or by the board of directors.

(7) Treasurer. The treasurer must [~~shall~~] have custody of all funds, securities, evidences of indebtedness, and other valuable documents of the association, including those attributable to the stabilization reserve funds. The treasurer must [~~shall~~] receive and give, or cause to be given, receipts and acquittances for money paid in on account of the association, and [~~shall~~] pay out of the funds on hand all just debts of the association, of whatever nature, upon maturity of the debts. The treasurer must [~~shall~~] enter, or cause to be entered, in books of the association to be kept for that purpose, full and accurate accounts of all money received and paid out on account of the association, and whenever required by the board of directors, the treasurer must [~~shall~~] keep, or cause to be kept, other books as would show a true record of the reserves, expenses, losses, gains, assets, and liabilities of the association.

(f) Fiscal year. The fiscal year of the association is [~~shall be~~] the calendar year.

(g) Waiver of notice. Whenever any notice is required to be given to any members or director of the association under the provisions of this subchapter a waiver in writing, signed by the person or persons entitled to notice is [~~shall be~~] deemed equivalent to the giving of such notice.

(h) Protection of directors and officers.

(1) Any person or insurer made or threatened to be made a party to any civil, criminal, administrative, or investigative action, suit, or proceeding (other than an action by or in the right of the association) because such person or insurer is or was a member or is serving or served on a committee or is or was an officer or employee of the association, or is or was serving any other entity or organization at the request of the association, is [~~shall be~~] entitled to be indemnified by the association against all judgments, fines, amounts paid in settlement, reasonable costs and expenses (including attorneys' fees), and other liabilities actually and reasonably incurred (other than for amounts paid to the association itself) as a result of such threatened or actual action, suit, or proceeding except in relation to matters as to which that person or insurer is [~~shall be~~] finally adjudged in such action, suit, or proceeding to be liable by reason of willful misconduct in the performance of that person's or insurer's duties or obligations to the association or other entity as previously provided and, with respect to any criminal actions or proceedings, except when such person or insurer believed or had reasonable cause to believe that their conduct was unlawful.

(2) Indemnification must [~~shall~~] be provided whether or not such person or insurer is a member or is holding office or is employed or serving at the time of such action, suit, or proceeding, and whether or not any such liability was incurred prior to the adoption of this subchapter.

(3) Indemnification is not [~~shall not be~~] exclusive of other rights such person or insurer may have, and passes [~~shall pass~~] to the successors, heirs, executors, or administrators of such person or insurer.

(4) The termination of any such action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent will [~~shall~~] not in itself create a presumption that such person or insurer was liable by reason of willful misconduct or that they had reasonable cause to believe that their conduct was unlawful.

(5) In each instance when [~~in which~~] a question of indemnification arises, entitlements thereto, pursuant to the condition set forth in this subsection, must [~~shall~~] be determined by the board of directors by a majority vote of a quorum consisting of directors that were not parties to such action, suit, or proceeding or by the board of directors, whether interested or disinterested, if based upon a written opinion of legal counsel that the action, suit, or proceeding could qualify for indemnification because of reasonable doubt that the directors were liable by reason of willful misconduct in the performance of duties or obligations to the association or other entity as provided in this subsection, or that there was reasonable doubt that the directors believed or had reasonable cause to believe that the conduct was unlawful, and the board of directors must [~~shall~~] also determine the time and manner of payment of such indemnification; provided, however, if any such action, suit, or proceeding is terminated by compromise settlement, indemnification in respect of such disposition must [~~shall~~] be made only if such settlement had the prior approval of the board of directors, and provided further that a person or insurer who or that [~~which~~] has been wholly successful, on the merit or otherwise, in the defense of a civil or criminal action, suit, or proceeding of the character described in this subsection will [~~shall~~] be entitled in every instance to indemnification as authorized in this subchapter.

(6) Expense incurred in defending a civil or criminal action, suit, or proceeding may be paid by the association in advance of the final disposition of the [~~such~~] action, suit, or proceeding, as authorized by the board of directors in the specific case, upon receipt of an undertaking by or on behalf of the person or insurer to repay the [~~such~~] amount, unless it is [~~shall ultimately be~~] determined that the [~~such~~] person or insurer is not entitled to be indemnified by the association.

(7) Nothing in this subsection is [~~shall be~~] deemed to preclude a person or insurer who or that [~~which~~] the board of directors has determined not to be entitled to indemnification from asserting the right to such indemnification by legal proceedings.

(8) Indemnification as provided in this subsection is [~~shall be~~] apportioned among all members, including any named in any such action, suit, or proceeding, in the same manner as other operating expenses of the association.

(i) Annual report. The treasurer must [~~shall~~] file with the department annually, on or before the first day of March, a statement that contains [~~which shall contain~~] information on the association's transactions, condition, operations, and affairs during the preceding calendar year. Such statement must [~~shall~~] be in the form and contain the matters and information prescribed by the department. The department may, at any time, require the association to furnish additional information with respect of its transactions, condition, or any matter considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

(j) Examinations. The department must examine [~~shall make an examination into~~] the affairs of the association in accordance with Insurance Code Chapter 401 [~~Articles 1.15 and 1.16~~].

§5.2003. Members and Policyholders Participation in the Texas Medical Liability Insurance Underwriting Association.

(a) Powers of the association. The association is created by the Act and will [~~shall~~] be governed by the provisions of the Act and this subchapter.

(b) Collection and investment of funds.

(1) Collection. The treasurer is [~~shall, on behalf of the association, be~~] responsible for the collection of all the premiums received by the association, all assessments levied against the members, all assessments and charges levied against policyholders (including contributions to the stabilization reserve funds), and all proceeds from the investment of funds.

(2) Investment.

(A) All funds collected by the association must [~~shall~~] be retained in appropriate accounts in any bank or banks doing business in [~~the State of~~] Texas and may be invested only in the following:

(i) interest-bearing time deposits or certificates of deposit in any bank or banks doing business in [~~the State of~~] Texas that [~~which~~] are members of the Federal Deposit Insurance Corporation; or

(ii) treasury bills, notes, or bonds of the government of the United States of America; or

(iii) other investments as may be proposed by the board of directors and approved by the Commissioner [~~commissioner~~].

(B) The board of directors must [~~shall~~] determine what portion of such funds should [~~shall~~] be retained in a checking account or accounts and what portion of such funds should [~~shall~~] be invested in the investments set forth in subparagraph (A) of this paragraph, as well as which specific investments, if any, should [~~shall~~] be made.

(c) Stabilization reserve funds. Insurance Code §2203.301 [~~The Act, §4A,~~] creates a policyholder's stabilization reserve fund for physicians and certain health care providers (§2203.301 [§4A] fund), and Insurance Code §2203.303 [§4B] creates a stabilization reserve fund for for-profit and not-for-profit nursing homes and assisted living facilities (§2203.303 [§4B] fund) and further provides that these funds must [~~shall~~] be administered as provided in Insurance Code Chapter 2203 [~~the Act~~] and this subchapter and that the advisory directors must [~~shall~~] be chosen as provided in this subchapter.

(1) General provisions.

(A) In accordance with Insurance Code §2203.101 [~~the Act, §3A~~] and §2203.103 [~~§3B~~], the Commissioner will [~~commissioner shall~~] establish by order the categories of physicians and other health care providers, including health care practitioners, and health care facilities, who are eligible to obtain coverage from the association. The [~~Such~~] order may indicate the stabilization reserve fund appropriate to the new category and may be revised from time to time to include or exclude from eligibility some [~~particular~~] categories of health care providers and physicians.

(B) The following provisions also govern the [~~§4A and §4B~~] stabilization reserve funds under Insurance Code §2203.301 and §2203.303.

(i) Within 15 days after the effective date of any Commissioner [~~commissioner~~] order establishing eligibility, the board of directors must [~~shall~~] extend invitations to the appropriate Texas organizations representing eligible §2203.301 [§4A] fund health care providers and physicians and §2203.303 [§4B] fund for-profit and not-for-profit nursing homes and assisted living facilities to each designate an advisory director to represent each eligible category of §2203.301 [§4A] fund health care provider and physician and §2203.303 [~~and §4B~~] fund for-profit and not-for-profit nursing home and assisted living facility, and advise the association of its choice of director.

(ii) Each designated advisory director has [~~shall have~~] a vote on any matter coming before any meeting of the entire body of advisory directors for the §2203.301 [~~particular §4A~~] fund or §2203.303 [§4B] fund to which the advisory director has been designated. That [~~, and that~~] vote will [~~shall~~] be weighted in the proportion that the net written premium collected during the most recent calendar year from policies issued to each category of §2203.301 [§4A] fund health care provider and physician or §2203.303 [§4B] fund for-profit or not-for-profit nursing home and assisted living facility bears to the total net written premiums collected from all categories of §2203.301 [§4A] fund health care providers and physicians or to all categories of §2203.303 [§4B] fund for-profit and not-for-profit nursing homes and assisted living facilities as applicable during the same calendar year. The proportion of weighting of the advisory directors' votes for the §2203.301 [§4A] fund and the §2203.303 [§4B] fund respectively must [~~shall~~] be determined annually by the association, not later than August 31.

(iii) The designated advisory directors for the §2203.301 [§4A] fund and the §2203.303 [§4B] fund respectively must [~~shall~~] meet not later than September 15 of each year, [~~annually~~] at a place in Texas stipulated by the board of directors to consider the amount of funds available and the status of the respective §2203.301 [§4A] fund or §2203.303 [§4B] fund. The designated advisory directors for the respective §2203.301 [§4A] fund and §2203.303 [§4B] fund must [~~shall~~] inform the board of directors of the percentage to be charged to all policyholders of all policies issued or renewed by the association for the respective §2203.301 [§4A] fund or §2203.303 [§4B] fund during the next calendar year. This percentage must [~~shall~~] be communicated to the board of directors no later than September 20, annually.

(iv) If any organization described in clause (i) of this subparagraph fails to designate an advisory director, the directors designated by the remaining organizations [~~shall~~] constitute the entire body of advisory directors for the respective §2203.301 [§4A] fund or §2203.303 [§4B] fund, and their establishment of the respective §2203.301 [§4A] fund or §2203.303 [§4B] fund charge must [~~shall~~] be accepted as valid by the association and imposed pursuant to the operational procedures of the association, upon approval of the department.

(v) In the event that the advisory directors fail to establish a specific percentage charge for the respective §2203.301 [§4A] fund or §2203.303 [§4B] fund to be collected for the coming calendar year before the applicable deadline, the board of directors must [~~shall~~] immediately submit for approval by the Commissioner [~~commissioner~~] a charge to be collected from the respective §2203.301 [§4A] fund or §2203.303 [§4B] fund policyholders of each new and renewal policy during the upcoming [~~forthcoming~~] calendar year in accordance with the provisions of the Insurance Code.

(vi) The advisory directors [~~shall~~] serve without salary or other fee, and they may [~~shall~~] not be reimbursed for any expenses. The advisory directors, in the performance of their duties, will [~~shall~~] be afforded the protection of §5.2002(h) of this title (relating to Operation of the Texas Medical Liability Insurance Underwriting Association).

(C) The respective §2203.301 [§4A] fund or §2203.303 [§4B] fund charge must [~~shall~~] be collected annually from each policyholder of the applicable §2203.301 [§4A] or §2203.303 [§4B] fund, as may be appropriate, and must [~~shall~~] be stated as a percentage of the annual premium due for all coverages on all policies issued or renewed on or after the effective date of the charge. The [~~Such~~] percentage charge will [~~shall~~] remain in effect until changed in accordance with subparagraph (B) of this paragraph.

(D) The respective §2203.301 [§4A] fund or §2203.303 [§4B] fund charge must [~~shall~~] be separately stated in the policy, but may [~~shall~~] not constitute a part of premium or be subject to premium taxation, servicing fees, acquisition costs, commissions, or any other such charges. Further, the respective fund charge will [~~shall~~] not be considered premiums for the purpose of any assessments levied under subsection (d) of this section.

(E) The respective §2203.301 [§4A] fund or §2203.303 [§4B] fund charges must [~~shall~~] be collected and administered by the association and must [~~shall~~] be treated as a liability of the association along with and in the same manner as premium and loss reserves. The §2203.301 [§4A] fund and the §2203.303 [§4B] fund must [~~shall~~] be valued annually by the board of directors within 90 days of the last day of the preceding calendar year.

(F) Collections of the respective §2203.301 [§4A] fund or §2203.303 [§4B] fund charge must [~~shall~~] continue throughout each calendar year for which they are established; provided, that no charge will be made during the next succeeding calendar year if the net balance in the respective fund after recoupment of any prior year's deficit equals or exceeds the association's estimate of the projected sum of premiums to be written in the calendar year following the valuation date of the respective fund.

(2) §2203.301 [§4A] fund or §2203.303 [§4B] fund charge. The respective proportionate §2203.301 [§4A] fund or §2203.303 [§4B] fund charge must [~~shall~~] be based on the total annual written premium for all coverages provided by the association to the applicable §2203.301 [§4A] fund or §2203.303 [§4B] fund policyholders. The respective §2203.301 [§4A] fund or §2203.303 [§4B] fund charges are [~~shall~~] not be refundable if the policy is cancelled after the 90th day of coverage. If cancelled within the 90th day of coverage, the earned charge will be based on the same earned percentage charged for the insurance premium.

(3) Disbursements from the respective §2203.301 [§4A] fund or §2203.303 [§4B] fund. Disbursements from the respective §2203.301 [§4A] fund or §2203.303 [§4B] fund may [~~shall~~] not be made for any purpose other than to recoup a deficit from operations as defined in subsection (d) of this section. Upon suspension of the association by the Commissioner [~~commissioner~~], any funds remaining in the §2203.301 [§4A] fund must [~~shall~~] be added to the special fund created by the Commissioner [~~commissioner~~], acting as receiver, or a special deputy receiver acting on behalf of the receiver. Any investment income earned on the funds of the §2203.301 [§4A] fund must [~~shall~~] be added to that fund. Upon termination of the §2203.303 [§4B] fund, all assets of the fund must [~~shall~~] be transferred as provided in the Act.

(d) Participation by members and policyholders of the association.

(1) Deficit and remedy of a deficit.

(A) The association must [~~shall~~] have sustained a deficit from operations whenever the aggregate of the incurred losses (reported and unreported), plus all loss adjustment expenses incurred, plus commissions and plus other administrative expenses (including servicing carrier fees) incurred by the association in a given calendar year exceed the aggregate of the net premiums earned and other net income (including investment income earned) realized by the association in the same calendar year.

(B) Any deficits sustained by the association in any one calendar year with respect to any category of physicians or health care providers subject to Insurance Code §2203.101 [~~the Act, §3A(a)~~] or for-profit or not-for-profit nursing homes or assisted living facilities subject to Insurance Code §2203.102 must [~~the Act, §3A(c) shall~~] be recouped, pursuant to this subchapter and the rating plan in effect, by one or more of the following procedures in this sequence:

(i) first, a contribution from the §2203.301 [~~the §4A~~] fund or §2203.303 [§4B] fund, as appropriate, until the respective fund is exhausted;

(ii) second, an assessment upon the policyholders pursuant to paragraph (3) of this subsection and Insurance Code §2203.252 [~~the Act, §5(a)~~];

(iii) third, an assessment upon the members of the association pursuant to paragraph (4) of this subsection and Insurance Code §2203.053 [~~the Act, §5(b)~~].

(2) Surplus and disposition of a surplus.

(A) The association must [~~shall~~] have sustained a surplus from operations whenever the aggregate of the incurred losses (reported and unreported), plus all loss adjustment expenses incurred, plus commissions and plus other administrative expenses (including servicing carrier fees) incurred by the association in a given calendar year do not exceed the aggregate of the net premiums earned and other net income (including investment income earned) realized by the association in the same calendar year.

(B) Upon approval by the board of directors, surplus from operations must [~~shall~~] be ratably distributed as reimbursements to members who have been assessed pursuant to paragraph (4) of this subsection and have paid such assessments, but have not been previously reimbursed and have not been allowed the premium tax credit (offset) pursuant to subsection (e) of this section.

(C) Upon approval of the Commissioner [~~commissioner~~], the association must [~~shall~~] reimburse the state to the extent that the members have recouped their assessments using premium tax credits pursuant to subsection (e) of this section, with interest at a rate to be approved by the Commissioner [~~commissioner~~].

(D) Any balance remaining in the funds of the association at the close of its fiscal year, meaning its then excess of revenue over expenditures after approved reimbursement of members' contributions, must [~~shall~~] be added to the reserves of the association.

(3) Participation by policyholders of the association.

(A) Assessment of policyholders; contingent liability. Each policyholder within either the §2203.301 [§4A] fund or §2203.303 [§4B] fund must [~~shall~~] have contingent liability for a proportionate share of any assessment of policyholders in the applicable §2203.301 [§4A] fund or §2203.303 [§4B] fund made by the association pursuant to Insurance Code §2203.252 [~~the Act, §5(a)~~] and the provisions of the plan of operation set forth in this subchapter.

(B) Procedure for assessment of policyholders. Assessment of policyholders shall be made in accordance with the following.

(i) Notice of assessment must [~~shall~~] be sent by certified mail, return receipt requested, to each policyholder being assessed within 30 days [~~of the levy of the meeting~~] of the board of directors meeting at which such assessment was levied. Notice must [~~shall~~] be forwarded to the address of each policyholder as it appears on the books of the association. The notice must [~~shall~~] state the policyholder's allocated amount of assessment and must [~~shall~~] inform each policyholder of the sanctions imposed by clause (ii) of this subparagraph for the failure to pay such assessment within the time prescribed by this section.

(ii) Each policyholder must [~~shall~~] remit to the association payment in full of an assessment within 30 days of receipt of notice of assessment. [~~; provided,~~] However [~~however~~], [~~that~~] a policyholder that is not delinquent on any prior assessments, stabilization reserve fund charge, or premium may remit payment of an assessment levied for a deficit incurred in a calendar year in two installments with at least one-half of the assessment paid within 30 days after receipt of notice of assessment and the remaining balance paid within 30 days thereafter. If the association has not received payment of the policyholder's assessment or any installment payment within 10 days after the [~~such~~] payment is due, then the association must [~~shall~~] promptly cancel any policy of insurance that [~~which~~] the policyholder at that time has in force with the association, and the association may [~~shall be entitled to~~] offset any unearned premium otherwise refundable on such policy against the amount of that policyholder's unpaid assessment. Such cancellation of current insurance coverage will [~~shall~~] in no way affect the right of the association to proceed against the policyholder in any court

of law or equity in the United States for any remedy provided by law or contract to the association, including, but not limited to, the right to collect the policyholder's assessment.

(4) Participation by members of the association.

(A) Assessment of members. Insurance Code Chapter 2203 [~~The Act~~] provides that in the event that sufficient funds are not available for the sound financial operation of the association, in addition to assessments paid pursuant to the plan of operation set forth in this subchapter and contributions from the stabilization reserve funds, all members must [~~shall~~], on a basis authorized by the Commissioner [~~commissioner~~], as long as the Commissioner [~~commissioner~~] deems it necessary, contribute to the financial requirements of the association in the manner provided for in this section and Insurance Code §2203.254 [~~the Act, §5~~]. Any assessment or contribution must [~~shall~~] be reimbursed to the members as provided in Insurance Code §2203.255 [~~the Act, §4~~].

(B) Procedure for assessment of members.

(i) All insurers that [~~which~~] are members of the association must [~~shall~~] participate in its writings, expenses, and losses in the proportion that the net direct premiums of each member, excluding that portion of premiums attributable to the operation of the association, written in this state during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members of the association during the same calendar year. Each insurer's participation in the association must [~~shall~~] be determined annually on the basis of net direct premiums written during the preceding calendar year as reported in the annual statements and other reports filed by that insurer that may be required by the department. No member may [~~shall~~] be obligated in any one year to reimburse the association on account of its proportionate share in the unrecouped deficit from operations of the association in that year in excess of 1.0% of its surplus to policyholders. The [~~and the~~] aggregate amount not reimbursed must [~~shall~~] be reallocated among the remaining members in accordance with the method of determining participation prescribed in this subsection, after excluding from the computation the total net direct premiums of all members not sharing in such excess deficit. In the event that the deficit from operations allocated to all members of the association in any calendar year exceeds [~~shall exceed~~] 1.0% of their respective surplus to policyholders, the amount of the deficit must [~~shall~~] be allocated to each member in accordance with the method of determining participation prescribed in this subsection.

(ii) Notice of assessment must [~~shall~~] be sent by certified mail, return receipt requested, to each member within 30 days of the [~~levy of meeting of the~~] board of directors meeting at which the [~~such~~] assessment was levied. Notice shall be forwarded to the office address of the member as it appears on the books of the association. The notice must [~~shall~~] state the member's allocated amount of assessment and must [~~shall~~] inform each member of the sanctions imposed by clause (iii) of this subparagraph for the failure to pay the assessment within the time prescribed by this section.

(iii) Each member must [~~shall~~] remit to the association payment in full of its assessed amount within 30 days of receipt of notice of assessment. If the association has not received payment in full of a member's allocated amount of assessment within 40 days of notice of the receipt by the member of the notice of assessment, then the association must [~~shall~~] report to the Commissioner [~~commissioner of insurance~~] the fact that the [~~such~~] assessment has not been paid. The [~~and the~~] Commissioner [~~commissioner of insurance~~] may take such actions as are permitted under the Insurance Code, including, but not limited to, actions authorized by [~~the~~] Insurance Code [~~,~~] Chapter 82, to consider revocation of the certificate of authority of the delinquent member. Any action by the Commissioner will [~~commissioner of insurance shall~~] in no way affect the right of the association to proceed against the member in any court of law or equity in the United States for any remedy provided by law or contract to the association, including, but not limited to, the right to collect the member's assessment. A member, by mailing payment of its allocated amount of assessment as provided by this section, does [~~shall~~] not waive any right it may have to contest the computation of its allocated amount of assessment. A contest does [~~shall~~] not, however, toll the time in which the assessment must [~~shall~~] be paid, or the report is made to the Commissioner [~~commissioner of insurance~~].

(5) Basis of computation of deficit, surplus, and assessments. The computation of the deficit or surplus in operations of the association and the computation of assessment of members and policyholders must [~~shall~~] be computed on a calendar-year [~~calendar year~~] basis in accordance with the reporting requirements of the annual statement filed with the department.

(e) Premium tax credit (offset) for member [~~members~~] assessments. To the extent that a member has been assessed and has paid one or more assessments as contemplated by this subchapter and has not received reimbursement from the association for the assessments, that member, as provided for in Insurance Code §2203.251 [~~the Act, §4(b)(3)~~], must [~~shall~~] be allowed a credit against its premium taxes under [~~the~~] Insurance Code Chapter 221 [~~Article 4.10~~], for all lines of insurance that [~~which~~] the member is writing in [~~the State of~~] Texas, which are subject to a premium tax under Insurance Code Chapter 221 [~~Article 4.10~~]. The tax credit, in the aggregate amount of the assessments plus interest at a rate to be approved by the Commissioner, must [~~commissioner shall~~] be allowed at a rate of 20% per year for five successive years following the year in which the deficit was sustained and at the option of the member may be taken over an additional number of years. For purposes of this premium tax offset, expense fees paid pursuant to §5.2002(b)(1) and (2) of this title (relating to Operation of the Texas Medical Liability Insurance Underwriting Association) are deemed to be assessments.

(f) Auditing of members. The association may audit the policies, records, book of accounts, documents, and related material of any member that [~~, which~~] are necessary to carry out its functions. Such material must [~~shall~~] be provided by the members in the form and with the frequency reasonably required by rules adopted by the Commissioner [~~commissioner~~].

§5.2004. Medical Liability Insurance and General Liability Insurance.

(a) The policy.

(1) Approval. The procedures regarding rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to insurance written by the association and related statistics must comply with Insurance Code Chapter 2203, Subchapter E.

(2) Duration of policies.

(A) All policies issued by the association must be written for a term of one year or less, as determined by the association, to begin at 12:01 a.m. on their respective effective dates.

(B) The association may not issue a policy with an effective date after a date set under Insurance Code Article 21.49-3, §11 for a plan of suspension to become effective and operative.

(C) All policies must be written on forms approved by the department, and must contain a provision that requires, as a condition precedent to settlement or compromise of any claim, the consent or acquiescence of the insured. If, however, the insured refuses to consent to any settlement recommended in writing by the association and

elects to contest or continue any legal proceedings, the liability of the association must not exceed the amount for which the claim could have been settled plus the cost and expenses incurred up to the date of the refusal.

(3) Installment payment plan. The association may offer an installment plan for coverage obtained through the association or for payment of the stabilization reserve fund charge. The association may require the policyholder to pay the stabilization reserve fund charge as an annual lump sum.

(4) Limits of liability.

(A) No individual or organization may be insured by a policy issued, or caused to be issued, by the association for an amount exceeding a total of $1 million per occurrence (for all coverages combined) and $3 million aggregate per annum (for all coverages combined). As used in this paragraph, the terms "individual" and "organization" mean each physician, health care provider, health care practitioner, and health care facility holding a separate license or accreditation from the appropriate licensing or accrediting agency as applicable.

(B) If provided, general liability limits must be the same as medical liability limits subject to the maximum policy limits specified in subparagraph (A) of this paragraph.

(5) Special provisions.

(A) The association may issue policies with deductibles.

(B) The association may issue policies subject to retrospective rating plans.

(C) Policies of excess medical liability insurance and excess general liability insurance written by the association must:

(i) be on a following form basis to the underlying medical liability insurance or underlying general liability insurance coverage over which it is written;

(ii) be issued subject to review of the underlying coverage if review is deemed necessary by the association or its representatives;

(iii) not be issued in those cases where the net retention at risk by the primary carrier is less than $100,000 per occurrence or less than $300,000 aggregate per annum after applying any applicable deductible;

(iv) be issued only when the underlying insurance coverage is underwritten by a member of the association and the underlying insurance coverage does not have a deductible in excess of $25,000;

(v) terminate automatically if the underlying primary medical liability insurance policy or underlying primary general liability insurance is not maintained for any reason, except exhaustion by payment of a loss or losses. If the aggregate underlying primary medical liability insurance or general liability insurance is exhausted by the payment of a loss or losses occurring during the policy period, the insurance provided by the excess policy must apply in the same manner as if the underlying primary insurance was in full force and effect;

(vi) not be accepted for a hospital or other institutional health care provider or health care facility if the applicant does not provide evidence that all physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners with staff privileges are insured for their individual medical liability with limits of liability of at least $100,000 per occurrence and $300,000 aggregate per annum; and

(vii) not be accepted for physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners who employ or contract with other physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners if the applicant does not provide evidence that all employed physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners who are eligible to obtain coverage from the association are insured for their individual medical liability with limits of liability of at least $100,000 per occurrence and $300,000 aggregate per annum.

(D) No hospital or other institutional health care provider, health care facility or physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners that have employed or contracted physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers or health care practitioners can be accepted for coverage in the association without evidence that all physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, or other health care providers, or health care practitioners with staff privileges or employed or contracted by the applicant are insured for their individual medical liability with limits of at least $100,000 per occurrence and $300,000 aggregate per annum.

(E) For purposes of this section, the term "health care providers or health care practitioners" does not include personnel at or below the level of employed registered nurse. Insurance required for physicians, surgeons, podiatrists, dentists, pharmacists, chiropractors, health care practitioners, or other health care providers with hospital staff privileges or employed or contracted by the applicant must be limited to any one of the following entities:

(i) an insurance company authorized and licensed to write and writing health care liability or medical liability insurance in Texas under Insurance Code Chapter 801;

(ii) an insurance company eligible to write and writing health care liability or medical liability insurance in Texas as a surplus lines carrier under Insurance Code Chapter 981;

(iii) the Texas Medical Liability Insurance Underwriting Association, established under Insurance Code Chapter 2203;

(iv) a self-insurance trust created to provide health care liability or medical liability insurance, established under Insurance Code Chapter 2212;

(v) a risk retention group or purchasing group writing health care liability or medical liability insurance in Texas, registered under Insurance Code Chapter 2201;

(vi) a plan of self-insurance of an institution of higher education that provides health care liability or medical liability coverage, established under Education Code Chapter 59; or

(vii) a plan of self-insurance that meets each of the following criteria:

(I) the plan's liabilities must be fully funded and the plan must be solvent. The plan must have a minimum net worth equal to the lesser of $1 million or that amount of net worth that results in a capitalization ratio of 5% [~~percent~~]. As used in this subclause, "net worth" is calculated by determining the excess, if any, of the plan's total assets over the plan's total liabilities. As used in this subclause, "capitalization ratio" means the ratio of the plan's net worth (as the numerator) to the plan's total assets (as the denominator). Notwithstanding

the preceding, the net worth requirements in this subclause do not apply to a plan that lawfully has taxing authority over a segment of the Texas public, provided that the taxing authority may be used to meet the plan's liabilities and other obligations; and

(II) the plan must annually obtain from a qualified actuary who is a member in good standing of the American Academy of Actuaries an actuarial analysis that reflects that its operations are viable. Notwithstanding the preceding, an actuarial opinion filed with the department under Insurance Code §802.002 may be accepted for purposes of this subsection; and

(III) financial statements of the plan must annually be audited by an independent certified public accountant who is a member in good standing of the American Institute of Certified Public Accountants (AICPA). The audits must use generally accepted auditing standards and must result in a report that attests to whether the financial statements comply with generally accepted accounting principles adopted by the AICPA. Notwithstanding the preceding, an audit report filed with the department under Insurance Code Chapter 401 may be accepted for purposes of this subsection; and

(IV) the plan must have competent and trustworthy management who are generally knowledgeable of insurance matters. A plan is not eligible if a plan officer or member of the plan's board of directors or similar governing body has been convicted of a felony involving moral turpitude or breach of fiduciary duty.

(6) Rates, rating plans, and rating rules applicable. The rates, rating plans, rating rules, rating classifications, and territories applicable must be those established under Insurance Code Chapter 2203, Subchapter E.

(b) Application, underwriting standards, and acceptance or rejection.

(1) Eligibility and forms.

(A) Any physician and any health care provider as defined in Insurance Code §2203.002 and any health care practitioner and health care facility as defined in Insurance Code §2203.103 that falls within any of the categories of physicians, health care providers, health care practitioners, or health care facilities established by order of the Commissioner [~~commissioner~~] from time to time as being eligible to obtain coverage from the association[~~,~~] is entitled to apply to the association for a medical liability insurance policy. However, if the applicant is a partnership, professional association, or corporation (other than a nonprofit corporation certified under Occupations Code Chapter 162) composed [~~comprised~~] of eligible health care providers or health care practitioners (such as physicians, dentists, or podiatrists), all of the partners, professional association members, or shareholders must also be individually insured in the association.

(i) Any category of physician or health care provider, which by order of the Commissioner [~~commissioner~~] has been excluded from eligibility to obtain coverage from the association, may be eligible for coverage in the association if, after at least 10 days' notice and an opportunity for a hearing, the Commissioner [~~commissioner~~] determines that medical liability insurance is not available for the category of physician or health care provider. In addition, a for-profit or not-for-profit nursing home or assisted living facility not otherwise eligible for coverage from the association is eligible for coverage if the nursing home or assisted living facility demonstrates, in accordance with the requirements of the association, that the nursing home or assisted living facility made a verifiable effort to obtain coverage from authorized insurers and eligible surplus lines insurers and was unable to obtain substantially equivalent coverage and rates.

(ii) All applications for medical liability and general liability insurance must be made on forms prescribed by the board of directors of the association and approved by the department. The application forms must contain a statement as to whether or not there are any unpaid premiums, assessments, or stabilization reserve fund charges due from the applicant for prior insurance. Application may be made on behalf of the applicant by an agent authorized under Insurance Code Chapter 4051. The agent need not be appointed by a servicing company.

(B) The association may issue a general liability insurance policy to an applicant specified in subparagraph (A) of this paragraph only if the association issues to that applicant a medical liability insurance policy.

(2) Licensed agent. If a liability insurance policy is written through a licensed agent then:

(A) the commission paid to the licensed agent must be 10% [~~percent~~] of the first $1,000 of the policy premium, 5% [~~percent~~] of the next $9,000 of the policy premium, and 2% [~~percent~~] of the policy premium in excess of $10,000 for policies written by the association on the form approved for physicians and noninstitutional health care providers;

(B) the commission paid to the licensed agent must be 12.5% [~~percent~~] of the first $2,000 of the policy premium, 7.5% [~~percent~~] of the next $3,000 of the policy premium, 5% [~~percent~~] of the next $15,000 of the policy premium, and 2% [~~percent~~] of the policy premium in excess of $20,000 for policies written by the association on the form approved for hospitals and other institutional health care providers;

(C) the commission paid to the licensed agent must be 10% [~~percent~~] of the policy premium for an excess liability insurance policy written by the association for a physician or any other health care provider as defined in Insurance Code §2203.002. The commission, however, may not exceed $250 for a policy written on the form approved for physicians and other noninstitutional health care providers, and may not exceed $500 for a policy written on the form approved for hospitals and other institutional health care providers; and

(D) no commission may be payable for any assessment payable by the policyholder by reason of a deficit incurred by the association, including charges for the stabilization reserve funds. On cancellation, the agent must refund any unearned portion of the commission to the association.

(3) Submission. Application for medical liability or general liability insurance on the prescribed form must be accompanied by tender of the amount of the deposit premium and the charge for the stabilization reserve fund required to bind the policy.

(4) Underwriting standards.

(A) On initial application and every reapplication to the association, the following underwriting standards must apply for policies of medical liability insurance written by the association:

(i) all applicants to the association must be currently licensed, chartered, certified, or accredited to practice or provide their respective health care services in Texas;

(ii) all health care provider, practitioner and facility and physician applicants to the association must provide evidence of inability to obtain medical liability coverage. The evidence must be two written rejections by carriers licensed and engaged in writing the coverage applied for in Texas or by a self-insurance trust created under Insurance Code Chapter 2212;

(iii) all for-profit and not-for-profit nursing home and assisted living facility applicants to the association must provide evidence of inability to obtain coverage from authorized insurers and eligible surplus lines insurers for substantially equivalent coverage and rates. The evidence must be two written rejections by insurers licensed and engaged in writing the coverage applied for in Texas or by eligible surplus lines insurers. For purposes of this subsection, a rejection has occurred if the applicant:

(I) made a verifiable effort to obtain insurance coverage from authorized insurers and eligible surplus lines insurers; and

(II) was unable to obtain substantially equivalent insurance coverage and rates.

(iv) any material misrepresentation in the application for coverage must be cause to decline coverage on discovery by the association or its authorized representative;

(v) each application must be accompanied by authorization for and consent to investigations of material information bearing on the moral character, professional reputation, and fitness to engage in the activities embraced by the applicant's license with respect to applicants who are to be provided coverage on the form approved for physicians and noninstitutional health care providers, or the reputation, method of operation, accident prevention programs, and fitness to engage in the activities embraced by the applicant's license, charter, certificate, or accreditation for applicants that are to be provided coverage on the form approved for hospitals and other institutional health care providers, including authorization to every person or entity, public or private, to release to the association any documents, records, or other information bearing on this information;

(vi) no coverage may be afforded either by binder or by policy issuance to any applicant whose license, charter, certificate, or accreditation has been ordered canceled, revoked, or suspended, [;] provided that, if the order has been probated by the appropriate regulatory body or licensing agency, the probation may be reviewed by the association for a determination whether and on what basis coverage may be afforded in the association;

(vii) the applicant, to be eligible for coverage in the association, must comply with all significant recommendations arising out of a loss control or risk management report either before binding coverage or as soon as practicable concurrently with coverage;

(viii) there must be no unpaid, uncontested premium; assessment; or charge due from the applicant;

(ix) there must be no unpaid deductible, in whole or part, owed to the association.

(5) Receipt of the application. On receipt of the application, the required deposit premium, and the applicable stabilization reserve fund charge, the association must, within 30 days:

(A) cause a binder or insurance policy to be issued; or

(B) advise the agent or applicant that the applicant does not meet the underwriting standards of the association, in which case the association must indicate the reasons the applicant does not meet the underwriting standards.

(c) Cancellation, nonrenewal, and notice.

(1) Cancellation by the association. The association may not cancel an insurance policy except for:

(A) nonpayment of premium;

(B) nonpayment of the applicable stabilization reserve fund charge;

(C) nonpayment of assessment;

(D) evidence of fraud or material misrepresentation; or

(E) cause that would have been grounds for nonacceptance of the risk under this subchapter had the cause been known to the association at the time the policy was issued; or

(F) any cause arising after the policy is issued that would have been grounds for nonacceptance of the risk under this subchapter had the cause existed at the time of acceptance; or

(G) noncompliance with reasonable loss control or risk management recommendations under subsection (b)(4)(A)(vii) of this section. On cancellation of an insurance policy by the association, the association must refund to the insured the unearned portion of any paid premium and, if canceled within the 90th day of coverage, the unearned portion of the paid fund charges under Insurance Code Chapter 2203, Subchapter G on a pro rata basis, provided that all assessments and fund charges earned under Insurance Code Chapter 2203, Subchapter G have been fully paid; otherwise, only that portion of unearned premium over any unpaid assessment and fund charges under Insurance Code Chapter 2203, Subchapter G will be refunded. Policyholder assessments and fund charges under Insurance Code Chapter 2203, Subchapter G are fully earned on payment; therefore, except as provided in Insurance Code Chapter 2203 or §5.2003(c)(2) of this title (relating to Members and Policyholders Participation in the Texas Medical Liability Insurance Underwriting Association), no portion is refundable.

(2) Cancellation by the insured. An insurance policy may be canceled at any time:

(A) by the insured, on written request for cancellation of the policy; or

(B) by an insurance premium finance company in accordance with Insurance Code Chapter 651.

(3) Refund of unearned portion of paid premium. The association must refund the unearned portion of any paid premium and, if canceled within the 90th day of coverage, the unearned portion of the paid fund charges under Insurance Code Chapter 2203, Subchapter G according to the approved short-rate table, provided all assessments and fund charges under Insurance Code Chapter 2203, Subchapter G earned have been fully paid; otherwise, only that portion of the unearned premium over any unpaid assessment and fund charges under Insurance Code Chapter 2203, Subchapter G will be refunded. Policyholder assessments and fund charges under Insurance Code Chapter 2203, Subchapter G are fully earned on payment; therefore, except as provided in Insurance Code Chapter 2203 or §5.2003(c)(2) of this title, no portion is refundable.

(4) Exhausted policy limits. If there is an outstanding claim or claims under any insurance policy on which a reserve or reserves have been established, which in the aggregate or when combined with losses previously paid under the policy equal or exceed the aggregate limits of coverage under the policy, the association must notify the insured. At the insured's option, the policy may be canceled. If the policy is canceled, the premium must be considered fully earned and the insured may apply for a new policy to be effective concurrently with the termination date of the canceled policy.

(5) Notice of cancellation, nonrenewal, or premium increase.

(A) The association may cancel a medical liability insurance policy and general liability insurance policy, or decline to re-

new a policy for any reason listed in paragraph (1) of this subsection at any time within the first 90 days from the effective date of the policy by sending 90 days written notice to the insured.

(B) The association may cancel a medical liability insurance policy and general liability insurance policy or decline to renew a policy for nonpayment of premium, assessments, or fund charges under Insurance Code Chapter 2203, Subchapter G, or for loss of license, charter, certification, or accreditation at any time during the policy period by sending 10 days' written notice to the insured.

(C) Notice of cancellation or nonrenewal under subparagraphs (A) and (B) of this paragraph must contain a statement of the reason for the cancellation or nonrenewal and a statement that the insured has the right to appeal under Insurance Code Chapter 2203, Subchapter I.

(D) The association must give at least 90 days' written notice to an insured before increasing the premium by reason of a rate increase on the insured's medical liability insurance policy. The notice must state the amount of the increase.

(6) General liability insurance. A general liability insurance policy issued by the association under Insurance Code §2203.151(b) automatically terminates on the same effective date and time as the termination of the medical liability insurance policy.

(d) Suspension of policy. The association must, on written request from a policyholder subject to the Servicemembers Civil Relief Act of 2003 (50 United States Code App. §§501, et seq.), suspend the policy issued by the association, in accordance with the Servicemembers Civil Relief Act of 2003.

(e) Removal of risks. Any member, or self-insurance trust established under Insurance Code Chapter 2212, at any time, on written consent from the insured filed with the association, may write the risk as regular business, in which event the association must cancel its policy pro rata as of a date and time specified by the manager of the association. The association will require written confirmation that the member or self-insurance trust is taking the risk out of the association before allowing pro rata cancellation.

(f) Payment of claims.

(1) Report of loss. All losses must be reported to the association in the manner prescribed by the board of directors.

(2) Adjustment of loss. All losses must be adjusted in the manner designated by the board of directors subject to the provisions of this plan of operation and the insurance laws of Texas.

§5.2005. Amendments.

Amendments to this subchapter may be recommended by the board of directors, subject to the approval of the Commissioner [~~commissioner~~], or may [~~shall~~] be made at the direction of the Commissioner [~~commissioner~~].

§5.2006. Reinsurance.

Pursuant to Insurance Code §2203.151(a)(3) and (4) [~~the Act, §3(b)(4)~~], the Texas Medical Liability Insurance Underwriting Association may cede and purchase reinsurance. The purpose of this section is to implement Insurance Code §2203.151(a)(3) and (4) [~~the Act, §3(b)(4)~~].

(1) The association may develop a reinsurance program that will provide for the purchase of reinsurance and that will maintain the purpose of the association to provide medical liability insurance and general liability insurance on a self-supporting basis.

(2) A reinsurance program is [~~shall be~~] subject to prior approval by the Commissioner [~~commissioner~~], and such prior approval must be obtained before implementation of the reinsurance program. The program must [~~shall~~] include, but is not limited to, the proposed reinsurance program structure and terms, including the reinsurance proposal and proposed reinsurance contract terms and conditions; cost of the proposed reinsurance program; the recommended percentage of reinsured business to be assumed by each individual reinsurer; a summary of the financial condition of each recommended reinsurer; the association's costs to administer the reinsurance program; compliance with Subchapter F of Chapter 7 of this title (relating to Reinsurance), to the extent that provisions do not conflict with this section or Chapter 2203 [~~Article 21.49-3~~]of the Insurance Code, or unless such provisions are waived by the Commissioner [~~commissioner~~]; and any other information the Commissioner [~~commissioner~~] deems necessary to enable the Commissioner [~~commissioner~~] to determine whether to approve or disapprove the reinsurance program. The association must [~~shall~~] submit to the Commissioner [~~commissioner~~], no later than 90 days before expiration of the reinsurance contract, the proposed renewal reinsurance program or a statement of the reasons why a reinsurance program is no longer necessary.

(3) The association must [~~shall~~] submit written notice of any amendment [~~amendment(s)~~] to any existing reinsurance contract to the Commissioner [~~commissioner~~] at least 60 days prior to the effective date of the proposed amendment [~~amendment(s)~~]. The notice must [~~shall~~] include an explanation of the reason for the amendment [~~amendment(s)~~] and a copy of the draft amendment [~~amendment(s)~~]. The amendment will [~~amendment(s) shall~~] be deemed approved by the Commissioner [~~commissioner~~] unless within 60 days following the submission of the written notice the Commissioner [~~commissioner~~] disapproves the amendment [~~amendment(s)~~].

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 July 13, 2020.

TRD-202002883
James Persons
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 676-6587

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 520. DISTRICT OPERATIONS

SUBCHAPTER A. ELECTION PROCEDURES

31 TAC §520.2

The Texas State Soil and Water Conservation Board (State Board) proposes amendments to Title 31, Texas Administrative Code, Part 17, Chapter 520 District Operations, Subchapter A, Election Procedures, §520.2, Definitions.

Background and Purpose

Pursuant to Texas Government Code §2001.039, the State Board conducted a rule review of Title 31, Texas Administrative

Code, Part 17, Chapter 520, District Operations, Subchapter A, Election Procedures. The State Board received no comments.

The proposed amendment to §520.2(5) deletes the former physical address of the State Board headquarters and leaves a physical address out of the rule to avoid future amendments regarding headquarter address changes. The other amendment alphabetizes the definitions.

Section-by-section Summary

The proposed amendment to §520.2(5) removes the former State Office address, 4311 South 31st Street, Temple, Texas.

Fiscal Impact on State and Local Government

Kenny Zajicek, COO/CFO for the State Board, has determined that the proposed amendment does not impose an increased cost to state or local government.

Because there is no effect on local economies for the first five years that the proposed amendment is in effect, no local employment impact statement is required under Texas Government Code §2001.022.

Public Benefit/Cost to Regulated Persons

Mr. Zajicek has determined that the public benefit is the correction of a rule to remove the former address of the State Board headquarters. For each year of the first five years the rule is in effect, there will be no anticipated economic costs to persons.

There are no costs to regulated persons because the State Board does not regulate individuals and because of the nature of the rule change, which deletes the former headquarters address.

One-for-one Rule Analysis

Due to the nature of the amendment and because the State Board does not regulate individuals; the proposed amendment does not impose a cost on a person. The amendment does not impose a cost on another state agency or a special district; therefore, it is not subject to Texas Government Code §2001.0045.

Government Growth Impact

During the first five years of the proposed amendment is in effect, it would not: (1) create or eliminate a government program; (2) require the creation of new employee positions or eliminate existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand or repeal an existing regulation; and (7) not negatively affect the state's economy. Because the amendment only deletes the former physical address of the State Board's headquarters and because the State Board does not regulate individuals, it is not necessary to perform an analysis to determine the number of individuals subject to the proposed amendments' applicability.

Local Employment and Impact Statement

The CFO/COO has determined that no local economies are substantially affected by the rule, and, as such, the State Board is exempted from preparing a local employment impact statement pursuant to Government Code §2001.022.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The CFO/COO has determined that the rule amendment will not have an adverse impact on small or micro-businesses, or rural communities, because there are no substantial anticipated costs to person who are required to comply with the rule. As a result, the State Board asserts that preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

Takings Impact Assessment

The State Board has determined that there are no private real property interests affected by the rule; thus, the State Board asserts the preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

Environmental Rule Analysis

The State Board has determined that this proposal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the State Board asserts that this proposal is not a "major environmental rule," as defined by Government Code §2001.0225. As a result, the State Board asserts that the preparation of an environmental impact analysis, as provided by Government Code §2001.0225, is not required.

Request for Public Comment

Comments on the proposed amendment may be submitted to Liza Parker, Policy Analyst/Legislative Liaison, Texas State Soil and Water Conservation Board; 1497 Country View Lane, Temple, Texas 76504, within 30 days of publication of this proposed amendment in the *Texas Register.* Comments may also be submitted via fax to (254) 773-3311 or via email to *lparker@tsswcb.texas.gov.*

Statutory Authority

The amendment is proposed under Texas Agriculture Code, Title 7, Chapter 201, Subchapter B, State Soil and Water Conservation Board, §201.020, which provides the State Board with the authority to adopt rules as necessary for the performance of its functions under Chapter 201, Texas Agriculture Code.

No other code, article or statutes are affected by this amendment.

§520.2. Definitions.

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

(1) District--A soil and water conservation district created under the Agriculture Code of Texas, Chapter 201.

(2) [~~(4)~~] Eligible Voter--A person or a family farm corporation designated corporate officer as defined in §201.003 Agriculture Code of Texas is eligible to vote in a district election.

(3) [~~(2)~~] Executive Director--The Executive Director of the Texas State Soil and Water Conservation Board.

(4) [~~(3)~~] State Board--The Texas State Soil and Water Conservation Board created under the Agriculture Code of Texas, Chapter 201.

(5) State Office--The State Board headquarters office [~~located at 4311 South 31st Street, Temple, Texas~~].

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 July 8, 2020.

TRD-202002811

Liza Parker
Policy Analyst/Legislative Liaison
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: August 23, 2020
For further information, please call: (254) 773-2250

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.11

The Texas Department of Public Safety (the department) proposes amendments to §4.11, concerning General Applicability and Definitions. The proposed amendments harmonize updates to Title 49, Code of Federal Regulation with those laws adopted by Texas. The Federal Motor Carrier Safety Administration has granted an exemption and this amendment provides clarification for commercial driver license exemptions for covered farm vehicles.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the section as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be maximum efficiency of the Motor Carrier Safety Assistance Program.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require an increase or decrease in future legislative appropriations to the agency; will not require the creation of new employee positions nor eliminate current employee positions; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does limit an existing regulation. It does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should positively impact the state's economy.

The Texas Department of Public Safety, in accordance with the Administrative Procedures Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Monday, August 10, 2020 at 10:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.11 regarding General Applicability and Definitions, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed 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.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.11. General Applicability and Definitions.

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385 - 387, 390 - 393, and 395 - 397 including all interpretations thereto, as amended through June 1, 2020 [~~July 1, 2019~~]. All other references in this subchapter to the Code of Federal Regulations also refer to amendments and interpretations issued through June 1, 2020 [~~July 1, 2019~~]. The rules detailed in this section ensure:

(1) a commercial motor vehicle is safely maintained, equipped, loaded, and operated;

(2) the responsibilities imposed on a commercial motor vehicle's operator do not impair the operator's ability to operate the vehicle safely;

(3) the physical condition of a commercial motor vehicle's operator enables the operator to operate the vehicle safely;

(4) commercial motor vehicle operators are qualified, by reason of training and experience, to operate the vehicle safely; and

(5) the minimum levels of financial responsibility for motor carriers of property or passengers operating commercial motor vehicles in interstate, foreign, or intrastate commerce is maintained as required.

(b) Certain terms, when used in the federal motor carrier safety regulations as adopted in subsection (a) of this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Motor carrier--Has the meaning assigned by Texas Transportation Code, §643.001(6) when vehicles operated by the motor carrier meet the applicability requirements of subsection (c) of this section.

(2) Hazardous material shipper--A consignor, consignee, or beneficial owner of a shipment of hazardous materials.

(3) Interstate or foreign commerce--All movements by motor vehicle, both interstate and intrastate, over the streets and highways of this state.

(4) Department--The Texas Department of Public Safety.

(5) Director--The director of the Texas Department of Public Safety or the designee of the director.

(6) Federal Motor Carrier Safety Administration (FMCSA)--The director of the Texas Department of Public Safety for vehicles operating in intrastate commerce.

(7) Farm vehicle--Any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher being used to transport agriculture commodities, farm machinery, and farm supplies to or from a farm or ranch.

(8) Commercial motor vehicle--Has the meaning assigned by Texas Transportation Code, §548.001(1) if operated intrastate; commercial motor vehicle has the meaning assigned by Title 49, Code of Federal Regulations, §390.5 if operated interstate.

(9) Foreign commercial motor vehicle--Has the meaning assigned by Texas Transportation Code, §648.001.

(10) Agricultural commodity--Has the meaning as defined in Title 49, Code of Federal Regulations, §395.2 and includes wood chips.

(11) Planting and harvesting seasons--Are January 1 to December 31.

(12) Producer--A person engaged in the business of producing or causing to be produced for commercial purposes an agricultural commodity. The term includes the owner of a farm on which the commodity is produced and the owner's tenant or sharecropper.

(13) Off-road motorized construction equipment--Includes but is not limited to, motor scrapers, backhoes, motor graders, compactors, excavators, tractors, trenchers, bulldozers, and other similar equipment routinely found at construction sites and that is occasionally moved to or from construction sites by operating the equipment short distances on public highways. Off-road motorized construction equipment is not designed to operate in traffic and such appearance on a public highway is only incidental to its primary functions. Off-road motorized construction equipment is not considered to be a commercial motor vehicle as that term is defined in Texas Transportation Code, §644.001.

(14) The phrase "The commercial driver's license requirements of part 383 of this subchapter" as used in Title 49, Code of Federal Regulations, §382.103(a)(1) shall mean the commercial driver's license requirements of Texas Transportation Code, Chapter 522.

(15) For purposes of removal from safety-sensitive functions for prohibited conduct as described in Title 49, Code of Federal Regulations, §382.501(c), commercial motor vehicle means a vehicle subject to the requirements of Texas Transportation Code, Chapter 522 and a vehicle subject to §4.22 of this title (relating to Contract Carriers of Certain Passengers), in addition to those vehicles enumerated in Title 49, Code of Federal Regulations, §382.501(c).

(c) Applicability.

(1) The FMCSA regulations are applicable to the vehicles detailed in subparagraph (A) - (G) [~~(A)~~ - ~~(F)~~] of this paragraph:

(A) a vehicle or combination of vehicles with an actual gross weight or a gross weight rating in excess of 26,000 pounds when operating intrastate;

(B) a farm vehicle or combination of farm vehicles with an actual gross weight or a gross weight rating of 48,000 pounds or more when operating intrastate;

(C) a vehicle designed or used to transport more than 15 passengers, including the driver;

(D) a vehicle transporting hazardous material requiring a placard;

(E) a foreign commercial motor vehicle that is owned or controlled by a person or entity that is domiciled in or a citizen of a country other than the United States; [~~and~~]

(F) a contract carrier transporting the operating employees of a railroad on a road or highway of this state in a vehicle designed to carry 15 or fewer passengers; and[~~.~~]

(G) a covered farm vehicle as defined in Texas Transportation Code, §522.004 and in Title 49, Code of Federal Regulations, §390.5 qualifies for the commercial driver license (CDL) exemption only when a gross vehicle weight (GVW) or gross vehicle weight rating (GVWR), whichever is greater, of more than 26,001 lbs. is operated in intrastate commerce. All other covered farm vehicle exemptions apply in intrastate commerce at a GVW or GVWR of 48,000 lbs. or more.

(2) The regulations contained in Title 49, Code of Federal Regulations, §392.9a, and all interpretations thereto, are applicable to motor carriers operating exclusively in intrastate commerce and to the intrastate operations of interstate motor carriers that have not been federally preempted by the United Carrier Registration Act of 2005. The term "operating authority" as used in Title 49, Code of Federal Regulations, §392.9a, for the motor carriers described in this paragraph, shall mean compliance with the registration requirements found in Texas Transportation Code, Chapter 643. For purposes of enforcement of this paragraph, peace officers certified to enforce this chapter, shall verify that a motor carrier is not registered, as required in Texas Transportation Code, Chapter 643, before placing a motor carrier out-of-service. Motor carriers placed out-of-service under Title 49, Code of Federal Regulations, §392.9a may request a review under §4.18 of this title (relating to Intrastate Operating Authority Out-of-Service Review). All costs associated with the towing and storage of a vehicle and load declared out-of-service under this paragraph shall be the responsibility of the motor carrier and not the department or the State of Texas.

(3) All regulations contained in Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385 - 387, 390 - 393 and 395 - 397, and all interpretations thereto pertaining to interstate drivers and vehicles are also adopted except as otherwise excluded.

(4) A medical examination certificate, issued in accordance with Title 49, Code of Federal Regulations, §§391.14, 391.41, 391.43, and 391.45, shall expire on the date indicated by the medical examiner; however, no such medical examination certificate shall be valid for more than two years from the date of issuance.

(5) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee health and safety.

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

Filed with the Office of the Secretary of State on July 7, 2020.

TRD-202002772
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 424-5848

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 51. MEDICALLY DEPENDENT CHILDREN PROGRAM

As required by Texas Government Code §531.0202(b), the Department of Aging and Disability Services (DADS) was abolished effective September 1, 2017, after all of its functions were transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code §531.0201 and §531.02011. Rules of the former DADS are codified in Title 40, Part 1, and will be repealed or administratively transferred to Title 26, Health and Human Services, as appropriate. Until such action is taken, the rules in Title 40, Part 1 govern functions previously performed by DADS that have transferred to HHSC. Texas Government Code §531.0055, requires the Executive Commissioner of HHSC to adopt rules for the operation and provision of services by the health and human services system, including rules in Title 40, Part 1. Therefore, the Executive Commissioner of HHSC proposes the repeal of rules in Texas Administrative Code (TAC) Title 40, Part 1, Chapter 51, concerning Medically Dependent Children Program.

BACKGROUND AND PURPOSE

The purpose of the proposal is to repeal obsolete rules for the Medically Dependent Children Program (MDCP), a Medicaid §1915(c) waiver program that provides medical assistance benefits to children and young adults. The rules in 40 TAC, Chapter 51 governed the delivery of MDCP under a fee-for-service payment system.

Senate Bill 7, 83rd Legislature, Regular Session, 2013, amended the Texas Government Code, Chapter 533, by adding §533.00253, STAR Kids Medicaid Managed Care Program. Section 533.00253 required HHSC to establish a STAR Kids capitated managed care program to provide medical assistance benefits to children with disabilities. Section 533.00253 also required HHSC to provide medical assistance benefits through the STAR Kids managed care program to children who were receiving benefits in MDCP.

HHSC adopted managed care rules in 1 TAC, Chapter 353, Medicaid Managed Care, including §353.1155, Medically Dependent Children Program, effective November 1, 2016, that govern MDCP services provided under a Medicaid managed care program. On November 1, 2016, HHSC transitioned children and young adults enrolled in MDCP to the Medcaid managed care program.

In addition to adopting MDCP rules in 1 TAC §353.1155, HHSC staff completed an analysis in January 2018, to ensure that all MDCP requirements under managed care were included in the Uniform Managed Care Contract, Uniform Managed Care Manual, STAR Kids Managed Care Contract, STAR Health Managed Care Contract, and the STAR Kids Handbook.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §§51.101, 51.103, 51.201, 51.203, 51.207, 51.211, 51.213, 51.215, 51.217, 51.219, 51.221, 51.231, 51.233, 51.235, 51.237, 51.241, 51.243, 51.245, 51.247, 51.251, 51.301, 51.303, 51.305, 51.307, 51.309, 51.321, 51.323, 51.325, 51.327, 51.329, 51.331, 51.401, 51.403, 51.405, 51.407, 51.409, 51.411, 51.413, 51.415, 51.417, 51.418, 51.419, 51.421, 51.423, 51.431, 51.433, 51.441, 51.461, 51.463, 51.465, 51.471, 51.473, 51.475, 51.477, 51.479, 51.481, 51.483, 51.485, 51.505, 51.509, 51.511, 51.513, and 51.515 deletes obsolete rules in 40 TAC, Part 1.

FISCAL NOTE

Liz Prado, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the repeals will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues to state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the sections will be repealed:

(1) the proposed repeals will not create or eliminate a government program;

(2) implementation of the proposed repeals will not affect the number of HHSC employee positions;

(3) implementation of the proposed repeals will result in no assumed change in future legislative appropriations;

(4) the proposed repeals will not affect fees paid to HHSC;

(5) the proposed repeals will not create a new rule;

(6) the proposed repeals will repeal existing rules;

(7) the proposed repeals will not change the number of individuals subject to the repeals; and

(8) the proposed repeals will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Liz Prado has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the proposed repeals. The proposed rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed repeals will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to the proposed repeals because the repeals do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Stephanie Muth, State Medicaid Director, has determined that for each year of the first five years the repeals are in effect, the public will benefit from the removal of obsolete rules that no longer govern MDCP.

Liz Prado has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because there is no requirement to alter current business practices.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4900 North Lamar Boulevard, Austin, Texas 78751; or e-mailed to HHSRulesCoordinationOffice@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or e-mailed before midnight on the following business day to be accepted. When e-mailing comments, please indicate "Comments on Proposed Rule 18R006" in the subject line.

SUBCHAPTER A. INTRODUCTION

40 TAC §51.101, §51.103

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

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

§51.101. Purpose.

§51.103. 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.

Filed with the Office of the Secretary of State on July 7, 2020.

TRD-202002779
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 438-3501

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SUBCHAPTER B. ELIGIBILITY, ENROLLMENT, AND SERVICES
DIVISION 1. ELIGIBILITY

40 TAC §§51.201, 51.203, 51.207

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

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

§51.201. MDCP Interest List.

§51.203. Eligibility Requirements.

§51.207. Medical Necessity.

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 July 7, 2020.

TRD-202002781
Karen Ray
Chief Counsel
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Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 438-3501

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DIVISION 2. ENROLLMENT

40 TAC §§51.211, 51.213, 51.215, 51.217, 51.219, 51.221

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

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

§51.211. Enrollment.

§51.213. Enrollment of Former Nursing Facility Residents.

§51.215. Home Visit.

§51.217. Individual Plan of Care.

§51.219. Maintaining Enrollment.

§51.221. Other Responsibilities.

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 July 7, 2020.

TRD-202002782
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 438-3501

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DIVISION 3. SERVICES

40 TAC §§51.231, 51.233, 51.235, 51.237, 51.241, 51.243, 51.245, 51.247

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

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

§51.231. Service Limitations.

§51.233. Choosing a Program Provider.

§51.235. CDS Option.

§51.237. Service Schedule Changes.

§51.241. Service Suspensions by DADS.

§51.243. Denials, Terminations, and Service Reductions.

§51.245 Respite Services or Adaptive Aids Outside of the Contracted Service Delivery Area.

§51.247. HCSSA Transfer to a Different Contracted Service Delivery Area.

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

Filed with the Office of the Secretary of State on July 7, 2020.

TRD-202002783
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Department of Aging and Disability Services
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 438-3501

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DIVISION 4. APPEALS

40 TAC §51.251

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

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

§51.251. Appeals.

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 July 7, 2020.

TRD-202002784
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Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 438-3501

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SUBCHAPTER C. RESPONSIBILITIES OF THE INDIVIDUAL IN SECURING ADAPTIVE AIDS AND MINOR HOME MODIFICATIONS

DIVISION 1. ADAPTIVE AIDS

40 TAC §§51.301, 51.303, 51.305, 51.307, 51.309

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of

services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

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

§51.301. Procurement.

§51.303. Specifications for Adaptive Aids.

§51.305. Bids for Adaptive Aids.

§51.307. Enhancements to Adaptive Aids.

§51.309. Vehicle Modifications and Adaptive Equipment.

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 July 7, 2020.

TRD-202002785
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 438-3501

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DIVISION 2. MINOR HOME MODIFICATIONS

40 TAC §§51.321, 51.323, 51.325, 51.327, 51,329, 51.331

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

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

§51.321. Minor Home Modifications.

§51.323. List of Minor Home Modifications.

§51.325. Specifications for Minor Home Modifications.

§51.327. Owner Approval for Minor Home Modifications.

§51.329. Bids for Minor Home Modifications.

§51.331. Enhancements to Minor Home Modifications.

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 July 7, 2020.

TRD-202002786
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 438-3501

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SUBCHAPTER D. PROVIDER REQUIREMENTS

DIVISION 1. CONTRACTING REQUIREMENTS

40 TAC §§51.401, 51.403, 51.405, 51.407, 51.409

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

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

§51.401. Contracting Requirements.

§51.403. Use of Third-Party Resources.

§51.405. Monitoring Medicaid Eligibility.

§51.407. Written Information.

§51.409. Utilization Review.

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 July 7, 2020.

TRD-202002787
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 438-3501

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DIVISION 2. SERVICE DELIVERY REQUIREMENTS FOR ALL PROVIDERS

40 TAC §§51.411, 51.413, 51.415, 51.417, 51.418, 51.419

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive

Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

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

§51.411. General Service Delivery Requirements.
§51.413. Response to Service Authorization.
§51.415. Notification to the Individual.
§51.417. Notification to the Case Manager.
§51.418. Protective Devices.
§51.419. Service Suspensions by Program Provider.

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 July 7, 2020.

TRD-202002788
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 438-3501

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DIVISION 3. SERVICE DELIVERY REQUIREMENTS FOR RESPITE AND FLEXIBLE FAMILY SUPPORT SERVICES

40 TAC §51.421, §51.423

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

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

§51.421. Requirements for Attendants Providing Respite and Flexible Family Support Services.
§51.423. Respite and Flexible Family Support Services.

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

Filed with the Office of the Secretary of State on July 7, 2020.

TRD-202002789
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 438-3501

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DIVISION 4. SERVICE DELIVERY REQUIREMENTS FOR HOST FAMILIES

40 TAC §51.431, §51.433

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

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

§51.431. Host Family Requirements.
§51.433. Host Family Duties.

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 July 7, 2020.

TRD-202002790
Karen Ray
Chief Counsel
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Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 438-3501

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DIVISION 5. SERVICE DELIVERY REQUIREMENTS FOR CONSUMER DIRECTED SERVICES

40 TAC §51.441

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

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

§51.441. CDS Backup Plans.

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 July 7, 2020.

TRD-202002791
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 438-3501

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DIVISION 7. SERVICE DELIVERY REQUIREMENTS FOR ADAPTIVE AIDS

40 TAC §§51.461, 51.463, 51.465

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

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

§51.461. Delivery of Adaptive Aids.

§51.463. Follow-up After Delivery of Adaptive Aids.

§51.465. Reimbursement of Adaptive Aids.

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 July 7, 2020.

TRD-202002792
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 438-3501

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DIVISION 8. SERVICE DELIVERY REQUIREMENTS FOR MINOR HOME MODIFICATIONS

40 TAC §§51.471, 51.473, 51.475, 51.477, 51.479

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

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

§51.471. General Requirements.

§51.473. Time Frames for Completion of Minor Home Modifications.

§51.475. Inspection and Follow-Up.

§51.477. Reimbursement of Minor Home Modifications.

§51.479. Accountability for Minor Home Modifications.

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 July 7, 2020.

TRD-202002793
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 438-3501

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DIVISION 9. SERVICE DELIVERY REQUIREMENTS FOR EMPLOYEE ASSISTANCE AND SUPPORTED EMPLOYMENT

40 TAC §§51.481, 51.483, 51.485

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

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

§51.481. Employment Assistance.

§51.483. Supported Employment.

§51.485. Service Provider Qualifications for Providing Employment Assistance and Supported Employment.

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 July 7, 2020.

TRD-202002794

Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 438-3501

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SUBCHAPTER E. CLAIMS PAYMENT AND DOCUMENTATION

40 TAC §§51.505, 51.509, 51.511, 51.513, 51.515

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal Medicaid program in Texas.

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

§51.505. Purchase Completion Documentation.

§51.509. Claims and Service Delivery Records.

§51.511. Billable Time and Activities.

§51.513. Non-billable Time and Activities.

§51.515. Record Keeping.

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 July 7, 2020.

TRD-202002798
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 438-3501

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (TWC) proposes the following new sections to Chapter 800, relating to General Administration:

Subchapter A. General Provisions, §800.10

TWC proposes amendments to the following section of Chapter 800, relating to General Administration:

Subchapter A. General Provisions, §800.3

TWC proposes the following new subchapters to Chapter 800, relating to General Administration:

Subchapter H. Vendor Protests, §800.300 and §800.301

Subchapter I. Enhanced Contract Monitoring, §§800.350 - 800.352

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 800 rule amendments is to align TWC rules with the following sections of the Texas Government Code requiring state agencies to adopt rules regarding contracting and purchasing:

--Section 2252.202 requires agencies to adopt rules to promote compliance with the requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States;

--Section 2155.076 requires agencies to establish, by rule, procedures for resolving vendor protests relating to purchasing issues; and

--Section 2261.253 requires agencies to establish, by rule, a procedure to identify each contract that requires enhanced contract performance monitoring.

Additionally, minor nonsubstantive revisions are required to correct the Texas Comptroller of Public Accounts (Comptroller) rule citation and to remove the obsolete Comptroller division reference related to the Historically Underutilized Business (HUB) program.

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 A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§800.3. Historically Underutilized Businesses

Section 800.3 is amended to correct the Comptroller rule citation related to the HUB program and to remove the obsolete Comptroller division reference.

§800.10. Purchase of Certain Products

New §800.10 is added to comply with Texas Government Code, Chapter 2252, Subchapter G, §2252.202, requiring that governmental entities adopt rules to promote compliance with the uniform general conditions for a project in which iron or steel products will be used must require that the bid documents provided to all bidders and the contract include a requirement that any iron or steel product produced through a manufacturing process and used in the project be produced in the United States.

The rule language states that TWC complies with the statutory requirements of Texas Government Code, Chapter 2252, Subchapter G.

SUBCHAPTER H. VENDOR PROTESTS

TWC proposes new Subchapter H:

According to Texas Government Code §2155.076, each state agency, by rule, "shall develop and adopt protest procedures for resolving vendor protests relating to purchasing issues. An agency's rules must be consistent with the [Comptroller's] rules." TWC has procedures in place, and staff has ensured that its procedures are consistent with the Comptroller's rules in 34 Texas Administrative Code §1.72. However, pursuant to §2155.076,

these procedures must be in rule. New Subchapter H language reflects TWC's current procedures regarding bid protest procedures.

New §800.300 provides the following definitions related to vendor protests:

--Interested Parties--respondents in connection with the solicitation, evaluation, or award that is being protested.

--Protestant--A respondent vendor that submits a protest under TWC vendor protest procedures.

--Respondent--A vendor that submits an offer or proposal in response to a TWC solicitation.

--Solicitation--A document, such as an Invitation for Bids, Request for Offers, Request for Proposals, or Request for Qualifications that contains a request for responses from vendors to provide specified goods and services. The term also refers to the process of obtaining responses from vendors to provide specified goods and services.

--Vendor--A potential provider of goods or services to TWC.

New §800.301 describes the vendor protest procedures. The procedures state that any bid respondent who is allegedly aggrieved in connection with the solicitation, evaluation, or award of a contract by TWC may formally protest, in writing, to the TWC's director of business operations.

The protest must be received by the TWC's director of business operations within 10 working days after the protestant knows, or should have known, of the occurrence of the action that is protested.

The rules state that a protest that is not filed timely shall not be considered unless the director of business operations determines that a protest raises issues that are significant to the TWC's procurement practices or procedures.

The protest must be signed by an authorized representative for the protestant, and the signature notarized and contain the following details:

--the identifying name and number of the solicitation being protested

--identification of the specific statute or regulation that the protestant alleges has been violated

--a specific description of each act or omission alleged to have violated the statutory or regulatory provision identified above in paragraph (2)

--a precise statement of the relevant facts, including:

--sufficient documentation to establish that the protest has been timely filed; and

--a description of the resulting adverse impact to the protestant

--a statement of the argument and authorities that the protestant offers in support of the protest

--an explanation of the action the protestant is requesting from TWC

--a statement confirming that copies of the protest have been mailed or delivered to any other interested party known to the protestant.

The protestant may appeal determination of a protest to TWC's deputy executive director. The appeal must be in writing, addressed to TWC's deputy executive director, and the protest must be received by the deputy executive director no later than 10 business days after the date of receipt of the written determination issued by the director of business operations.

Finally, in order to protect the best interests of TWC or the state, the rules provide that TWC may move forward with a solicitation or contract award without delay, in spite of a timely filed protest.

SUBCHAPTER I. ENHANCED CONTRACT MONITORING

TWC proposes new Subchapter I:

Texas Government Code §2261.253(c) requires state agencies to establish, by rule, a procedure to identify contracts, prior to award, that require enhanced contract or performance monitoring and submit the information to the agency's governing body. In its Procurement and Contract Management Guide, the Comptroller has indicated that this requirement applies to "high-dollar and high-risk contracts." TWC has a procedure implementing the requirement; however, pursuant to §2261.253(c), these procedures must be in rule. New Subchapter I language reflects the current TWC procedures regarding enhanced contract monitoring.

New §800.350 describes the purpose and scope of the subchapter. The purpose of this subchapter is to implement the requirements of Texas Government Code, §2261.253(c) requiring state agencies to establish, by rule, a procedure to identify each contract that requires enhanced contract or performance monitoring.

Pursuant to Texas Government Code, §2261.253(d), this subchapter does not apply to:

--memoranda of understanding;

--interagency contracts;

--interlocal agreements; or

--contracts for which there is not a cost.

New §800.351 describes the enhanced contract monitoring policy and procedures. The rules state that:

TWC shall identify contracts requiring enhanced monitoring by evaluating the risk factors, which include:

--the complexity of the goods and services to be provided;

--the contract amount;

--the length and scope of the project supported by the contract;

--whether the services are new or have changed significantly since the last procurement of the same services;

--whether TWC has experience with the contractor;

--whether the project affects external stakeholders or is of particular interest to third parties;

--whether TWC data is accessed by the contractor; and

--any other factors TWC determines in a particular circumstance will create a level of risk to the state or TWC such that enhanced monitoring is required.

The rule states that for contracts requiring enhanced monitoring, the contractor shall report to the assigned TWC contract manager on progress toward goals or performance measure achievements, and the status of deliverables, if any, and on issues of which the contractor is aware that may create an impediment to meeting the project timeline or goals.

Enhanced monitoring may also include site visits, additional meetings with contractor staff, and inspection of documentation required by TWC to assess progress toward achieving performance requirements.

Projects deemed medium or high risk shall be monitored by the assigned contract manager and may involve additional team members such as an assigned project manager and staff from the Office of General Counsel or the Finance, Information Technology, or Regulatory Integrity Divisions, if warranted.

Texas Government Code, §2261.253 requires TWC to submit information on each contract identified for enhanced contract monitoring to TWC's three-member Commission (Commission). New §800.352 describes the reporting requirements for enhanced contractor monitoring as follows:

--The director of Procurement and Contract Services (PCS Director) shall immediately notify the Commission of any serious issue or risk that is identified with respect to a contract identified for enhanced contract monitoring.

--The contract manager shall report on the status of all contracts subject to enhanced monitoring to the PCS director quarterly.

--If any serious issues or risks are identified about a contract subject to enhanced monitoring, the PCS director will immediately notify the director of business operations and the executive director.

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. 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 align TWC rules with the Texas Government Code requiring state agencies to adopt rules regarding contracting and purchasing.

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 proposed amendments will be in effect:

--the proposed amendments will not create or eliminate a government program;

--implementation of the proposed amendments will not require the creation or elimination of employee positions;

--implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to TWC;

--the proposed amendments will not require an increase or decrease in fees paid to TWC;

--the proposed amendments will not create a new regulation;

--the proposed amendments will not expand, limit, or eliminate an existing regulation;

--the proposed amendments will not change the number of individuals subject to the rules; and

--the proposed amendments will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rules will not have an adverse economic impact on small businesses or rural communities, as the 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.

Lowell A. Keig, Director, Business Operations Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure compliance with statutory contracting and procurement requirements.

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 Local Workforce Development Boards (Boards). TWC provided the concept paper regarding these rule amendments to the Boards for consideration and review on December 10, 2019. TWC also conducted a conference call with Board executive directors and Board staff on December 20, 2019, 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 or postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §800.3, §800.10

The 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 proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.3. Historically Underutilized Businesses.

In accordance with Texas Government Code §2161.003, the Agency adopts by reference the rules of the Texas Comptroller of Public Accounts, found at Title 34 TAC, §§20.281 - 298, concerning the Historically Underutilized Business (HUB) program [~~Texas Procurement and Support Services at 34 TAC Chapter 20, Subchapter D, Division D, Historically Underutilized Businesses~~]. These rules were promulgated by the Texas Comptroller of Public Accounts, as required under Texas Government Code §2161.002.

§800.10. Purchasing of Certain Products.

Iron and Steel Products. The Agency complies with the requirements of Texas Government Code, Chapter 2252, Subchapter G, relating to the purchase of iron or steel products made in the United States for certain governmental entity projects.

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 July 9, 2020.

TRD-202002820
Patricia Martinez
Interim Deputy Director, Workforce Program Policy
Texas Workforce Commission
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 689-9855

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SUBCHAPTER H. VENDOR PROTESTS

40 TAC §800.300, §800.301

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 proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.300. Definitions.

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

(1) Interested Parties--Respondents in connection with the Solicitation, evaluation, or award that is being protested.

(2) Protestant--A Respondent Vendor that submits a protest under the Agency Vendor Protest Procedures.

(3) Respondent--A Vendor that submits an offer or proposal in response to an Agency Solicitation.

(4) Solicitation--A document, such as an Invitation for Bids, Request for Offers, Request for Proposals, or Request for Qualifications that contains a request for responses from Vendors to provide specified goods and services. The term also refers to the process of obtaining responses from Vendors to provide specified goods and services.

(5) Vendor--A potential provider of goods or services to the Agency.

§800.301. Vendor Protest Procedures.

(a) Any Respondent who is allegedly aggrieved in connection with the Solicitation, evaluation, or award of a contract by the Agency may formally protest to the Agency's director of business operations.

(1) Such protests must be made in writing and timely received by the Agency's director of business operations.

(2) The protest must be received by the Agency's director of business operations within 10 working days after the Protestant knows, or should have known, of the occurrence of the action that is protested.

(3) The Protestant shall mail or deliver copies of the protest to: Director of Business Operations, 101 E. 15th Street, Room 316T, Austin, Texas 78778. The Protestant must also mail or deliver copies of the protest to Interested Parties known to the Protestant.

(b) A protest that is not filed timely shall not be considered unless the director of business operations determines that the protest raises issues that are significant to the Agency's procurement practices or procedures.

(c) The protest must be in writing and contain:

(1) the identifying name and number of the Solicitation being protested;

(2) identification of the specific statute or regulation that the Protestant alleges has been violated;

(3) a specific description of each act or omission alleged to have violated the statutory or regulatory provision identified above in paragraph (2) of this section;

(4) a precise statement of the relevant facts including:

(A) sufficient documentation to establish that the protest has been timely filed; and

(B) a description of the resulting adverse impact to the Protestant;

(5) a statement of the argument and authorities that the Protestant offers in support of the protest;

(6) an explanation of the action the Protestant is requesting from the Agency; and,

(7) a statement confirming that copies of the protest have been mailed or delivered to any other Interested Party known to the Protestant.

(d) The protest must be signed by an authorized representative for the Protestant and the signature notarized.

(e) The Protestant may appeal determination of a protest to the Agency's deputy executive director.

(1) The appeal filed under these procedures must be in writing, addressed to the Agency's deputy executive director; and

(2) The protest must be received by the deputy executive director no later than 10 business days after the date of receipt of the written determination issued by the director of business operations.

(f) The Agency may move forward with a Solicitation or contract award without delay, in spite of a timely filed protest, to protect the best interests of the Agency or the 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.

Filed with the Office of the Secretary of State on July 9, 2020.

TRD-202002821
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Texas Workforce Commission
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 689-9855

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SUBCHAPTER I. ENHANCED CONTRACT MONITORING

40 TAC §§800.350 - 800.352

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 proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.350. Purpose and Scope.

(a) Purpose. The purpose of this subchapter is to implement the requirements of Texas Government Code, §2261.253(c), requiring state agencies to establish, by rule, a procedure to identify each contract that requires enhanced contract or performance monitoring.

(b) Scope. Pursuant to Texas Government Code, §2261.253(d) and (g), this subchapter does not apply to:

(1) memoranda of understanding;

(2) interagency contracts;

(3) interlocal agreements; or

(4) contracts for which there is not a cost.

§800.351. Enhanced Contract Monitoring Policy.

(a) The Agency shall identify which contracts for goods and services require enhanced monitoring by evaluating the risk factors, which include:

(1) the complexity of the goods and services to be provided;

(2) the contract amount;

(3) the length and scope of the project supported by the contract;

(4) whether the services are new or have changed significantly since the last procurement of the same services;

(5) whether the Agency has experience with the contractor;

(6) whether the project affects external stakeholders or is of particular interest to third parties;

(7) whether Agency data is accessed by the contractor; and

(8) any other factors the Agency determines in a particular circumstance will create a level of risk to the state or Agency such that enhanced monitoring is required.

(b) For contracts requiring enhanced monitoring, the contractor shall report to the assigned Agency contract manager on progress toward goals or performance measure achievements, and the status of deliverables, if any, and on any issues of which the contractor is aware that may create an impediment to meeting the project timeline or goals.

(c) Enhanced monitoring may also include site visits, additional meetings with contractor staff, and inspection of documentation required by the Agency to assess progress toward achievement of performance requirements.

(d) Projects deemed medium or high risk shall be monitored by the assigned contract manager and may involve additional team members such as an assigned project manager and staff from the Office of General Counsel or the Finance, Information Technology, or Regulatory Integrity Divisions, if warranted.

§800.352. Reporting of Enhanced Contract Monitoring.

(a) Pursuant to the Texas Government Code §2261.253, the Agency shall submit information on each contract identified for enhanced contract monitoring to the Commission.

(b) The director of Procurement and Contract Services (PCS director) shall immediately notify the Commission of any serious issue or risk that is identified with respect to a contract identified for enhanced contract monitoring.

(c) The contract manager shall report on the status of all contracts subject to enhanced monitoring to the PCS director quarterly.

(d) If any serious issues or risks are identified about a contract subject to enhanced monitoring, the PCS director will immediately notify the director of business operations and the executive director.

Filed with the Office of the Secretary of State on July 9, 2020.

TRD-202002822
Patricia Martinez
Interim Deputy Director, Workforce Program Policy
Texas Workforce Commission
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 689-9855

CHAPTER 813. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM EMPLOYMENT AND TRAINING

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 813, relating to Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T):

Subchapter B. Access to Employment and Training Activities and Support Services, §§813.11, 813.13, and 813.14

Subchapter D. Allowable Activities, §§813.31 - 813.34

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 813 rule change is to comply with the Agriculture Improvement Act of 2018 and other federal requirements.

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 B. ACCESS TO EMPLOYMENT AND TRAINING ACTIVITIES AND SUPPORT SERVICES

TWC proposes the following amendments to Subchapter B:

§813.11. Board Responsibilities Regarding Access to SNAP E&T Activities and Support Services

Amended §813.11 adds clarification regarding Local Workforce Development Board (Board) responsibilities in monitoring SNAP E&T participation.

§813.13. Good Cause for Mandatory Work Registrants Who Participate in SNAP E&T Services

Amended §813.13 adds clarification regarding actions that Boards must take when a mandatory work registrant fails to respond to an outreach notification or fails to participate in SNAP E&T activities.

§813.14. Special Provisions Regarding Sanctions for Noncooperation

Amended §813.14 amends the 120-hour monthly participation limitation to comply with 7 USC §2015(d)(4)(F)(ii).

SUBCHAPTER D. ALLOWABLE ACTIVITIES

TWC proposes the following amendments to Subchapter D:

§813.31. Activities for Mandatory Work Registrants and Exempt Recipients Who Voluntarily Participate in SNAP E&T Services

Amended §813.31 updates the activities that may be provided for SNAP E&T mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services to comply with the requirements of the Agriculture Improvement Act of 2018.

§813.32. SNAP E&T Activities for ABAWDs

Amended §813.32 adds, as an allowable SNAP E&T activity, employment and training programs for veterans operated by the US Department of Labor or the US Department of Veterans Affairs.

§813.33. Job Retention Activities

Amended §813.33 updates Board requirements regarding the provision of job retention activities to comply with the requirements of the Agriculture Improvement Act of 2018 and offers flexibility to Boards regarding the job retention period.

§813.34. Job Retention Support Services

Amended §813.34 updates Board requirements regarding the provision of job retention support services to comply with the requirements of the Agriculture Improvement Act of 2018 and offers flexibility to Boards regarding the job retention period.

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. 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 comply with the Agriculture Improvement Act of 2018 and other federal requirements.

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 proposed amendments will be in effect:

--the proposed amendments will not create or eliminate a government program;

--implementation of the proposed amendments will not require the creation or elimination of employee positions;

--implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to TWC;

--the proposed amendments will not require an increase or decrease in fees paid to TWC;

--the proposed amendments will not create a new regulation;

--the proposed amendments will not expand, limit, or eliminate an existing regulation;

--the proposed amendments will not change the number of individuals subject to the rules; and

--the proposed amendments will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rules will not have an adverse economic impact on small businesses or rural communities, as the 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 the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure compliance with the Agriculture Improvement Act of 2018 and other federal requirements.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Local Workforce Development Boards (Boards). TWC provided the concept paper regarding these rule amendments to the Boards for consideration and review on January 7, 2020. TWC also conducted a conference call with Board executive directors and Board staff on January 17, 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 or postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER B. ACCESS TO EMPLOYMENT AND TRAINING ACTIVITIES AND SUPPORT SERVICES

40 TAC §§813.11, 813.13, 813.14

The 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 proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§813.11. Board Responsibilities Regarding Access to SNAP E&T Activities and Support Services.

(a) A Board shall ensure that allowable SNAP E&T activities and support services, as set forth in Subchapters D and E, respectively, of this chapter, are provided as specified in the annual state plan of operations approved by the United States Department of Agriculture (USDA), to individuals who are:

(1) classified as the General Population; or

(2) ABAWDs.

(b) A Board shall ensure that the monitoring of SNAP E&T requirements and participant activities is ongoing and frequent, as determined appropriate by the Board, and consists of:

(1) tracking and reporting SNAP E&T participation hours;

(2) tracking and reporting support services hours;

(3) determining and arranging for any intervention needed to assist the individual in complying with SNAP E&T service requirements;

(4) monitoring and ensuring progress toward achieving the goals and objectives in the employment plan; and

(5) monitoring all other requirements.

(c) A Board shall ensure that all ABAWDs in full-service SNAP E&T counties are provided with an offer of a work activity within 10 calendar days from the date of referral from HHSC.

(d) A Board shall ensure that HHSC is notified in a timely manner if a mandatory work registrant fails to comply with participant responsibilities, as set forth in §813.12 of this subchapter.

(e) A Board shall ensure that employment and training activities are conducted in compliance with the Fair Labor Standards Act (FLSA) (29 USC [U.S.C.] §201 et seq.), as follows:

(1) The [the] amount of time per week that a mandatory work registrant or exempt recipient who voluntarily participates in SNAP E&T services may be required to participate in activities that are not exempt from minimum wage and overtime under the FLSA shall be determined by the SNAP benefits amount being divided by the minimum wage, so that the amount paid to the mandatory work registrant or exempt recipient who voluntarily participates in SNAP E&T services would be equal to or more than the amount required for payment of wages, including minimum wage and overtime. [; and]

(2) If [if] a Board provides activities that meet all the following criteria set forth in this paragraph, the activities are [activity is] considered "training" under FLSA and minimum wage and overtime are not required, as follows:

(A) The training is similar to that given in a vocational school.

(B) The training is for the benefit of the trainees.

(C) Trainees do not displace currently employed workers.

(D) Employers derive no immediate advantage from trainees' activities.

(E) Trainees are not entitled to a job after training is completed.

(F) Employers and trainees understand that trainees are not paid.

(f) A Board shall ensure that placement in work-based services does not result in the displacement of currently employed workers or impair existing contracts for services or collective bargaining agreements.

§813.13. Good Cause for Mandatory Work Registrants Who Participate in SNAP E&T Services.

(a) Good cause applies only to mandatory work registrants who are required to participate in SNAP E&T services. A Board shall notify HHSC of a SNAP E&T participant's noncompliance within seven days of the noncompliance. A Board also shall ensure that all good cause claims are forwarded to HHSC for determination before SNAP benefits are denied when mandatory work registrants state that they have a [~~legitimate~~] reason for failing to:

(1) [~~failing to~~] respond to the outreach notification; and

(2) [~~failing to~~] participate in SNAP E&T activities.

(b) For purposes of this chapter, the following are [~~legitimate~~] reasons a Board may consider when making a good cause recommendation to HHSC after a SNAP E&T participant fails [~~for failing~~] to respond to outreach notifications or fails [~~failing~~] to participate in SNAP E&T activities:

(1) Temporary [~~temporary~~] illness or incapacitation[~~;~~]

(2) Court [~~court~~] appearance[~~;~~]

(3) Caring [~~caring~~] for a physically or mentally disabled household member who requires the recipient's presence in the home[~~;~~]

(4) No [~~no~~] available transportation and the distance prohibits walking; or no available job within reasonable commuting distance, as defined by the Board[~~;~~]

(5) Distance [~~distance~~] from the home of the mandatory work registrant who participates in SNAP E&T services, to the Workforce Solutions Office, or employment service provider requires commuting time of more than two hours a day (not including taking a child to and from a child care facility), the distance prohibits walking, and there is no available transportation[~~;~~]

(6) Farmworkers [~~farmworkers~~] who are away from their permanent residence or home base, who travel to work in an agriculture or related industry during part of the year, and are under contract or similar agreement with an employer to begin work within 30 days of the date that the individual notified the Board of his or her seasonal farmwork assignment[~~;~~]

(7) An [~~an~~] inability to obtain needed child care, as defined by the Board and based on any of the following reasons:

(A) Informal [~~informal~~] child care by a relative or child care provided under other arrangements is unavailable or unsuitable, and based on, where applicable, Board policy regarding child care. Informal child care may also be determined unsuitable by the parent.[~~;~~]

(B) Eligible [~~eligible~~] formal child care providers, as defined in Chapter 809 of this title (relating to Child Care Services), are unavailable.[~~;~~]

(C) Affordable [~~affordable~~] formal child care arrangements within maximum rates established by the Board are unavailable.[~~; and~~]

(D) Formal [~~formal~~] or informal child care within a reasonable distance from home or the work site is unavailable.[~~;~~]

(8) An [~~an~~] absence of other support services necessary for participation[~~;~~]

(9) Receiving [~~receipt of~~] a job referral that results in an offer below the federal minimum wage, except when a lower wage is permissible under federal minimum wage law[~~;~~]

(10) An [~~an~~] individual or family crisis or a family circumstance that may preclude participation, including substance abuse and mental health and disability-related issues, provided that the mandatory work registrant who participates in SNAP E&T services engages in problem resolution through appropriate referrals for counseling and support services[~~; or~~]

(11) An [~~an~~] individual is a victim of family violence[~~.~~]

(c) A Board shall ensure that good cause is monitored at least on a monthly basis and results are shared with HHSC if there is a change in the circumstances surrounding the good cause exception.

§813.14. Special Provisions Regarding Sanctions for Noncooperation.

Mandatory [~~General population mandatory~~] work registrants who are scheduled to participate more than 120 hours per month may not be sanctioned for noncooperation after 120 hours have been reached, as described in the Food and Nutrition Act, 7 USC [~~U.S.C.~~] §2015(d)(4)(F)(ii). The 120 hours include hours in all SNAP E&T activities, including any hours worked for paid or unpaid compensation.

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 July 9, 2020.

TRD-202002823
Patricia Martinez
Interim Deputy Director, Workforce Program Policy
Texas Workforce Commission
Earliest possible date of adoption: August 23, 2020
For further information, please call: (512) 689-9855

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SUBCHAPTER D. ALLOWABLE ACTIVITIES

40 TAC §§813.31 - 813.34

The 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 proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§813.31. Activities for Mandatory Work Registrants and Exempt Recipients Who Voluntarily Participate in SNAP E&T Services.

The following activities may be provided for SNAP E&T mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services, subject to the limitations specified in §813.32 of this subchapter:

(1) Supervised job search services that shall:

(A) incorporate job readiness, job search training, directed job search, and group job search, and may include the following:

(i) Employability [~~job skills~~] assessment[~~;~~]

(ii) Counseling [~~counseling;~~]

~~*(iii)* job search skills training;~~

(iii) [~~(iv)~~] Information [~~information~~] on available jobs[~~;~~]

(iv) [~~(v)~~] Occupational [~~occupational~~] exploration, including information on local emerging and demand occupations[~~;~~]

(v) [~~(vi)~~] Interviewing [~~interviewing~~] skills and practice interviews[~~;~~]

(vi) [~~(vii)~~] Assistance [~~assistance~~] with applications and resumés [~~resumes;~~]

(vii) [~~(viii)~~] Job [~~job~~] fairs[~~;~~]

(viii) [~~(ix)~~] Life [~~life~~] skills[~~; or~~]

(ix) [~~(x)~~] Guidance [~~guidance~~] and motivation for development of positive work behaviors necessary for the labor market; and

(B) limit the number of weeks a mandatory work registrant or exempt recipient who voluntarily participates in SNAP E&T services can spend as follows:

(i) ABAWDs shall not be enrolled for more than four weeks, and the job search activity shall be provided in conjunction with the workfare activity, as described in §813.32(a)(4)(D) of this subchapter.

(ii) General Population mandatory work registrants and exempt recipients who voluntarily participate in SNAP E&T services shall not be enrolled:

(I) for more than four weeks of consecutive activity under this paragraph;

(II) for more than six weeks of total activity in a federal fiscal year.

(iii) Job search, when offered as part of other SNAP E&T activities, is allowed for more time than the limitations set forth in clauses (i) and (ii) of this subparagraph if the job search activities comprise less than half of the required time spent in other activities.

(2) Vocational [~~vocational~~] training that shall:

(A) relate to the types of jobs available in the labor market;

(B) be consistent with employment goals identified in the employment plan, when possible; and

(C) be provided only if there is an expectation that employment will be secured upon completion of the training.

(3) Nonvocational [~~nonvocational~~] education that shall increase employability, such as:

(A) enrollment and satisfactory attendance in:

(i) a secondary school; or

(ii) a course of study leading to a high school diploma or a certificate of general equivalence;

(B) basic skills and literacy;

(C) English proficiency; or

(D) postsecondary education, leading to a degree or certificate awarded by a training facility, career school or college, or other educational institution that prepares individuals for employment in current and emerging occupations that do not require baccalaureate or advanced degrees;

(4) Work [~~work~~] experience, as authorized by 7 USC [~~U.S.C.~~] §2015(d)(4)(B)(iv) and by [~~the Workforce Investment Act in~~] 20 CFR [~~C.F.R.~~] §663.200(b), for mandatory work registrants who need assistance in becoming accustomed to basic work skills[~~,~~] that shall:

(A) occur in the workplace for a limited period of time;

(B) be made in either the private for-profit, the nonprofit, or the public sectors; and

(C) be paid or unpaid;

(5) Unsubsidized [~~unsubsidized~~] employment[~~; or~~]

(6) Other [~~other~~] activities approved in the current SNAP E&T state plan of operations[~~.~~]

§813.32. SNAP E&T Activities for ABAWDs.

(a) Boards shall ensure that SNAP E&T activities for ABAWDs are limited to participating in the following:

(1) Services [~~services~~] or activities under the Trade Act of 1974, as amended by the Trade Act of 2002[~~;~~]

(2) Activities [~~activities~~] under Workforce Innovation and Opportunity Act (29 USC §3111 et seq.) [~~the Workforce Investment Act (29 U.S.C. §2801, et seq.);~~]

(3) Education [~~education~~] and training, which may include:

(A) vocational training as described in §813.31(2) of this subchapter; or

(B) nonvocational education as described in §813.31(3) of this subchapter; and

(4) Workfare [~~workfare~~] activities that shall:

(A) be designed to improve the employability of ABAWDs through actual employment experience or training, or both;

(B) be unpaid job assignments based in the public or private nonprofit sectors;

(C) have hourly requirements based on the ABAWD's monthly household SNAP allotment divided by the number of ABAWDs in the SNAP household, as provided by HHSC and then divided by the federal minimum wage; and

(D) include a four-week job search period before [~~prior to~~] placement in a workfare activity.

(b) Boards shall ensure that ABAWDs who are referred to a [~~Texas~~] Workforce Solutions Office [~~Center~~] and subsequently become engaged in unsubsidized employment for at least 20 hours per week are not required to continue participation in SNAP E&T services because they have fulfilled their work requirement, as described in 7 USC [~~U.S.C.~~] §2015(o)(2)(A). Additionally [~~In addition~~], Boards shall ensure that HHSC is notified when ABAWDs obtain employment.

(c) An employment and training program for veterans operated by the US Department of Labor or the US Department of Veterans Affairs, as tracked by HHSC, is an allowable SNAP E&T activity for ABAWDs.

§813.33. Job Retention Activities.

(a) Boards shall offer [~~may provide~~] job retention activities:

(1) similar to the SNAP E&T activities described in §813.31(1) - (3) of this subchapter, and as specified in the annual SNAP E&T state plan of operations and any subsequent amendments approved by USDA;

(2) for a minimum of 30 days and not more than [~~up to~~] 90 days to SNAP recipients who participated in SNAP E&T activities and obtained full-time employment; and

(3) in full-service or minimum-service counties as funding permits and as specified in paragraphs (1) and (2) of this subsection.

(b) Boards shall ensure that SNAP eligibility is verified each month that job retention activities are provided.

§813.34. Job Retention Support Services.

Boards shall offer [~~may provide~~] job retention support services for a minimum of 30 days and not more than [~~up to~~] 90 days to assist:

(1) mandatory work registrants who obtain part-time employment while participating, or after successfully participating, in SNAP E&T activities; and

(2) exempt recipients who participated in SNAP E&T activities and obtained full-time employment.

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 July 9, 2020.

TRD-202002824
Patricia Martinez
Interim Deputy Director, Workforce Program Policy
Texas Workforce Commission
Earliest possible date of adoption: August 23, 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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 11. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM REIMBURSEMENT

1 TAC §355.8212

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.8212, concerning Waiver Payments to Hospitals for Uncompensated Charity Care. The amendment is adopted with changes to the proposed text as published in the April 24, 2020, issue of the *Texas Register* (45 TexReg 2623). The text of the rule will be republished.

BACKGROUND AND JUSTIFICATION

The rule amendment clarifies how the uncompensated-care (UC) payment amount is calculated for a hospital receiving both Disproportionate Share Hospital (DSH) payments and UC payments, including what constitutes total eligible UC costs and eligible hospital charity-care costs, and clarifies the process of returning to governmental entities the non-federal share of funds in the event of certain recoupments.

Subsection (g) defines "total eligible uncompensated costs" for a hospital receiving both DSH payments and UC payments as the hospital's DSH hospital-specific limit (HSL) plus the unreimbursed costs of inpatient and outpatient services provided to uninsured charity-care patients. The intent of this definition is to ensure that a hospital is not being reimbursed for the same costs in both DSH and UC. A hospital may have unreimbursed charity-care costs that are not included in the hospital's DSH HSL. This rule amendment changes the definition of "total eligible uncompensated costs" to clarify that a hospital's total eligible uncompensated costs include the unreimbursed charity-care costs that are not included in the hospital's state payment cap for interim UC payments, or the hospital's DSH HSL in the UC reconciliation, for the corresponding program year.

In addition, the rule amendment clarifies that a hospital's uninsured charity-care payments must be included in a hospital's UC application and will be considered in the calculation of a hospital's annual maximum uncompensated-care payment. The rule amendment is consistent with the current UC protocol described in the Texas Healthcare Transformation and Quality Improvement Program 1115 Medicaid demonstration waiver, approved by the Centers for Medicare & Medicaid Services (CMS).

The rule amendment also changes the recoupment provision to clarify that, in the event funds are recouped from a hospital, the non-federal share will be returned to the governmental entities in proportion to each entity's initial contribution to funding the UC program for that hospital's Service Delivery Area (SDA) in the applicable program year.

COMMENTS

The comment period ended May 26, 2020.

During this period, HHSC received feedback regarding the proposed rule from 18 commenters: Ascension Providence, Ascension Seton, Baylor Scott and White Health, CHRISTUS Health, Doctors Hospital at Renaissance Health System (DHR Health), Hospital Corporation of America (HCA) Healthcare, LifePoint Health, Memorial Hermann Health System, Midland County Hospital District, State Representative Oscar Longoria, Steward Health Care, Teaching Hospitals of Texas (THOT), Tenet Healthcare, Texas Association of Voluntary Hospitals (TAVH), Texas Children's Hospital (TCH), Texas Essential Healthcare Partnerships (TEHP), Texas Health Resources, and Universal Health Services, Inc.

A summary of comments relating to the rule and HHSC's responses to the comments follow.

Comment: Most commenters supported the proposed definition of "total eligible uncompensated costs."

Response: HHSC appreciates the support. No changes were made in response to this comment.

Comment: A few commenters were concerned the proposed definition of "total eligible uncompensated costs" may subject DSH hospitals to recoupment liability if CMS or the State's outside auditor calculate the application of UC payments in the audited DSH HSL differently than HHSC's interpretation. One of the commenters requested HHSC add language to the rule to assure hospitals that to the extent this were to occur, HHSC will not seek collection of any recoupments from hospitals.

Response: The proposed definition of "total eligible uncompensated costs" is consistent with the UC Protocol, which was correspondingly revised. HHSC received CMS approval of the change to the UC Protocol prior to publication of the proposed rule amendment. No changes were made in response to this comment.

Comment: Several commenters provided feedback about the DSH intergovernmental transfer (IGT) credit calculation in §355.8212(g)(2)(A)(iv). Most of the commenters urged HHSC to revise the rule to limit the amount of DSH IGT credit for large public hospitals. These commenters argued the current

DSH IGT credit no longer makes policy sense due to the UC provisions that changed beginning October 1, 2019, and suggested continuation of the current methodology will result in funding inequities between hospital classes. Conversely, one commenter provided feedback to encourage HHSC not to eliminate the DSH IGT credit. This commenter said eliminating the DSH IGT credit would hurt transferring hospitals by reducing funding that helps offset their uninsured charity care costs.

Response: HHSC declines to make a change. These comments are outside the scope of the proposed amendment. HHSC plans to conduct a review of all supplemental and directed payment programs funding after demonstration year 9. As part of the review, HHSC will evaluate the reimbursement, percentage of uninsured costs covered, and allocation of funding across all programs to determine if there are funding disparities. If the review identifies a change is needed to the DSH IGT credit to promote equitable funding across the programs and by hospital class, HHSC will consider reopening the rule to revise the policy. No changes were made in response to this comment.

Comment: Two commenters requested HHSC amend the rule to provide non-rural public hospitals with the same DSH IGT credit conferred on large public hospitals. The commenters stated that, under the current UC rules, non-rural public DSH hospitals are the most disadvantaged class of hospitals because they are the only hospital class that must incur the full cost of financing their own DSH payments without receiving any protection or preferential treatment in the calculation of their UC entitlement.

Response: HHSC declines to make a change. These comments are outside the scope of the proposed amendment. HHSC plans to conduct a review of all supplemental and directed payment programs funding after demonstration year 9. As part of the review, HHSC will evaluate the reimbursement, percentage of uninsured costs covered, and allocation of funding across all programs to determine if there are funding disparities. If the review identifies a change is needed to the DSH IGT credit to promote equitable funding across the programs and by hospital class, HHSC will consider reopening the rule to revise the policy. No changes were made in response to this comment.

Comment: Three commenters proposed HHSC change the reference in §355.8212(g)(2)(B) from "DSH hospital-specific limit" to "state payment cap." The commenters stated that this change will align the language with HHSC's recent renaming of the interim hospital specific limit to "state payment cap" and alleviate any confusion regarding whether the proposed definition applies only during the DSH audit process or also applies during the payment calculation.

Response: HHSC agrees a change is needed and has added language to §355.8212(g)(2)(B) from the proposed version to clarify the proposed definition applies during the interim UC payment calculation and UC reconciliation.

Comment: Two commenters requested clarification of the meaning and scope of the phrase "additional payments associated with uninsured charity charges" in the proposed amendment to §355.8212(g)(3)(A). The commenters included specific questions that they wanted clarification on.

Response: HHSC intends to issue separate guidance to stakeholders that further describes the meaning and scope of the phrase "additional payments associated with uninsured charity charges." No changes were made as a result of this comment.

Comment: One commenter was concerned the proposed language in §355.8212(g)(3)(B) to identify payments that must offset charity-care costs for non-S-10 hospitals is inconsistent with the application instructions. The commenter said the rule as proposed could be misconstrued to mean non-S-10 hospitals must report all payments received for services provided to uninsured patients in the data year, when in fact, the instructions require the hospital to report "payments received during this cost reporting period, regardless of when the services were provided, from patients for amounts previously written off as charity care or uninsured discounts." The commenter suggested HHSC amend §355.8212(g)(3)(B) to require hospitals to report their charity-care charges and payments in compliance with the instructions on the UC application.

Response: HHSC agrees with the commenter and has revised §355.8212(g)(3)(B) from the proposed version of this rule in response to this comment.

Comment: One commenter agreed with the proposed amendment to §355.8212(j) but requested HHSC clarify the language to limit refunds to governmental entities that funded the program for the repaying hospital's SDA. The commenter suggested adding "for that hospital's SDA" to the language in §355.8212(j)(1).

Response: HHSC agrees with the commenter's suggested change and amended the rule accordingly.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b-1), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code, Chapter 32.

§355.8212. Waiver Payments to Hospitals for Uncompensated Charity Care.

(a) Introduction. Texas Healthcare Transformation and Quality Improvement Program §1115(a) Medicaid demonstration waiver payments are available under this section to help defray the uncompensated cost of charity care provided by eligible hospitals on or after October 1, 2019. Waiver payments to hospitals for uncompensated care provided before October 1, 2019, are described in §355.8201 of this division (relating to Waiver Payments to Hospitals for Uncompensated Care). Waiver payments to hospitals must be in compliance with the Centers for Medicare & Medicaid Services approved waiver Program Funding and Mechanics Protocol, HHSC waiver instructions, and this section.

(b) Definitions.

(1) Affiliation agreement--An agreement, entered into between one or more privately-operated hospitals and a governmental entity that does not conflict with federal or state law. HHSC does not prescribe the form of the agreement.

(2) Allocation amount--The amount of funds approved by the Centers for Medicare & Medicaid Services for uncompensated-care payments for the demonstration year that is allocated to each uncom-

pensated-care provider pool or individual hospital, as described in subsections (f)(2) and (g)(6) of this section.

(3) Anchor--The governmental entity identified by HHSC as having primary administrative responsibilities on behalf of a Regional Healthcare Partnership (RHP).

(4) Centers for Medicare & Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid, or its successor.

(5) Charity care--Healthcare services provided without expectation of reimbursement to uninsured patients who meet the provider's charity-care policy. The charity-care policy should adhere to the charity-care principles of the Healthcare Financial Management Association Principles and Practices Board Statement 15 (December 2012). Charity care includes full or partial discounts given to uninsured patients who meet the provider's financial assistance policy. Charity care does not include bad debt, courtesy allowances, or discounts given to patients who do not meet the provider's charity-care policy or financial assistance policy.

(6) Data year--A 12-month period that is described in §355.8066 of this subchapter (relating to Hospital-Specific Limit Methodology) and from which HHSC will compile cost and payment data to determine uncompensated-care payment amounts. This period corresponds to the Disproportionate Share Hospital data year.

(7) Delivery System Reform Incentive Payments (DSRIP)--Payments related to the development or implementation of a program of activity that supports a hospital's efforts to enhance access to health care, the quality of care, and the health of patients and families it serves. These payments are not considered patient-care revenue and are not offset against the hospital's costs when calculating the hospital-specific limit as described in §355.8066 of this subchapter.

(8) Demonstration year--The 12-month period beginning October 1 for which the payments calculated under this section are made. This period corresponds to the Disproportionate Share Hospital (DSH) program year. Demonstration year one corresponded to the 2012 DSH program year.

(9) Disproportionate Share Hospital (DSH)--A hospital participating in the Texas Medicaid program that serves a disproportionate share of low-income patients and is eligible for additional reimbursement from the DSH fund.

(10) Governmental entity--A state agency or a political subdivision of the state. A governmental entity includes a hospital authority, hospital district, city, county, or state entity.

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

(12) Institution for mental diseases (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness.

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

(14) Large public hospital--An urban public hospital - Class one as defined in §355.8065 of this subchapter (relating to Disproportionate Share Hospital Reimbursement Methodology).

(15) Mid-Level Professional--Medical practitioners which include the following professions only:

(A) Certified Registered Nurse Anesthetists;

(B) Nurse Practitioners;

(C) Physician Assistants;

(D) Dentists;

(E) Certified Nurse Midwives;

(F) Clinical Social Workers;

(G) Clinical Psychologists; and

(H) Optometrists.

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

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

(18) RHP plan--A multi-year plan within which participants propose their portion of waiver funding and DSRIP projects.

(19) Rural hospital--A hospital enrolled as a Medicaid provider that is:

(A) located in a county with 60,000 or fewer persons according to the 2010 U.S. Census; or

(B) designated by Medicare as a Critical Access Hospital (CAH) or a Sole Community Hospital (SCH); or

(C) designated by Medicare as a Rural Referral Center (RRC); and

(i) is not located in a Metropolitan Statistical Area (MSA), as defined by the U.S. Office of Management and Budget; or

(ii) is located in an MSA but has 100 or fewer licensed beds.

(20) Service Delivery Area (SDA)--The counties included in any HHSC-defined geographic area as applicable to each MCO.

(21) Uncompensated-care application--A form prescribed by HHSC to identify uncompensated costs for Medicaid-enrolled providers.

(22) Uncompensated-care payments--Payments intended to defray the uncompensated costs of charity care as defined in paragraph (5) of this subsection.

(23) Uninsured patient--An individual who has no health insurance or other source of third-party coverage for the services provided. The term includes an individual enrolled in Medicaid who received services that do not meet the definition of medical assistance in section 1905(a) of the Social Security Act (Medicaid services), if such inclusion is specified in the hospital's charity-care policy or financial assistance policy and the patient meets the hospital's policy criteria.

(24) Waiver--The Texas Healthcare Transformation and Quality Improvement Program Medicaid demonstration waiver under §1115 of the Social Security Act.

(c) Eligibility. A hospital that meets the requirements described in this subsection may receive payments under this section.

(1) Generally. To be eligible for any payment under this section:

(A) a hospital must be enrolled as a Medicaid provider in the State of Texas at the beginning of the demonstration year; and

(B) if it is a hospital not operated by a governmental entity, it must have filed with HHSC an affiliation agreement and the documents described in clauses (i) and (ii) of this subparagraph.

(i) The hospital must certify on a form prescribed by HHSC:

(I) that it is a privately-operated hospital;

(II) that no part of any payment to the hospital under this section will be returned or reimbursed to a governmental entity with which the hospital affiliates; and

(III) that no part of any payment to the hospital under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the hospital's receipt of the supplemental funds.

(ii) The governmental entity that is party to the affiliation agreement must certify on a form prescribed by HHSC:

(I) that the governmental entity has not received and has no agreement to receive any portion of the payments made to any hospital that is party to the agreement;

(II) that the governmental entity has not entered into a contingent fee arrangement related to the governmental entity's participation in the waiver program;

(III) that the governmental entity adopted the conditions described in the certification form prescribed by or otherwise approved by HHSC pursuant to a vote of the governmental entity's governing body in a public meeting preceded by public notice published in accordance with the governmental entity's usual and customary practices or the Texas Open Meetings Act, as applicable; and

(IV) that all affiliation agreements, consulting agreements, or legal services agreements executed by the governmental entity related to its participation in this waiver payment program are available for public inspection upon request.

(iii) Submission requirements.

(I) Initial submissions. The parties must initially submit the affiliation agreements and certifications described in this subsection to the HHSC Rate Analysis Department on the earlier of the following occurrences after the documents are executed:

(-a-) the date the hospital submits the uncompensated-care application that is further described in paragraph (2) of this subsection; or

(-b-) the new affiliation cut-off date posted on HHSC Rate Analysis Departments' website for each payment under this section.

(II) Subsequent submissions. The parties must submit revised documentation to HHSC as follows:

(-a-) When the nature of the affiliation changes or parties to the agreement are added or removed, the parties must submit the revised affiliation agreement and related hospital and governmental entity certifications.

(-b-) When there are changes in ownership, operation, or provider identifiers, the hospital must submit a revised hospital certification.

(-c-) The parties must submit the revised documentation thirty days before the projected deadline for completing the IGT for the first payment under the revised affiliation agreement. The projected deadline for completing the IGT is posted on HHSC Rate Analysis Department's website for each payment under this section.

(III) A hospital that submits new or revised documentation under subclause (I) or (II) of this clause must notify the Anchor of the RHP in which the hospital participates.

(IV) The certification forms must not be modified except for those changes approved by HHSC prior to submission.

(-a-) Within 10 business days of HHSC Rate Analysis Department receiving a request for approval of proposed modifications, HHSC will approve, reject, or suggest changes to the proposed certification forms.

(-b-) A request for HHSC approval of proposed modifications to the certification forms will not delay the submission deadlines established in this clause.

(V) A hospital that fails to submit the required documentation in compliance with this subparagraph is not eligible to receive a payment under this section.

(2) Uncompensated-care payments. For a hospital to be eligible to receive uncompensated-care payments, in addition to the requirements in paragraph (1) of this subsection, the hospital must:

(A) submit to HHSC an uncompensated-care application for the demonstration year, as is more fully described in subsection (g)(1) of this section, by the deadline specified by HHSC; and

(B) submit to HHSC documentation of:

(i) its participation in an RHP; or

(ii) approval from CMS of its eligibility for uncompensated-care payments without participation in an RHP.

(3) Changes that may affect eligibility for uncompensated-care payments.

(A) If a hospital closes, loses its license, loses its Medicare or Medicaid eligibility, withdraws from participation in an RHP, or files bankruptcy before receiving all or a portion of the uncompensated-care payments for a demonstration year, HHSC will determine the hospital's eligibility to receive payments going forward on a case-by-case basis. In making the determination, HHSC will consider multiple factors including whether the hospital was in compliance with all requirements during the demonstration year and whether it can satisfy the requirement to cooperate in the reconciliation process as described in subsection (i) of this section.

(B) A hospital must notify HHSC Rate Analysis Department in writing within 30 days of the filing of bankruptcy or of changes in ownership, operation, licensure, Medicare or Medicaid enrollment, or affiliation that may affect the hospital's continued eligibility for payments under this section.

(d) Source of funding. The non-federal share of funding for payments under this section is limited to public funds from governmental entities. Prior to processing uncompensated-care payments for the final payment period within a waiver demonstration year for any uncompensated-care pool or sub-pool described in subsection (f)(2) of this section, HHSC will survey the governmental entities that provide public funds for the hospitals in that pool or sub-pool to determine the amount of funding available to support payments from that pool or sub-pool.

(e) Payment frequency. HHSC will distribute waiver payments on a schedule to be determined by HHSC and posted on HHSC's website.

(f) Funding limitations.

(1) Payments made under this section are limited by the maximum aggregate amount of funds allocated to the provider's uncompensated-care pool for the demonstration year. If payments for uncompensated care for an uncompensated-care pool attributable to a demonstration year are expected to exceed the aggregate amount of funds allocated to that pool by HHSC for that demonstration year, HHSC will reduce payments to providers in the pool as described in subsection (g)(6) of this section.

(2) HHSC will establish the following uncompensated-care pools: a state-owned hospital pool, a non-state-owned hospital pool, a physician group practice pool, a governmental ambulance provider pool, and a publicly owned dental provider pool.

(A) The state-owned hospital pool.

(i) The state-owned hospital pool funds uncompensated-care payments to state-owned teaching hospitals, state-owned IMDs, and the Texas Center for Infectious Disease.

(ii) HHSC will determine the allocation for this pool at an amount less than or equal to the total annual maximum uncompensated-care payment amount for these hospitals as calculated in subsection (g)(2) of this section.

(B) Non-state-owned provider pools. HHSC will allocate the remaining available uncompensated-care funds, if any, among the non-state-owned provider pools as described in this subparagraph. The remaining available uncompensated-care funds equal the amount of funds approved by CMS for uncompensated-care payments for the demonstration year less the sum of funds allocated to the state-owned hospital pool under subparagraph (A) of this paragraph. HHSC will allocate the funds among non-state-owned provider pools based on the following amounts.

(i) For the physician group practice pool, the governmental ambulance provider pool, and the publicly owned dental provider pool:

(I) for demonstration year nine, an amount to equal the percentage of the applicable total uncompensated-care pool amount paid to each group in demonstration year six; and

(II) for demonstration years ten and after, an amount to equal a percentage determined by HHSC annually based on factors including the amount of reported charity-care costs for the previous demonstration year and the ratio of reported charity-care costs to hospitals' charity-care costs.

(ii) For the non-state-owned hospital pool, all of the remaining funds after the allocations described in clause (i) of this subparagraph. HHSC will further allocate the funds in the non-state-owned hospital pool among all hospitals in the pool and create non-state-owned hospital sub-pools as follows:

(I) calculate a revised maximum payment amount for each non-state-owned hospital as described in subsection (g)(6) of this section and allocate that amount to the hospital; and

(II) group all non-state-owned hospitals into sub-pools based on their geographic location within one of the state's Medicaid service delivery areas (SDAs), as described in subsection (g)(7) of this section.

(3) Payments made under this section are limited by the availability of funds identified in subsection (d) of this section and timely received by HHSC. If sufficient funds are not available for all payments for which the providers in each pool or sub-pool are eligible, HHSC will reduce payments as described in subsection (h)(2) of this section.

(4) If for any reason funds allocated to a provider pool or to individual providers within a sub-pool are not paid to providers in that pool or sub-pool for the demonstration year, the funds will be redistributed to other provider pools based on each pool's pro-rata share of remaining uncompensated costs for the same demonstration year. The redistribution will occur when the reconciliation for that demonstration year is performed.

(g) Uncompensated-care payment amount.

(1) Application.

(A) Cost and payment data reported by a hospital in the uncompensated-care application is used to calculate the annual maximum uncompensated-care payment amount for the applicable demonstration year, as described in paragraph (2) of this subsection.

(B) Unless otherwise instructed in the application, a hospital must base the cost and payment data reported in the application on its applicable as-filed CMS 2552 Cost Report(s) For Electronic Filing Of Hospitals corresponding to the data year and must comply with the application instructions or other guidance issued by HHSC.

(i) When the application requests data or information outside of the as-filed cost report(s), a hospital must provide all requested documentation to support the reported data or information.

(ii) For a new hospital, the cost and payment data period may differ from the data year, resulting in the eligible uncompensated costs based only on services provided after the hospital's Medicaid enrollment date. HHSC will determine the data period in such situations.

(2) Calculation.

(A) A hospital's annual maximum uncompensated-care payment amount is the sum of the components described in clauses (i) - (iv) of this subparagraph.

(i) The hospital's inpatient and outpatient charity-care costs pre-populated in or reported on the uncompensated-care application, as described in paragraph (3) of this subsection, reduced by interim DSH payments for the same program period, if any, that reimburse the hospital for the same costs. To identify DSH payments that reimburse the hospital for the same costs, HHSC will:

(I) Use self-reported information on the application to identify charges that can be claimed by the hospital in both DSH and UC, convert the charges to cost, and reduce the cost by any applicable payments described in paragraph (3) of this subsection;

(II) Calculate a DSH-only uninsured shortfall by reducing the hospital's total uninsured costs, calculated as described in §355.8066 of this chapter, by the result from subclause (I) of this clause;

(III) Reduce the interim DSH payment amount by the sum of:

(-a-) the DSH-only uninsured shortfall calculated as described in subclause (II) of this clause; and

(-b-) the hospital's Medicaid shortfall, calculated as described in §355.8066 of this chapter.

(ii) Other eligible costs for the data year, as described in paragraph (4) of this subsection;

(iii) Cost and payment adjustments, if any, as described in paragraph (5) of this subsection; and

(iv) For each large public hospital, the amount transferred to HHSC by that hospital's affiliated governmental entity to sup-

port DSH payments to that hospital and private hospitals for the same demonstration year.

(B) A hospital also participating in the DSH program cannot receive total uncompensated-care payments under this section (related to inpatient and outpatient hospital services provided to uninsured charity-care individuals) and DSH payments that exceed the hospital's total eligible uncompensated costs. For purposes of this requirement, "total eligible uncompensated costs" means the hospital's state payment cap for interim payments or DSH hospital-specific limit (HSL) in the UC reconciliation plus the unreimbursed costs of inpatient and outpatient services provided to uninsured charity-care patients not included in the state payment cap or HSL for the corresponding program year.

(3) Hospital charity-care costs.

(A) For each hospital required by Medicare to submit schedule S-10 of the CMS 2552-10 cost report, HHSC will pre-populate the uncompensated-care application described in paragraph (1) of this subsection with the uninsured charity-care charges and payments reported by the hospital on schedule S-10 for the hospital's cost reporting period ending in the calendar year two years before the demonstration year. For example, for demonstration year 9, which coincides with federal fiscal year 2020, HHSC will use data from the hospital's cost reporting period ending in calendar year 2018. Hospitals should also report any additional payments associated with their uninsured charity charges that were not captured in worksheet S-10 in the application described in paragraph (1) of this subsection.

(B) For each hospital not required by Medicare to submit schedule S-10 of the CMS 2552-10 cost report, the hospital must report its hospital charity-care charges and payments in compliance with the instructions on the uncompensated-care application described in paragraph (1) of this subsection.

(i) The instructions for reporting eligible charity-care costs in the application will be consistent with instructions contained in schedule S-10.

(ii) An IMD may not report charity-care charges for services provided during the data year to patients aged 21 through 64.

(4) Other eligible costs.

(A) In addition to inpatient and outpatient charity-care costs, a hospital may also claim reimbursement under this section for uncompensated charity care, as specified in the uncompensated-care application, that is related to the following services provided to uninsured patients who meet the hospital's charity-care policy:

(i) direct patient-care services of physicians and mid-level professionals; and

(ii) certain pharmacy services.

(B) A payment under this section for the costs described in subparagraph (A) of this paragraph are not considered inpatient or outpatient Medicaid payments for the purpose of the DSH audit described in §355.8065 of this subchapter.

(5) Adjustments. When submitting the uncompensated-care application, a hospital may request that cost and payment data from the data year be adjusted to reflect increases or decreases in costs resulting from changes in operations or circumstances.

(A) A hospital:

(i) may request that costs not reflected on the as-filed cost report, but which would be incurred for the demonstration year, be included when calculating payment amounts; and

(ii) may request that costs reflected on the as-filed cost report, but which would not be incurred for the demonstration year, be excluded when calculating payment amounts.

(B) Documentation supporting the request must accompany the application, and provide sufficient information for HHSC to verify the link between the changes to the hospital's operations or circumstances and the specified numbers used to calculate the amount of the adjustment.

(i) Such supporting documentation must include:

(I) a detailed description of the specific changes to the hospital's operations or circumstances;

(II) verifiable information from the hospital's general ledger, financial statements, patient accounting records or other relevant sources that support the numbers used to calculate the adjustment; and

(III) if applicable, a copy of any relevant contracts, financial assistance policies or other policies/procedures that verify the change to the hospital's operations or circumstances.

(ii) HHSC will deny a request if it cannot verify that costs not reflected on the as-filed cost report will be incurred for the demonstration year.

(C) Notwithstanding the availability of adjustments impacting the cost and payment data described in this section, no adjustments to the state payment cap will be considered for purposes of Medicaid DSH payment calculations described in §355.8065 of this subchapter.

(6) Reduction to stay within uncompensated-care pool allocation amounts. Prior to processing uncompensated-care payments for any payment period within a waiver demonstration year for any uncompensated-care pool described in subsection (f)(2) of this section, HHSC will determine if such a payment would cause total uncompensated-care payments for the demonstration year for the pool to exceed the allocation amount for the pool and will reduce the maximum uncompensated-care payment amounts providers in the pool are eligible to receive for that period as required to remain within the pool allocation amount.

(A) Calculations in this paragraph will be applied to each of the uncompensated-care pools separately.

(B) HHSC will calculate the following data points:

(i) For each provider, prior period payments to equal prior period uncompensated-care payments for the demonstration year.

(ii) For each provider, a maximum uncompensated-care payment for the payment period to equal the sum of:

(I) the portion of the annual maximum uncompensated-care payment amount calculated for that provider (as described in this section and the sections referenced in subsection (f)(2)(B) of this section) that is attributable to the payment period; and

(II) the difference, if any, between the portions of the annual maximum uncompensated-care payment amounts attributable to prior periods and the prior period payments calculated in clause (i) of this subparagraph.

(iii) The cumulative maximum payment amount to equal the sum of prior period payments from clause (i) of this subparagraph and the maximum uncompensated-care payment for the payment period from clause (ii) of this subparagraph for all members of the pool combined.

(iv) A pool-wide total maximum uncompensated-care payment for the demonstration year to equal the sum of all pool members' annual maximum uncompensated-care payment amounts for the demonstration year from paragraph (2) of this subsection.

(v) A pool-wide ratio calculated as the pool allocation amount from subsection (f)(2) of this section divided by the pool-wide total maximum uncompensated-care payment amount for the demonstration year from clause (iv) of this subparagraph.

(C) If the cumulative maximum payment amount for the pool from subparagraph (B)(iii) of this paragraph is less than the allocation amount for the pool, each provider in the pool is eligible to receive its maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph without any reduction to remain within the pool allocation amount.

(D) If the cumulative maximum payment amount for the pool from subparagraph (B)(iii) of this paragraph is more than the allocation amount for the pool, HHSC will calculate a revised maximum uncompensated-care payment for the payment period for each provider in the pool as follows:

(i) The physician group practice pool, the governmental ambulance provider pool, and the publicly owned dental provider pool. HHSC will calculate a capped payment amount equal to the product of each provider's annual maximum uncompensated-care payment amount for the demonstration year from paragraph (2) of this subsection and the pool-wide ratio calculated in subparagraph (B)(v) of this paragraph.

(ii) The non-state-owned hospital pool.

(I) For rural hospitals, HHSC will:

(-a-) sum the annual maximum uncompensated-care payment amounts from paragraph (2) of this subsection for all rural hospitals in the pool;

(-b-) in demonstration year:

(-1-) nine, set aside for rural hospitals the amount calculated in item (-a-) of this subclause; or

(-2-) ten and after, set aside for rural hospitals the lesser of the amount calculated in item (-a-) of this subclause or the amount set aside for rural hospitals in demonstration year nine;

(-c-) calculate a ratio to equal the rural hospital set-aside amount from item (-b-) of this subclause divided by the total annual maximum uncompensated-care payment amount for rural hospitals from item (-a-) of this subclause; and

(-d-) calculate a capped payment amount equal to the product of each rural hospital's annual maximum uncompensated-care payment amount for the demonstration year from paragraph (2) of this subsection and the ratio calculated in item (-c-) of this subclause.

(II) For non-rural hospitals, HHSC will:

(-a-) sum the annual maximum uncompensated-care payment amounts from paragraph (2) of this subsection for all non-rural hospitals in the pool;

(-b-) calculate an amount to equal the difference between the pool allocation amount from subsection (f)(2) of this section and the set-aside amount from subclause (I)(-b-) of this clause;

(-c-) calculate a ratio to equal the result from item (-b-) of this subclause divided by the total annual maximum uncompensated-care payment amount for non-rural hospitals from item (-a-) of this subclause; and

(-d-) calculate a capped payment amount equal to the product of each non-rural hospital's annual maximum uncompensated-care payment amount for the demonstration year from paragraph (2) of this subsection and the ratio calculated in item (-c-) of this subclause.

(III) The revised maximum uncompensated-care payment for the payment period equals the lesser of:

(-a-) the maximum uncompensated-care payment for the payment period from subparagraph (B)(ii) of this paragraph; or

(-b-) the difference between the capped payment amount from subclause (I) or (II) of this clause and the prior period payments from subparagraph (B)(i) of this paragraph.

(IV) HHSC will allocate to each non-state-owned hospital the revised maximum uncompensated-care payment amount from subclause (III) of this clause.

(7) Non-state-owned hospital SDA sub-pools. After HHSC completes the calculations described in paragraph (6) of this subsection, HHSC will place each non-state-owned hospital into a sub-pool based on the hospital's geographic location in a designated Medicaid SDA for purposes of the calculations described in subsection (h) of this section.

(8) Prohibition on duplication of costs. Eligible uncompensated-care costs cannot be reported on multiple uncompensated-care applications, including uncompensated-care applications for other programs. Reporting on multiple uncompensated-care applications is duplication of costs.

(9) Advance payments.

(A) In a demonstration year in which uncompensated-care payments will be delayed pending data submission or for other reasons, HHSC may make advance payments to hospitals that meet the eligibility requirements described in subsection (c)(2) of this section and submitted an acceptable uncompensated-care application for the preceding demonstration year from which HHSC calculated an annual maximum uncompensated-care payment amount for that year.

(B) The amount of the advance payments will:

(i) in demonstration year nine, be based on uninsured charity-care costs reported by the hospital on schedule S-10 of the CMS 2552-10 cost report used for purposes of sizing the UC pool, or on documentation submitted for that purpose by each hospital not required to submit schedule S-10 with their cost report; and

(ii) in demonstration years ten and after, be a percentage, to be determined by HHSC, of the annual maximum uncompensated-care payment amount calculated by HHSC for the preceding demonstration year.

(C) Advance payments are considered to be prior period payments as described in paragraph (6)(B)(i) of this subsection.

(D) A hospital that did not submit an acceptable uncompensated-care application for the preceding demonstration year is not eligible for an advance payment.

(E) If a partial year uncompensated-care application was used to determine the preceding demonstration year's payments, data from that application may be annualized for use in computation of an advance payment amount.

(h) Payment methodology.

(1) Notice. Prior to making any payment described in subsection (g) of this section, HHSC will give notice of the following information:

(A) the payment amount for each hospital in a pool or sub-pool for the payment period (based on whether the payment is made quarterly, semi-annually, or annually);

(B) the maximum IGT amount necessary for hospitals in a pool or sub-pool to receive the amounts described in subparagraph (A) of this paragraph; and

(C) the deadline for completing the IGT.

(2) Payment amount. The amount of the payment to hospitals in each pool or sub-pool will be determined based on the amount of funds transferred by the affiliated governmental entities as follows:

(A) If the governmental entities transfer the maximum amount referenced in paragraph (1) of this subsection, the hospitals in the pool or sub-pool will receive the full payment amount calculated for that payment period.

(B) If the governmental entities do not transfer the maximum amount referenced in paragraph (1) of this subsection, each hospital in the pool or sub-pool will receive a portion of its payment amount for that period, based on the hospital's percentage of the total payment amounts for all hospitals in the pool or sub-pool.

(3) Final payment opportunity. Within payments described in this section, governmental entities that do not transfer the maximum IGT amount described in paragraph (1) of this subsection during a demonstration year will be allowed to fund the remaining payments to hospitals in the pool or sub-pool at the time of the final payment for that demonstration year. The IGT will be applied in the following order:

(A) to the final payments up to the maximum amount; and

(B) to remaining balances for prior payment periods in the demonstration year.

(i) Reconciliation. HHSC will reconcile actual costs incurred by the hospital for the demonstration year with uncompensated-care payments, if any, made to the hospital for the same period:

(1) If a hospital received payments in excess of its actual costs, the overpaid amount will be recouped from the hospital, as described in subsection (j) of this section.

(2) If a hospital received payments less than its actual costs, and if HHSC has available waiver funding for the demonstration year in which the costs were accrued, the hospital may receive reimbursement for some or all of those actual documented unreimbursed costs.

(3) Each hospital that received an uncompensated-care payment during a demonstration year must cooperate in the reconciliation process by reporting its actual costs and payments for that period on the form provided by HHSC for that purpose, even if the hospital closed or withdrew from participation in the uncompensated-care program. If a hospital fails to cooperate in the reconciliation process, HHSC may recoup the full amount of uncompensated-care payments to the hospital for the period at issue.

(j) Recoupment.

(1) In the event of an overpayment identified by HHSC or a disallowance by CMS of federal financial participation related to a hospital's receipt or use of payments under this section, HHSC may recoup an amount equivalent to the amount of the overpayment or disallowance. The non-federal share of any funds recouped from the hospital will be returned to the governmental entities in proportion to each entity's initial contribution to funding the program for that hospital's SDA in the applicable program year.

(2) Payments under this section may be subject to adjustment for payments made in error, including, without limitation, adjustments under §371.1711 of this title (relating to Recoupment of Overpayments and Debts), 42 CFR Part 455, and Chapter 403 of the Texas Government Code. HHSC may recoup an amount equivalent to any such adjustment.

(3) HHSC may recoup from any current or future Medicaid payments as follows:

(A) HHSC will recoup from the hospital against which any overpayment was made or disallowance was directed.

(B) If, within 30 days of the hospital's receipt of HHSC's written notice of recoupment, the hospital has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all future Medicaid payments from the hospital until HHSC has recovered an amount equal to the amount overpaid or disallowed.

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 July 7, 2020.

TRD-202002801
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Effective date: July 27, 2020
Proposal publication date: April 24, 2020
For further information, please call: (512) 407-3285

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER J. COSTS, RATES AND TARIFFS

DIVISION 1. RETAIL RATES

16 TAC §25.248

The Public Utility Commission of Texas (commission) adopts new §25.248, relating to Generation Cost Recovery Rider (GCRR), with changes to the proposed text as published in the March 6, 2020, issue of the *Texas Register* (45 TexReg 1527). The rule will be republished. The new rule implements the provisions of Section Nos. 4 and 5 of House Bill No. 1397 of the 86th Legislature, Regular Session in 2019 (HB 1397). The new rule allows for a utility that operates solely outside of the Electric Reliability Council of Texas (ERCOT) to apply for a Generation Cost Recovery Rider (GCRR) to recover certain

generation invested capital for a discrete generation facility. Project Number 50031 is assigned to this proceeding.

The commission received written comments and reply comments on the proposed rule from El Paso Electric Company (El Paso), Entergy Texas, Inc. (Entergy), Southwestern Electric Power Company (SWEPCO), and Southwestern Public Service Company (SPS), Office of Public Utility Counsel (OPUC), and Texas Industrial Energy Consumers (TIEC). No party requested a public hearing.

General comments on the proposed rule:

Support for the proposed rule

SPS and El Paso commented that they support the proposed rule as drafted.

Comments on specific sections of the proposed rule:

Subsection (b) Definitions

Define "GCRR test year"

TIEC commented that the rule should define the term "GCRR test year" and that other sections of the draft rule might be dependent upon such a definition. OPUC replied that, if the definition of the term "GCRR test year" provides more clarity and avoids confusion, then it would support inclusion of the definition.

Entergy and SWEPCO replied that such a definition is unnecessary. SWEPCO commented that it was not certain what sections TIEC thought were dependent, and it disputed that any section of the proposed rule depends upon the definition.

Commission Response

Because the statute provides for recovery of investment only for a discrete facility and not for a broad category of investment, the commission agrees with Entergy and SWEPCO that defining "GCRR test year" is unnecessary and retains the rule language as proposed.

Define "Commercial operation date"

In order to avoid confusion about when generation invested capital is placed into service, TIEC commented that the rule should clarify, in the definition of "Generation invested capital" in proposed paragraph (b)(2), that a generation facility begins providing service to customers on its commercial operation date. OPUC similarly commented that the rule should define "commercial operation date" in subsection (b), and that the commercial operation date would be the effective date of the GCRR. OPUC also suggested that a utility should be required to provide proof of commercial operation of the new generation facility.

SWEPCO disagreed with the need for defining the term "commercial operation date" and rejected OPUC's expanded criteria for determining the effective date. SWEPCO argued that the in-service date for a generation facility should be determined according to the facts and circumstances surrounding the facility, and SWEPCO used as an example the determination of the in-service date for its Turk plant in Docket No. 40443, *Application of Southwestern Electric Power Company for Authority to Change Rates and Reconcile Fuel Costs.*

Commission Response

The commission disagrees with TIEC's and OPUC's suggestion that defining "commercial operation date" as the date on which the facility begins providing service to customers is necessary or clarifying. The commission notes that any disputes about what date the facility begins providing service can be addressed in the reconciliation of the GCRR, and the commission retains the rule language as proposed.

Subsection (b)(2) Generation invested capital

Entergy commented that the definition of "Generation invested capital" in (b)(2) should be expanded to include, in addition to the expenses in the FERC accounts specified in the proposed rule, other "accounts with similar contents or amounts functionalized to the generation function." Entergy argued that there are other FERC accounts that may include invested costs from certain financing arrangements. Entergy noted that its suggested language mirrors other commission rule language in the transmission cost of service (TCOS) rule in 16 Texas Administrative Code (TAC) §25.192(c). Entergy specifically requested the inclusion of FERC Account 114 (acquisition adjustment).

TIEC and OPUC opposed Entergy's suggested language as overly broad and asserted that it could easily be interpreted to include items that are not properly part of investment in a discrete power generation facility. TIEC proposed language to allow a utility to apply for a good cause exception to include in generation invested capital the amounts in other FERC accounts that are properly functionalized as generation plant.

Commission Response

The commission disagrees with Entergy's suggestion to expand the definition of "generation invested capital" because it goes beyond the provisions of the statute. The expansion of the definition would add unnecessary complexity and lead to less streamlined GCRR proceedings, defeating the purpose of a simple interim cost recovery mechanism. Some requested accounts fall outside of the FERC accounts for generation assets, and the treatment of amounts in those accounts is appropriately addressed in a utility's comprehensive base-rate case. Accordingly, the commission retains the rule language as proposed.

Subsection (b)(3) Power generation facility

Investment at existing generation assets

SWEPCO stated that, under its interpretation, the statute covers generation investment broadly, including key investments at existing generation stations. SWEPCO asserted that no change to the language in the proposed rule is necessary to allow for such investment but that the rule could be modified to explicitly cover such non-routine, sizable investments. SWEPCO commented that major upgrades and retrofits would meet the statute's requirement of having a specific in-service date. SWEPCO additionally noted that safeguards against overearning exist, including the threshold to file a comprehensive base-rate case in this rule and the commission's earnings monitoring process. SWEPCO noted that it reads TIEC's initial comments to agree that the rule should apply to significant retrofits.

OPUC replied that the rule should follow the statute and apply only to new investment in a discrete facility. OPUC cited changes in drafts of the HB 1397, particularly the change from "power generation investment" to a "power generation facility," as support that the bill was not intended as a catch-all for generation cost recovery.

Commission Response

The commission disagrees with SWEPCO's assertion that the statute, as well as the proposed rule as drafted, broadly

cover generation investment outside of investment in a discrete generation facility. The commission declines to modify the rule language as suggested by SWEPCO. The commission explicitly notes that the rule is intended to apply only to investment at one or more new, discrete generation facilities or to a significant retrofit at a facility, and that the rule is not intended to update all additions to generation investment since the utility's last base-rate case or to update routine investments at existing facilities.

Clarification that rider includes only investment in a discrete facility

TIEC commented that the rule should be clarified to include in a GCRR only investment in a discrete generation facility. TIEC stated that the proposed rule's use of the phrase "or facilities" in paragraph (b)(3) could invite utilities to apply to update additions and improvements to existing facilities. TIEC commented that multiple references in the statute to a single facility, when coupled with the notion of setting rates for the date a single facility is placed in service, justify changing the language in the rule. TIEC also suggested clarifying paragraph (c)(2) to apply to additional investment in a new, discrete facility, as considered below.

OPUC agreed with TIEC in reply comments. OPUC noted that applying the rule only to investment in a discrete generation facility is fundamentally tied to the other issues raised in comments. Examples of these issues raised in initial comments were SWEPCO's recommendation that the GCRR include incremental investment at existing facilities and Entergy's call for the GCRR to include updates to operations and maintenance expense.

Entergy disagreed that TIEC's suggested clarification is necessary. Entergy noted that TIEC's suggested edit might preclude investment in two or more discrete facilities under a single GCRR application, increasing the administrative burden unnecessarily. Entergy stated its support for the language in the proposed rule.

Commission Response

The commission agrees that the rule applies only to investment in one or more discrete generation facilities, but the commission disagrees that deleting the phrase "or facilities" is clarifying and is concerned that its deletion could prevent a GCRR from covering investment at multiple discrete facilities. The commission retains the rule language as proposed.

Subsection (b)(5) Power generation facility net invested capital

General comments on the use of revenue offsets

OPUC and TIEC commented that the rule should be modified to provide offsets to generation rate base to protect ratepayers, including offsets for a load growth adjustment, for updated accumulated depreciation and tax impacts on all generation investment, for generation plant retirements, and for terminated or expired purchased power agreements (PPAs). TIEC commented that, in general, the provisions of PURA §36.053 speak to the commission setting the overall revenues of a utility, and that the GCRR should provide offsets and consider the overall generation rates for the utility. TIEC also noted that other interim cost recovery riders--including those approved by the commission in the last ten years--provide for appropriate and reasonable offsets to the revenue requirement. TIEC argued that the legislature expected the commission to use its discretion to provide appropriate offsets in implementing the rule. TIEC quoted Senator Nichols's discussion of HB 1397 during the Senate floor debate, in which he stated that "[the statute] was meant to give the Public Utility Commission flexibility to make whatever adjustments they think are appropriate." TIEC stressed that, without offsets, the GCRR would likely lead to cumulative over-recovery of the generation function. TIEC requested that the rule provide for the commission to set the interim generation revenue requirement in a GCRR proceeding by considering the total generation revenue requirement and not merely a portion of it. OPUC expressed support for TIEC's general analysis regarding the need for appropriate offsets.

SPS opposed the offsets recommended by OPUC and TIEC because the statute does not explicitly provide for the offsets and their inclusion would likely lead to an increased possibility of a contentious, rather than streamlined, proceeding. SPS noted that OPUC and TIEC are very concerned about over-recovery, but that it believes that under-recovery is more likely. SWEPCO noted that the commission already decided not to include such offsets in the proposed rule after OPUC and TIEC made similar suggestions at the stakeholder workshop and in informal comments. SWEPCO commented that the recommended offsets were inconsistent with investment in a single facility and would likely add contention that could prevent a streamlined proceeding. Finally, SWEPCO argued that the recommended offsets would increase the chance that a utility under-recovers its generation costs.

Entergy opposed all of TIEC's and OPUC's recommended offsets. Entergy stated that offsets are not necessary to set just and reasonable rates, as OPUC and TIEC asserted, and that the recommended offsets would increase the likelihood of under-recovery. Entergy commented that all the recommended offsets are not provided for in the statute and suffer from asymmetry regarding the scope and direction of the offset. Entergy stated that the proposed rule already includes offsets appropriate for the scope of the rule, and Entergy noted that other rules that have offsets similar to those recommended by OPUC and TIEC cover broader investment categories than the limited GCRR does. Entergy urged symmetry in the offsets and investment allowed in the rule.

Commission Response

The commission considers parties' general comments on revenue offsets in its responses to the specific recommended adjustments below.

Load growth adjustment

All commenters expressed strong opinions on the appropriateness of including an offsetting "load growth adjustment" to account for increases in generation-related revenue from growth in customer base, demand, and usage. Specifically, OPUC and TIEC recommended that the GCRR rule have a load growth adjustment modeled on the purchased power cost recovery factor (PCRF) rule in 16 TAC §25.238(h).

OPUC argued that, without a load growth adjustment, a utility will almost certainly over-recover its generation costs and that the purpose of the statute was to mitigate regulatory lag, not allow for over-recovery. OPUC stressed that a load growth adjustment is necessary to ensure that a GCRR proceeding does not set the overall generation revenue requirement higher than what would result from a base-rate proceeding. OPUC commented that the statute's silence on a load growth adjustment should not preclude the commission's inclusion of one in the rule, and OPUC cited the PCRF rule as an example. OPUC and TIEC

each provided a simple example to demonstrate how, without a load growth adjustment, a utility would very likely over-recover its total generation costs. In its reply comments, OPUC noted the interwoven nature of load growth and the need for new generation facilities, and OPUC stated that the rule should acknowledge this and include a load growth adjustment.

TIEC also commented that, in order to prevent partial double-recovery of the same generation costs, the rule should include an offset to the GCRR to account for load growth related to generation invested capital already being recovered. TIEC argued that the commission has consistently netted out load growth from similar incremental additions to base revenues for transmission and distribution asset classes. Additionally, TIEC noted that the commission has included a load growth adjustment in every other rider developed in the last decade. TIEC quoted Senator Nichols's discussion of the statute, as well as citing other commission interim rules, such as those for the PCRF and distribution cost recovery factor (DCRF) in 16 TAC §25.243(d), in supporting its recommendation to include a load growth adjustment as an offset. OPUC referred to and agreed with TIEC's quote from Senator Nichols to demonstrate the legislature's intent to allow for the commission to include a load growth adjustment in the rule.

El Paso, Entergy, SPS, and SWEPCO all expressed opposition to the inclusion of a load growth adjustment in the GCRR. SWEPCO argued against TIEC's analysis regarding legislative intent by suggesting that the same logic should motivate TIEC to argue to include operations and maintenance expenses that, like the load growth adjustment, appeared in draft bills but not in the enacted legislation. El Paso, Entergy, and SWEPCO cited a recent Entergy transmission cost recovery factor (TCRF) proceeding in which the commission did not allow a load growth adjustment despite parties' requests. SWEPCO stated that OPUC's and TIEC's recommended offsets were selective and critiqued TIEC's simplified example of purported over-recovery.

Entergy disagreed with TIEC's and OPUC's assertions that a load growth adjustment was justified based on other riders and legislative history. Entergy commented that TIEC was incorrect in its claim that every other rider in the last decade included a load growth adjustment, because TIEC failed to consider 16 TAC §25.239, a rule addressing recovery of transmission costs for electric utilities operating outside the ERCOT service territory. Entergy disputed any assertion that Entergy suggested the commission lacked authority to implement a load growth adjustment. Entergy stated its belief that the commission, in this rulemaking, should follow its recent decision in a TCRF proceeding that disallowed a load growth adjustment.

El Paso commented that it opposes the load growth adjustment and supports the proposed rule as drafted. El Paso argued that the exclusion of a load growth adjustment in the proposed rule is appropriate because, unlike the DCRF and TCRF mechanisms that deal with an entire category of costs, the GCRR applies only to a discrete power generation facility. El Paso commented that the purpose of the legislation is to allow for a streamlined interim proceeding outside of a base-rate case, and that a load growth adjustment and other selective offsets would invite cumbersome, lengthy, and costly litigation. El Paso also disputed TIEC's analyses regarding legislative intent and other riders and urged implementation of the proposed rule.

Commission Response

The commission disagrees with TIEC's and OPUC's suggestion to include a load growth adjustment because the statute does not provide for a load growth adjustment. Furthermore, a load growth adjustment would make a GCRR proceeding more complex and contentious, counter to the purpose of having a streamlined interim cost recovery mechanism. The commission retains the rule language as proposed.

Offsets for updated accumulated depreciation and tax impacts

TIEC and OPUC commented that the rule should include offsets to the GCRR to account for updated accumulated depreciation and tax impacts for all existing generation investment, not just for discrete facilities covered by the GCRR. TIEC provided an example of how a utility might over-recover for the total generation function without updates for depreciation and tax impacts. TIEC noted that PURA §36.053(a) provides that rates must be based on original cost, less depreciation, of plant used and useful in service, and it argued that, similar to the other interim cost recovery mechanisms, the rule should update accumulated depreciation and tax impacts for all generation investment. OPUC argued that the updates to accumulated depreciation and accumulated deferred federal income taxes (ADFIT) are known and measurable accounting changes. Without updates to accumulated depreciation and ADFIT, OPUC asserted, customers would pay rates based on an inflated generation rate base and the utility would likely over-recover its generation costs.

SWEPCO replied that the recommended offset to accumulated depreciation and tax impacts was asymmetrical because it would apply to all generation invested capital, and thus it would be inconsistent with the statute that provided for recovery of investment in a single facility. SWEPCO also commented that the recommended offset might result in a normalization violation for updated tax amounts.

Commission Response

Because the statute provides for recovery of investment in a discrete facility and not for recovery of generation costs overall, the commission agrees that the GCRR rider should apply only to investment in a discrete facility and that updates to accumulated depreciation and tax impacts should not apply to generation investment in total. The commission retains the rule language as proposed.

Offset for plant retirements

TIEC commented that the rule should include an offset to the GCRR to account for retirements of generation investment included in base rates, as it could be likely that a new power generation facility displaces the need for an existing generation asset already included in base rates. TIEC also asserted that there is a current trend for utilities to retire coal plants early. TIEC argued that, to be consistent with commission precedent establishing that utilities are entitled to a return of, but not a return on, the unamortized balance of a retired plant, the rule should remove retired generation assets as an offset to rate base.

SWEPCO replied that the commission should reject TIEC's suggestion and that the proposed rule correctly considered only depreciation with the discrete power generation facility. SWEPCO also disputed any assertion that it intends to retire its Pirkey and Flint Creek coal units early.

Commission Response

The commission disagrees with TIEC's suggestion because the statute does not provide for updates to generation investment generally, in the way that the statutes for other interim cost recovery mechanisms provide for updates to broad categories of investment (transmission or distribution). The commission retains the rule language as proposed.

Offset for terminated or expired purchased power agreements (PPAs)

TIEC commented that the rule should include an offset to the GCRR to account for terminated or expired PPAs included in existing rates. TIEC stated that it would be probable that a major new generation facility would decrease the utility's need for existing (and possibly sizable) PPAs already recovered in base rates. OPUC also commented that the rule should include an offset for purchase power capacity costs included in base rates that are displaced or avoided by the new generation facility. TIEC asserted that the proposed rule provides asymmetric treatment when it allows for immediate rate increases while ignoring cost reductions in the current level of generation invested capital. OPUC stressed the likelihood of over-recovery if displaced purchase power costs embedded in current rates are not removed when the new generation facility obviates the need for them.

Entergy and SWEPCO replied to oppose an offset for terminated or expired PPAs in the GCRR. Entergy stated that TIEC's suggested offset would be asymmetrical because it would consider all PPAs across the generation function. Entergy also asserted that TIEC's recommended offset would open the door to increased litigation.

Commission Response

The commission disagrees with TIEC's and OPUC's suggestion because the statute does not provide for updates to generation investment generally. The commission retains the rule language as proposed.

Subsection (c)(2) GCRR Requirements

TIEC commented that the proposed rule's use of the phrase "and additional power generation facilities" in paragraph (c)(2) is potentially ambiguous. TIEC also suggested clarifying paragraph (b)(3) for similar reasons, and other stakeholders replied, as considered above.

Commission Response

The commission agrees that the rule applies only to investment in one or more discrete generation facilities, but the commission disagrees that deleting the phrase "and additional power generation facilities" is clarifying and is concerned that its deletion could prevent a GCRR from covering investment at multiple discrete facilities. The commission retains the rule language as proposed.

Subsection (d) Calculation of GCRR rates

The proposed rule prohibited the use of estimated costs in a GCRR in paragraph (d)(2). Entergy commented that the rule should be modified to include estimated or forecasted costs in the GCRR as a reasonable and permissible approach to recover investment. Entergy noted that the purpose of HB 1397 was to reduce regulatory lag, and one way to accomplish this goal would be to allow for the use of estimated costs in a GCRR. Entergy stated its belief that, because the statute allowed the commission to approve a GCRR before the facility begins providing service and because the statute provides for some reconciliation, the statute intended to allow for the use of estimated costs. Entergy stated that other stakeholders greatly exaggerate concerns over the use of estimated or forecasted costs. (Entergy's related comment about providing, in subsection (g), for the use of an "anticipated purchase price" for a purchased facility is considered below.)

OPUC and TIEC argued against the inclusion of estimated costs, for many reasons, including the fact that the statute does not provide for estimated costs and that the inclusion of estimated costs would be a radical departure from the commission's ratemaking practices. OPUC and TIEC expressed strong support for the proposed rule's prohibition against estimated costs, commenting that the provision in the proposed rule to relate back the effective date of GCRR rates to the date the facility began providing service should obviate a utility's need to use estimated costs.

TIEC commented that, in a proceeding where a utility included estimated costs, the reasonableness of those estimated costs would likely be at issue and probably preclude an expedited, streamlined proceeding. All other interim mechanisms for the recovery of invested capital, TIEC noted, provide for reconciliation and do not allow for the use of estimated costs.

Commission Response

For reasons stated by OPUC and TIEC, the commission disagrees with Entergy's suggestion to use estimated costs. HB 1397 states that the commission may approve an application by a utility to recover the electric utility's "investment" in a power generation facility; the statute does not provide for recovery of estimated costs. The commission also notes that recovery of only capital-related costs is consistent with the commission's existing rules for streamlined recovery of both transmission and distribution investment. The commission agrees with TIEC that consideration of estimated costs would be contrary to the objective of an expedited, streamlined proceeding. Therefore, no changes to the proposed rule are necessary.

Subsection (d)(5)(C) Baseline values

SWEPCO provided a formula for updating jurisdictional and rate-class allocation factors as a suggested edit to the definition of the Texas retail jurisdiction production allocation factor (TRAF) in (d)(5)(C). SWEPCO also suggested related edits to subsection (e).

Commission Response

The commission considers this comment with the related comments to proposed subsection (e) below.

Subsection (e) Jurisdictional and class allocation factors

SWEPCO commented that the rule, for the purposes of calculating the GCRR, should require the applicant to use updated jurisdictional allocation factors (and SWEPCO provided a formula for doing so in a suggested edit to (d)(5)(C) in its comments). SWEPCO argued that, because the proposed rule requires the applicant to calculate the GCRR using updated class allocation factors, the rule should likewise require the applicant to use updated jurisdictional allocation factors to calculate the GCRR.

OPUC disagreed and expressed concern that SWEPCO's suggested formula could be used to inflate or deflate jurisdictional allocation factors. OPUC also questioned whether SWEPCO's suggested formula would produce accurate results at the jurisdictional level across rate classes. OPUC stated that jurisdictional allocation is a complex process and argued that jurisdic-

tional factors should be updated only in a comprehensive base-rate proceeding.

Commission Response

The commission agrees with OPUC that SWEPCO's proposed formula could produce inaccurate results. Because of the complexity involved in jurisdictional allocation, the proper setting to update jurisdictional allocation factors is only in a comprehensive base-rate proceeding. The commission retains the rule language as proposed.

Subsection (f) Customer classification

OPUC commented that the rule should draw a distinction between firm and non-firm capacity, as the strawman for the stakeholder workshop had. OPUC argued that class allocation factors from the utility's last base-rate case may not be adequate to address new forms of generation not present during the last base-rate case. For example, a new generation facility might be a new wind facility for a utility that does not have wind generation assets in its base rates. OPUC commented that, if the rule does not draw a distinction between firm and non-firm capacity, the rule should explicitly provide that allocations used in a GCRR are not precedential for a generation resource not already used by the utility and that allocation factors are subject to reconciliation in the next base-rate proceeding.

TIEC disagreed and stated that any such distinction between firm and non-firm capacity should be handled in future proceedings addressing this novel issue, not prejudged in the rule. TIEC also argued against any retroactive application of allocation factors approved in a future base-rate proceeding.

Commission Response

The commission agrees with TIEC's analysis and notes that using allocation factors from a utility's most recent base-rate proceeding is sufficiently accurate for the purposes of a GCRR. The commission retains the rule language as proposed.

Subsection (g) GCRR application

Entergy suggested that, even if the rule otherwise prohibits the use of estimated costs in paragraph (d)(2), the rule should include in subsection (g) a provision to allow for the use of an "anticipated purchase price" for a facility that is purchased.

OPUC replied to Entergy's request for a provision to allow for the use of an "anticipated purchase price" by stating that a GCRR should only use an actual price for a purchased generation facility, with the rates relating back to the in-service date. TIEC opposed Entergy's request but also suggested clarified and limited language, should the commission adopt such a provision.

Commission Response

The commission declines to include Entergy's suggested language for the same reasons it declines to provide for the use of estimated costs. The update provision in subsection (h) and effective date provision in paragraph (c)(3) of the rule adequately handle situations where a facility is purchased. The commission retains the language in the rule as proposed.

Subsection(g)(6) Action on application

Entergy commented that paragraph (g)(6) should be modified to require an expedited procedural schedule to allow review and approval within 90 days, in order to address situations where contested proceedings might take longer than 90 days. Entergy expressed concern that some parties could request a hearing in a GCRR proceeding as a delaying tactic, and Entergy referred to dockets for other types of proceedings where it believes significant delay occurred.

TIEC replied that Entergy's recommended expedited schedule would only be appropriate if the rule included formulaic offsets similar to other interim proceedings, as OPUC and TIEC suggested in their comments. TIEC also commented that Entergy's request for "review and approval" within 90 days is unreasonable and that the commission should not adopt this suggested language.

Commission Response

The commission disagrees with Entergy's suggestion for expedited review and approval of a GCRR within 90 days. The effective date provision in paragraph (c)(3) of the rule adequately mitigates the consequences of any delays that might occur. The commission retains the rule language as proposed.

Subsection (h) Update of generation invested capital

SWEPCO commented that the time period for a utility to update its application should be 120 days rather than 60 days. SWEPCO stated that 60 days may not be enough time for a utility to incur and book the majority of trailing costs associated with building or buying a new generation facility.

OPUC replied that it supports the 60-day period in the proposed rule, that a 60-day period should be sufficient for a utility to file its update, and that a 120-day period would defeat the purpose of a streamlined proceeding.

Commission Response

The commission agrees with OPUC that a 60-day period should be sufficient to allow a utility to update its GCRR application while keeping the proceeding streamlined. The commission retains the rule language as proposed.

Comments on specific issues not in the proposed rule:

Inclusion of operations and maintenance expense

Entergy commented that, to reduce regulatory lag, the rule should be modified to include the operations and maintenance costs associated with generation investment in the GCRR. Without such a provision, Entergy envisioned a situation in which a utility might file a base-rate case and a GCRR application at the same time, in order to recover operations and maintenance expense and invested capital, respectively, on the same generation asset.

OPUC and TIEC argued that the statute provides only for the recovery of investment costs. Both OPUC and TIEC referenced the legislative history of HB 1397, in which early versions of the bill included a phrase providing for recovery of "[investment] and costs associated with that investment." Because that phrase was removed from the enacted bill, TIEC argued that the legislature did not intend for the GCRR to recover operations and maintenance expenses. OPUC and TIEC commented that no other interim cost recovery mechanism allows for an update of operations and maintenance costs.

OPUC stated that it would be difficult for utilities to break out common operations and maintenance expenses for the discrete generation facility, potentially resulting in over-recovery of amounts relating to the discrete generation facility. TIEC commented that

it would be impossible to include an actual amount of annual operations and maintenance expenses for a newly built or acquired facility.

Commission Response

The commission agrees with OPUC's and TIEC's analyses regarding the practical difficulties of breaking out and quantifying actual amounts of expenses for a newly constructed facility. Furthermore, the commission notes that recovery of operations and maintenance costs is not provided for in the statute and that such recovery would increase the likelihood that a GCRR proceeding would be contentious and not streamlined, increasing the administrative burden for all parties and defeating the purpose of providing a simple interim cost recovery mechanism. The commission retains the rule language as proposed.

Prohibition of simultaneous GCRR and PCRF

TIEC recommended reinserting the prohibition on simultaneously having a PCRF and GCRR that was present in the strawman for the stakeholder workshop in this rulemaking, in order to prevent potential double recovery of the same generation costs.

Commission Response

The commission disagrees with TIEC's suggestion. The commission's earnings monitoring process and the requirements for utility companies to file periodic, comprehensive base-rate cases serve as checks against the potential for double recovery. The commission retains the rule language as proposed.

Consideration of GCRR on risk in setting an electric utility's authorized rate of return

TIEC commented that, similar to rules for other interim proceedings such as an interim TCOS update or a DCRF proceeding, the rule should expressly allow the commission to consider the effect of the GCRR when setting an electric utility's authorized rate of return. TIEC stated that the existence of the GCRR significantly lowers the financial and business risk of a utility, and TIEC suggested language for such a provision. OPUC agreed with the inclusion of this provision and stated that its presence in other rules supports its inclusion in the GCRR rule.

Entergy expressed opposition to TIEC's and OPUC's suggestion and stated that it was unnecessary. Entergy commented that the commission already has full authority to consider all aspects of a utility's risk when setting its authorized rate of return. Entergy stated that the utilities subject to this rule rarely earn their authorized rates of return.

Commission Response

The commission agrees with Entergy that the commission already has the authority to consider all aspects of a utility's risk when setting its authorized rate of return. Accordingly, the commission rejects TIEC's and OPUC's suggestion and retains the rule language as proposed.

Reporting requirement for a GCRR

OPUC commented that, as a matter of due diligence, the rule should add a reporting requirement to monitor the utility's earnings over the 12-month period following the effective date of the GCRR. If the report showed that the utility was earning more than its authorized rate of return, the utility's GCRR would be limited to a 12-month period. OPUC argued that this provision would prevent over-recovery and is necessary because the proposed rule did not include important offsets recommended by OPUC and TIEC. OPUC supplied suggested rule language addressing this point.

Entergy, SPS, and SWEPCO argued against the inclusion of a reporting requirement for the GCRR as envisioned by OPUC. All three utilities stated that the provision is unnecessary and would be duplicative of the commission's earnings monitoring report process. SPS further noted that the suggested provision would be administratively inefficient and go against the goal of a streamlined proceeding, and SWEPCO commented the suggested requirement went beyond the statute. Entergy and SWEPCO commented that the threshold to file a comprehensive base-rate proceeding is an additional protection afforded to customers. SPS commented that no other interim cost recovery mechanism provides for a reporting requirement; SWEPCO commented that the DCRF rule has a requirement to include a copy of the utility's most recent earnings monitoring report, but that the requirement was included in the statute.

Commission Response

The commission rejects OPUC's suggestion because it proposes the creation of an unnecessary regulatory requirement that goes beyond the statute and would be duplicative of other commission functions, most notably the earnings monitoring process. The commission agrees with Entergy's, SPS's, and SWEPCO's analyses and retains the rule language as proposed.

In this rulemaking the commission fully considered all comments submitted under Project No. 50031, including any not specifically referenced herein. In adopting this section, the commission makes other modifications for the purpose of clarifying its intent.

The commission adopts this new rule under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2016 and Supp. 2017) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. This new rule implements the provisions of PURA §36.213(g) into the Texas Administrative Code.

Cross Reference to Statutes: PURA §§14.002 and 36.213.

§25.248. Generation Cost Recovery Rider.

(a) Applicability. This section provides a mechanism for an electric utility to request to recover investment in a power generation facility through a generation cost recovery rider (GCRR) outside of a base-rate proceeding. This section applies only to an electric utility that operates solely outside of the Electric Reliability Council of Texas.

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

(1) GCRR billing determinant--Each rate class's annual billing determinant (kilowatt-hour, kilowatt, or kilovolt-ampere) for the previous calendar year.

(2) Generation invested capital--The parts of the electric utility's invested capital for a power generation facility that will be functionalized as generation plant properly recorded in Federal Energy Regulatory Commission (FERC) Uniform System of Accounts 303 through 347, 352, and 353 when the generation facility is placed into service.

(3) Power generation facility--A discrete facility or facilities constructed or purchased by an electric utility for use in generating electricity for public service by the electric utility, and the cost of

which is not included in the electric utility's base rates. The term "facility" may encompass different parts of a single generation facility that begins providing service to the electric utility's customers on the same date.

(4) Power generation facility invested capital--Generation invested capital associated with a power generation facility included in the electric utility's GCRR that will be placed into service before or at the time the GCRR becomes effective under subsection (g) of this section.

(5) Power generation facility net invested capital--Power generation facility invested capital that is adjusted for accumulated depreciation and any changes in accumulated deferred federal income taxes, including changes to excess accumulated deferred federal income taxes, associated with all power generation facilities included in the electric utility's GCRR.

(6) Weather-normalized--Adjusted for normal weather using weather data for the most recent ten-year period prior to the year from which the GCRR billing determinants are derived.

(c) GCRR Requirements. The GCRR rate for each rate class, and any other terms or conditions related to those rates, will be specified in a rider to the utility's tariff.

(1) An electric utility must not have more than one GCRR.

(2) An electric utility with an existing GCRR may apply to amend the GCRR to include the electric utility's actual capital investment in a power generation facility and additional power generation facilities.

(3) Any GCRR established under this section will take effect on the date the power generation facility begins providing service to the electric utility's customers. Any amendment to an existing GCRR for an additional power generation facility will take effect on the date that the additional power generation facility begins providing service to the electric utility's customers.

(4) As part of the next base-rate proceeding for the electric utility, the electric utility must request to move all investment being recovered in a GCRR into base rates and the GCRR will be set to zero.

(d) Calculation of GCRR Rates. The GCRR rate for each rate class must be calculated according to the provisions of this subsection and subsections (e) and (f) of this section.

(1) The GCRR rates will not take into account changes in the number of the electric utility's customers and the effects that energy consumption and energy demand have on the amount of revenue recovered through the electric utility's base rates.

(2) The GCRR rates must not include estimated costs.

(3) The GCRR rate for each rate class will be calculated using the following formula: $GCRR_{CLASS} = RR_{CLASS} / BD_{C\text{-}CLASS}$

(4) The values of the terms used in this subsection will be calculated as follows:

(A) $RR_{CLASS} = RR_{TOT} * ALLOC_{C\text{-}CLASS}$

(B) $RR_{TOT} = TRAF * ((PGFIC * ROR_{RC}) + PGFDEPR + PGFFIT + PGFOT)$

(C) $ALLOC_{C\text{-}CLASS} = ALLOC_{RC\text{-}CLASS} * (BD_{C\text{-}CLASS} / BD_{RC\text{-}CLASS}) / \Sigma (ALLOC_{RC\text{-}CLASS} * (BD_{C\text{-}CLASS} / BD_{RC\text{-}CLASS}))$

(5) The terms used in this subsection represent or are defined as follows:

(A) Descriptions of calculated values.

(i) $GCRR_{CLASS}$--GCRR rate for a rate class.

(ii) RR_{CLASS}--GCRR class revenue requirement.

(iii) RR_{TOT}--Total GCRR revenue requirement.

(iv) $ALLOC_{C\text{-}CLASS}$--GCRR class allocation factor for a rate class.

(B) GCRR billing determinants and power generation facility values.

(i) $BD_{C\text{-}CLASS}$--GCRR billing determinants that are weather-normalized.

(ii) PGFIC--Power generation facility net invested capital.

(iii) PGFDEPR--Power generation facility depreciation expense.

(iv) PGFFIT--Federal income tax expense associated with the return on the power generation facility net invested capital, reduced by any tax credits related to the power generation facility that are not returned to customers as a credit or other offset to eligible fuel expense.

(v) PGFOT--Other tax expense associated with the power generation facility.

(C) Baseline values. The following values are based on those values used to establish rates in the electric utility's most recent base-rate proceeding, or if an input to the GCRR calculation from the electric utility's last base-rate proceeding is not separately identified in that proceeding, it will be derived from information from that proceeding:

(i) TRAF--Texas retail jurisdiction production allocation factor value used to establish rates in the electric utility's last base-rate proceeding determined under the provisions of subsection (e) of this section.

(ii) $BD_{RC\text{-}CLASS}$--Rate class billing determinants used to establish generation base rates in the last base-rate proceeding. Energy-based billing determinants will be used for those rate classes that do not include any rate demand charges, and demand-based billing determinants will be used for those rate classes that include rate demand charges.

(iii) ROR_{RC}--After-tax rate of return approved by the commission in the electric utility's last base-rate proceeding.

(iv) $ALLOC_{RC\text{-}CLASS}$--Rate class allocation factor value determined under the provisions of subsection (e) of this section.

(e) Jurisdictional and class allocation factors. For calculating GCRR rates, the baseline jurisdictional and rate-class allocation factors used to allocate generation invested capital in the last base-rate proceeding will be used.

(f) Customer classification. For the purposes of establishing GCRR rates, customers will be classified according to the rate classes established in the electric utility's most recently completed base-rate proceeding.

(g) GCRR application. An electric utility may file an application for a GCRR before the electric utility places a power generation facility in service. An electric utility may include only one discrete power generation facility in an application for a GCRR. An electric utility may file an application to amend its GCRR to include another discrete power generation facility even if it has another application to amend its GCRR pending before the commission. The proceeding for

a GCRR application must conform to the requirements of this subsection.

(1) Scope of proceeding. The issues of whether generation invested capital included in an application for a GCRR complies with PURA and is prudent, reasonable, and necessary will not be addressed in a GCRR proceeding.

(2) Notice. The applicant must notify all parties in the applicant's last base-rate proceeding that an application was filed. The notice must be provided by first-class mail and mailed the same day the application is filed. The notice must specify the docket number assigned to the application and a copy of the application must be included with the notice.

(3) Parties and intervention. Requests to intervene must be filed no later than 10 calendar days after the date the application is filed. Objections to a request to intervene must be filed no later than five working days after the request is filed. All requests to intervene must be ruled upon no later than 21 calendar days after the application is filed.

(4) GCRR forms. If the commission adopts a form for GCRR applications, an electric utility must file its application using that form.

(5) Sufficiency of application. A motion to find the application materially deficient must be filed no later than 10 calendar days after the application is filed. A motion to find an amended application deficient, when the amendment is in response to an order issued under this paragraph, must be filed no later than five working days after the amended application is filed. The motion must specify the nature of any alleged deficiency and, if the commission has adopted a form for a GCRR application, the particular requirements of the form for which the application is alleged to be out of compliance. The applicant's response to such motion must be filed no later than five working days after the motion is filed. Within five working days of the applicant's response, the presiding officer must issue an order finding the application sufficient or deficient, and if deficient must specify the deficiencies and the time within which the applicant must amend its application to cure the deficiencies. If the presiding officer has not issued a written order within 35 calendar days of the filing of the application, or 25 calendar days of the filing of an amended application, concluding that material deficiencies exist in the application, the application is sufficient.

(6) Action on application. If the requirements of §22.35 of this title are met, the presiding officer must issue a notice of approval within 60 calendar days of the date an application is found to be sufficient by order or rule. The presiding officer may extend this time if a party demonstrates that additional time is needed to review the application or the presiding officer needs additional time to prepare the notice of approval. Further, if the presiding officer determines that the application should be considered by the commission, the presiding officer must issue a proposed order for consideration by the commission at the next available open meeting.

(h) Update of generation invested capital. Within 60 calendar days after a power generation facility included in a GCRR begins providing service to the electric utility's customers, the electric utility may file an application to update the GCRR to reflect the electric utility's actual capital investment in the power generation facility. An application to update the GCRR under this subsection is subject to the requirements in subsection (g) of this section. Any update to the GCRR made under this subsection must include carrying costs on the amount of investment in excess of the investment initially approved for recovery under subsection (g) of this section. Carrying costs will accrue monthly from the date the power generation facility began providing service to the electric utility's customers through the date the adjustment is approved and must be calculated using the rate of return approved by the commission in the electric utility's most recent base-rate proceeding.

(i) Reconciliation.

(1) Amounts recovered through a GCRR approved under this section are subject to reconciliation in the first base-rate proceeding for the electric utility that is filed after the effective date of the GCRR. The reconciliation will true up the total amount actually recovered through the GCRR approved under this section with the total revenue requirement that the approved GCRR was designed to recover. As part of the reconciliation, the commission will determine if the amounts recovered through the GCRR are reasonable and necessary.

(2) Any amounts recovered through the GCRR that are found to have been unreasonable, unnecessary, or imprudent, plus the corresponding return and taxes, must be refunded with carrying costs. Carrying costs will be determined as follows:

(A) For the time period beginning with the date on which over-recovery is determined to have begun to the effective date of the electric utility's base rates set in the base-rate proceeding in which the GCRR is reconciled, carrying costs will accrue monthly and will be calculated using an effective monthly interest rate based on the same rate of return that was applied to the investments included in the GCRR.

(B) For the time period beginning with the effective date of the electric utility's rates set in the base-rate proceeding in which the GCRR is reconciled, carrying costs will accrue monthly and will be calculated using an effective monthly interest rate based on the electric utility's rate of return authorized in that base-rate proceeding.

(j) Threshold to initiate base-rate proceeding. If a GCRR approved under this section includes cumulative incremental recovery for a power generation facility or power generation facilities where the amount of generation invested capital is greater than $200 million on a Texas jurisdictional basis, the electric utility must initiate a base-rate proceeding at the commission not later than 18 months after the date the GCRR takes effect.

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 July 8, 2020.

TRD-202002810
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Effective date: July 28, 2020
Proposal publication date: March 6, 2020
For further information, please call: (512) 936-7244

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 62. CODE ENFORCEMENT OFFICERS

16 TAC §§62.10, 62.23, 62.24, 62.70

The Texas Department of Licensing and Regulation (Department) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 62, §§62.10, 62.23, 62.24,

and 62.70, regarding the Code Enforcement Officers program, without changes to the proposed text as published in the February 14, 2020, issue of the *Texas Register* (45 TexReg 983). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 62 implement Texas Occupations Code, Chapter 1952, Code Enforcement Officers.

The adopted rules are necessary to implement House Bill (HB) 2584, 86th Legislature, Regular Session (2019). Section 1 of HB 2584 states that the provisions of Texas Penal Code §46.02 and §46.03, prohibiting the possession or carrying of a club, do not apply to a registered code enforcement officer who possesses or carries an instrument used specifically for deterring an animal bite while the officer is performing official duties, or while traveling to or from a place of duty. Section 2 of HB 2584 requires the initial training course required for registration as a code enforcement officer to include "education regarding the principles and procedures to be followed when possessing or carrying an instrument used specifically for deterring an animal bite."

Section 3 of HB 2584 requires the Texas Commission of Licensing and Regulation (Commission) to "establish an approved curriculum that includes material regarding changes in applicable law and the principles and procedures to be followed when possessing or carrying an instrument used specifically for deterring an animal bite." Section 4 of the bill requires a registered code enforcement officer to complete certain educational requirements before the officer may carry or possess an instrument used specifically for deterring an animal bite.

The adopted rules implement HB 2584 first by defining the term "bite stick," which is the commonly used term for instruments designed specifically for deterring an animal bite. The adopted rules authorize "principles and procedures to be followed when possessing or carrying a bite stick" as an approved topic for continuing education and require the initial training course outlined in §62.23 to contain instruction in this topic. Further, the adopted rules require a registered code enforcement officer to have completed certain educational requirements before carrying or possessing a bite stick. Lastly, the adopted rules prohibit a code enforcement officer from misusing a bite stick while performing as a registrant.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §62.10, Definitions, to include the definition of "bite stick" as "[a] baton, club, or rod designed specifically to deter an animal bite." "Bite stick" is the commonly used term for what HB 2584 refers to as "an instrument used specifically for deterring an animal bite." The remaining definitions are also renumbered.

The adopted rules amend §62.23, Registration Requirements--Education, to require, pursuant to Section 2 of HB 2584, that the initial training course for registration include training on the principles and procedures to be followed when possessing or carrying a bite stick.

The adopted rules amend §62.24, Continuing Education, to add, pursuant to Section 3 of HB 2584, "principles and procedures to be followed when possessing or carrying a bite stick" as an acceptable topic for continuing education.

The adopted rules amend §62.70, Standards of Conduct for Engaging in Code Enforcement, to state in subsection (b) that a "registrant shall not misuse a bite stick while performing as a registrant." Because bite sticks could cause harm to a person or animal if misused, it is important that registrants use reasonable care when using these instruments.

The adopted rules add new §62.70(d), pursuant to Section 4 of HB 2584. New §62.70(d) provides that a registrant "shall not possess or carry a bite stick in a place prohibited by Texas Penal Code Section 46.03(a)" unless the person has completed one of three types of training. A registrant desiring to carry or possess a bite stick must complete one of the following types of training: (1) an initial training course that meets the requirements of §62.23 and includes instruction on the principles and procedures to be followed when possessing or carrying a bite stick; (2) an approved continuing education course on the principles and procedures to be followed when possessing or carrying a bite stick; or (3) the Animal Control Officer basic training course provided by the Texas Department of State Health Services.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the February 14, 2020, issue of the *Texas Register* (45 TexReg 983). The deadline for public comments was March 16, 2020. The Department did not receive any comments from interested parties on the proposed rules during the 30-day public comment period.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Code Enforcement Advisory Committee met on November 8, 2019, to discuss the proposed rules and recommended publishing the proposed rules without changes in the *Texas Register.* The Committee did not hold a second meeting due to circumstances caused by the COVID-19 situation.

At its meeting on June 30, 2020, the Commission adopted the proposed rules as published in the *Texas Register.*

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 1952, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 1952. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002828
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 14, 2020
For further information, please call: (512) 475-4879

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CHAPTER 68. ELIMINATION OF ARCHITECTURAL BARRIERS

16 TAC §68.100, §68.104

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 68, §68.100, regarding the Elimination of Architectural Barriers Program, without changes to the proposed text as published in the January 24, 2020, issue of the *Texas Register* (45 TexReg 499). This rule will not be republished.

The Commission also adopts a new rule at 16 TAC Chapter 68, §68.104, regarding the Elimination of Architectural Barriers Program, with changes to the proposed text as published in the January 24, 2020, issue of the *Texas Register* (45 TexReg 499). This rule will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rules update a reference from the "Commission" to the "Department." The adopted rules also implement necessary changes required by House Bill (HB) 3163, 86th Legislature, Regular Session (2019).

SECTION-BY-SECTION SUMMARY

The adopted rules amend §68.100, by updating the reference from the "Commission" to the "Department."

Adopted new §68.104 implements statutory changes required by HB 3163, which set requirements for paved accessible parking spaces. This includes painting the International Symbol of Accessibility on paved accessible parking spaces along with the words "NO PARKING" adjacent to accessible parking spaces. The rules also included a requirement for signage to identify the potential consequences for parking illegally in an accessible parking space. As result of the public comments, changes were made to various subsections of the rule. Subsection (a)(1) was changed to reference the "International Symbol of Accessibility," instead of "international symbol of access." Subsection (a)(2)(B) was changed to reference "twelve inches" instead of "one foot." Subsection (a)(3)(D) was changed to reference "48 inches" instead of "4 feet," and "6 feet" was changed to "80 inches" for consistency with the Texas Accessibility Standards. Subsection (b) incurred multiple changes for clarification of the rule.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the January 24, 2020, issue of the *Texas Register* (45 TexReg 499). The deadline for public comments was February 24, 2020. The Department received comments from 37 interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: The Department received a specific complaint from an individual regarding accessibility unrelated to the proposal.

Department Response: The complaint is beyond the scope of the proposal and was forwarded to the appropriate division within the Department for response. No change was made to the proposal in response to this comment.

Comment: The Department received a complaint from an individual regarding accessible parking which is unrelated to the proposal.

Department Response: The comment is beyond the scope of the rules and the Department did not make any changes to the proposal in response to this comment.

Comment: The Department received three comments from individuals. The individuals made general recommendations regarding accessibility and enforcement of parking violations.

Department Response: The comments are beyond the scope of the proposed rules. The Department did not make any changes to the proposal in response to these comments.

Comment: The Department received a comment from an individual suggesting changes to parking space identification signs.

Department Response: The comment is beyond the scope of the proposed rules. The Department did not make any changes to the proposal in response to this comment.

Comment: The Department received a comment from the Traffic Operations Support Group (TOSG). TOSG submitted a request for approval unrelated to the proposal.

Department Response: The Department notes that TOSG's submission is issue-specific and will not be addressed in this preamble. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Department received five comments from individuals in general support of the proposed rules.

Department Response: The Department thanks the individuals for submitting their support for the proposed rules. The Department notes that the commenters did not submit any suggested edits or propose any alternative language that directly related to the proposal and no changes were made in response to these comments.

Comment: The Department received a comment from an individual in support of the requirement to mark access aisles with the words, "NO PARKING." The individual also made additional comments relating to the size of parking spots, the need for special placards for vans, as well as additional accessible parking spots.

Department Response: The Department thanks the individual for expressing support for the proposed rules. The Department notes that it does not have regulatory authority over parking placards; the commenter may contact the Texas Department of Motor Vehicles, the agency that regulates disabled parking, placards, and plates. Regarding the individual's suggestions related to the size and number of parking spots, the Department notes that those comments are beyond the scope of this proposal and require amendments to the Texas Accessibility Standards (TAS). The Department did not make any changes to the proposed rules in response to these comments.

Comment: The Department received a comment from an individual in general support of the proposal. The individual also commented that cities should be required to repair sidewalks and bridges to permit the safe flow of wheelchair traffic.

Department Response: The Department thanks the commenter for expressing general support about the proposal. The individual's comments regarding required repairs are beyond the scope of this proposal; no changes to the proposed rules were made in response to these comments.

Comment: One individual submitted a comment seeking guidance regarding the placement of the words "NO PARKING" within the access aisles.

Department Response: The proposal provides the building owner with discretion to determine the best manner to implement and ensure compliance with the rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Texas Apartment Association submitted a comment seeking clarification regarding the definition of the word "paved." The Texas Apartment Association also sought information regarding potential consequences if painted letters became eroded due to normal wear and tear.

Department Response: The proposal provides the building owner with discretion to determine the best manner to implement and ensure compliance with the rules. Compliance with §68.104 will be determined at the time of construction. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One individual submitted a question regarding the effective date of the rules.

Department Response: The adopted rules will be effective 20 days after the they are submitted to the *Texas Register* by the Department. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One individual submitted a comment of general support for the proposal. The commenter stated that the proposed rules should apply to all accessible parking spaces since the cost of compliance would be minimal. The commenter also stated that there should be a deadline for complying with the proposed rules.

Department Response: The Department appreciates the comment in support of the proposed rules. Per §469.003 of the Occupations Code, the proposed rules are not retroactive and will only apply to buildings that are registered to be newly constructed, renovated, or modified on or after the effective date of the adopted rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Department received a comment of general support from an individual. The individual stated that the proposed rules should apply to all accessible parking spaces.

Department Response: The Department appreciates the comment in support of the changes. The Department does not have the statutory authority under HB 3163 to make the rules retroactive, and thereby apply to all accessible parking spaces in existence. Per §469.003 of the Occupations Code, the proposed rules are not retroactive and will only apply to buildings that are registered to be newly constructed, renovated, or modified on or after the effective date of the adopted rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One individual submitted a question asking whether the proposed rules would be retroactive and apply to existing facilities.

Department Response: The proposed rules will not apply retroactively. Per §469.003 of the Occupations Code, the proposed rules will only apply to buildings that are registered to be newly constructed, renovated, or modified after on or the effective date of the adopted rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One individual commented that they would like the rules to apply to accessible parking spaces that are repainted, in addition to newly built spaces.

Department Response: Per §469.003 of the Occupations Code, the proposed rules only apply to buildings that are registered to be newly constructed, renovated, or modified on or after the effective date of the adopted rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One individual submitted a comment stating that the rules should not be retroactive, and all current accessible parking spaces should be grandfathered to ensure buildings are compliant to avoid enforcement issues.

Department Response: The Department disagrees with this comment; the rules are not retroactive. Per §469.003 of the Occupations Code, the proposed rules are not retroactive and will only apply to buildings that are registered to be newly constructed, renovated, or modified on or after the effective date of the adopted rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Department received three comments from Fountainhead Management, Inc., the Texas Hospital Association, and an individual requesting the addition of a section to §68.104 to clarify that the adopted rule will only apply to paved accessible parking spaces in the scope of new construction, renovation or modification projects.

Department Response: The Department disagrees with the need for a statement of clarification to §68.104 in order to ensure that existing paved accessible parking spaces which are not part of a new construction, renovation, or modification project are excluded from the requirements of the adopted rule. Per §469.003 of the Occupations Code, the proposed rules will only apply to buildings that are registered to be newly constructed, renovated, or modified on or after the effective date of the rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Department received a comment from the Accessibility Professionals Association (APA) with multiple suggestions regarding proposed §68.104.

-The APA suggested that the reference to the "international symbol of access," in proposed §68.104(a)(1) be changed to "International Symbol of Accessibility," to align with the phrase used in TAS.

-The APA suggested the language in §68.104(a)(2)(B) which says, "one foot," be changed to "12 inches," for consistency with other references to measure in that section.

-The APA stated that proposed §68.104(a)(1) does not provide guidance to define the meaning of the word "conspicuously" and suggested that the word be defined using language found in the California Building Code.

-The APA suggested an exception to the requirement to paint the words "NO PARKING" on access aisles in proposed §68.104(a)(2), by permitting the use of a "pipe bollard, concrete filled, and painted yellow." However, the APA also pointed out that the use of a pipe bollard could result in obstruction of the access aisles if not properly placed.

Department Response: The Department will respond to each of the APA's comments separately.

-The Department agrees with the APA's suggestion to change the reference in proposed §68.104(a)(1) from "international symbol of access" to "International Symbol of Accessibility." The Department has made that change to ensure consistency with the TAS.

-The Department agrees with the APA's comment regarding §68.104(a)(2)(B). Subsections §68.104(a)(2)(B) and (a)(3)(D) have been changed in response to the APA's suggestion to ensure consistency with the TAS.

-The Department disagrees with the APA's comment regarding the need to define the word "conspicuously." The proposal provides the building owner with discretion to determine the best manner to implement and ensure compliance with the rules. The Department did not make any changes to the proposed rules in response to this comment.

-The Department disagrees with the APA's comment regarding the use of pipe bollards in lieu of painting access aisles with the words "NO PARKING." The proposed rules implement HB 3163, which requires painting the words on any adjacent access aisle. There is no discretion to permit an alternative option; additionally, as the APA points out, the use of the pipe bollard could create an issue with access by obstructing access ways. The Department did not make any changes to the proposed rules in response to these comments.

Comment: The Department received a comment from an individual in general support of the proposed rules. The individual submitted multiple questions and suggestions regarding proposed §68.104.

-The individual sought clarification regarding the placement of the "international symbol of access" within the parking stall.

-The individual inquired whether the required letter size for the words "NO PARKING" could be accommodated without stacking the words.

-The individual suggested that the words "NO PARKING" should be painted in contrast with the pavement.

-The individual requested that cities be required to use the van stall layout.

Department Response: The Department appreciates the comment in support of the changes. The Department will respond to each of the individual's comments separately.

- The Department disagrees with the individual's comment regarding the need to clarify the placement of the International Symbol of Accessibility. The proposal provides the building owner with discretion to determine the best manner to implement and ensure compliance with the rules. The Department did not make any changes to the proposed rules in response to this comment.

-In response to the individual's question regarding accommodation of the words "NO PARKING" on required signage, the Department notes that the proposal provides the building owner with discretion to determine the best manner to implement and ensure compliance with the rules. The Department did not make any changes to the proposed rules in response to this comment.

- The Department disagrees with the suggestion to require that the words "NO PARKING" be painted in contrast with the pavement. The proposal provides the building owner with discretion to determine the best manner to implement and ensure compliance with the rules. The Department did not make any changes to the proposed rules in response to this comment.

-The individual's request to require the use of van stalls is beyond the scope of the proposed rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One individual submitted a comment suggesting the parking space identification sign which includes the consequences for parking illegally should also be posted in adjacent aisles.

Department Response: The Department disagrees. House Bill 3163 only requires the consequences of parking illegally be included on a parking space identification sign. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One individual submitted a comment that additional signs identifying consequences of parking illegally should be required on each side of accessible parking spaces. The individual also submitted general comments regarding the elimination of architectural barriers, including requiring parking spaces to be four feet above the 500-year flood plain; requiring new senior and disabled PHA's to have disability ramps; and requiring that buildings be constructed of concrete and steel.

Department Response: The Department disagrees. House Bill 3163 requires the consequences of parking illegally be included on a parking space identification sign. While the Department recognizes the need to eliminate architectural barriers, the individual's additional comments are beyond the scope of the proposed rules and the Department's statutory authority. The Department did not make any changes to the proposed rules in response to these comments.

Comment: One individual stated that the "NO PARKING" sign is not a good idea and suggested adding a "wheelchair only" sign for the first parking space to accommodate those individuals, as well as additional room for that parking.

Department response: The Department disagrees with this comment. The proposed rules are necessary to implement HB 3163. The individual's suggestions are beyond the scope of the proposed rules. The Department did not make any changes to the proposed rules in response to these comments.

Comment: One individual commented that the signage required by §68.104 should be on a "visible pole or stand" so that it can be seen from afar. The individual also asked a question regarding parking spaces.

Department Response: The Department disagrees. House Bill 3163 requires the consequences of parking illegally be included on a parking space identification sign. The individual's question is issue-specific and beyond the scope of the proposed rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Department received comments from an individual regarding §68.104.

-The individual proposed modifying §68.104(b) to address potentially creating an exception for compliance with the entirety of section (a), not just (a)(3)(A).

-The individual also suggested that the sign required in §68.104(a)(3) should be installed so that bottom edge of the sign is no higher than 80 inches above ground level.

Department Response: The Department will address each of the individual's comments separately.

-The Department agrees with the individual's suggestion regarding §68.104(b) and has amended that subsection to address the inadvertent drafting error.

-The Department agrees with the individual's suggestion to increase the maximum height for the bottom of the sign required by §68.104(a)(3). In order to ensure consistency with the requirements set in TAS, the Department has changed to §68.104(a)(3)(D).

Comment: The Department received a comment from an individual regarding the height for the sign required in §68.104(a)(3). The individual stated the sign should be a minimum of 60" above the finished floor or ground level and no higher than 80" above finished floor or ground level.

Department Response: The Department disagrees; the TAS prescribes a minimum height of 60 inches above the finish floor or ground surface for parking space identification signs. To accommodate the addition of the sign required by §68.104(a)(3), which is necessary to implement HB 3163, the signage must be placed below the current parking space identification sign required by TAS 502.6. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One individual submitted a comment requesting that historical buildings be exempt from the proposed rules due to the negative economic impact imposed as a result of compliance.

Department Response: The Department disagrees; House Bill 3163 does not create an exemption from compliance. The Department has determined that the cost of compliance with the proposed rules will be minimal because building owners are currently required to comply with TAS requirements for parking spaces. Additionally, per §469.003 of the Occupations Code, the proposed rules are not retroactive and will only apply to buildings that are registered to be newly constructed, renovated, or modified after the effective date of the rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Department received a comment from an individual generally in opposition to new rules. The individual stated that any additional costs affecting a church's budget can be "a lot."

Department Response: The Department disagrees. Per §469.003 of the Occupations Code, the proposed rules are not retroactive and will only apply to buildings that are registered to be newly constructed, renovated, or modified on or after the effective date of the rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One individual submitted comments regarding the proposal. The individual did not object to the amendment in §68.100. Regarding §68.104, the individual stated that the rules create additional financial and compliance requirements for business owners and burden professionals practicing architecture and site development. The individual stated the only effective deterrent to illegal parking offenses is increased towing, not signage.

Department Response: The Department appreciates the individual's comment regarding §68.100. The Department disagrees with the individual's comments regarding §68.104. The Department has determined that the cost of compliance with the proposed rules will be minimal because building owners are currently required to comply with TAS requirements for accessible parking spaces. Additionally, per §469.003 of the Occupations Code, the proposed rules are not retroactive and will only apply to buildings that are registered to be newly constructed, renovated, or modified on or after the effective date of the rules. The Department did not make any changes to the proposed rules in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Elimination of Architectural Barriers Advisory Board met on June 15, 2020, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt proposed §68.100 as published in the *Texas Register* without changes; and adopt §68.104 as published in the *Texas Register* with changes to subsections (a)(1), (a)(2)(B), (a)(3)(D), and (b) in response to the public comments as explained in the Section-by-Section Summary. At its meeting on June 30, 2020, the Commission adopted the proposed rules as recommended by the Advisory Board.

STATUTORY AUTHORITY

The rules are adopted under Occupations Code, Chapters 51 and Government Code, Chapter 469, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Occupations Code, Chapters 51 and 1051, and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the adopted rules.

§68.104. Accessible Parking Spaces.

(a) A paved accessible parking space must include:

(1) the International Symbol of Accessibility painted conspicuously on the surface in a color that contrasts the pavement;

(2) the words "NO PARKING" painted on any access aisle adjacent to the parking space. The words must be painted:

(A) in all capital letters;

(B) with a letter height of at least twelve inches, and a stroke width of at least two inches; and

(C) centered within each access aisle adjacent to the parking space; and

(3) a sign identifying the consequences of parking illegally in a paved accessible parking space. The sign must:

(A) at a minimum state "Violators Subject to Fine and Towing" in a letter height of at least one inch;

(B) be mounted on a pole, post, wall or freestanding board;

(C) be no more than eight inches below a sign required by Texas Accessibility Standards, 502.6; and

(D) be installed so that the bottom edge of the sign is no lower than 48 inches and no higher than 80 inches above ground level.

(b) A parking space identification sign that complies with Texas Accessibility Standards, 502.6, that includes the requirements in subsection (a)(3)(A) satisfies subsection (a)(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.

Filed with the Office of the Secretary of State on July 10, 2020.

TRD-202002854
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: January 24, 2020
For further information, please call: (512) 463-3671

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CHAPTER 73. ELECTRICIANS

16 TAC §73.100

The Texas Department of Licensing and Regulation (Department) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 73, §73.100, regarding the Electricians program, with changes to the proposed text as published in the April 10, 2020, issue of the *Texas Register* (45 TexReg 2400). The adopted rule will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC, Chapter 73, implement Texas Occupations Code, Chapter 1305, Electricians.

The adopted rule is necessary to adopt the 2020 National Electrical Code (NEC), as required by statute. The Texas Electrical Safety and Licensing Act, §1305.101(a), requires the Commission to adopt, every three years, the revised NEC as the electrical code for the state. The current rule references the 2017 edition of the NEC. The 2020 edition of the NEC was approved by the National Fire Protection Association on August 25, 2019.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §73.100 by adopting the 2020 edition of the NEC. Changes were made to this rule to make the NEC effective on November 1, 2020, and to state that 2020 NEC was "approved" by the National Fire Protection Association, Inc., rather than "adopted" by the organization.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the April 10, 2020, issue of the *Texas Register* (45 TexReg 2400). The deadline for public comments was May 11, 2020. The Department received comments from 12 interested parties on the proposed rule during the 30-day public comment period. The public comments are summarized below.

Comment: Three commenters expressed approval of the proposed rule as published.

Department Response: The Department appreciates the comments. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter recommended changing the proposed rule to delay the effective date of the 2020 NEC until either the next calendar or fiscal year.

Department Response: The Department appreciates the comment. The Department delayed the effective date of the NEC in response to this and similar comments.

Comment: One commenter recommended changing the proposed rule to delay the effective date of the 2020 NEC until December 15, 2020.

Department Response: The Department appreciates the comment. The Department delayed the effective date of the NEC in response to this and similar comments.

Comment: One commenter recommended a change to the proposed rule to state that the National Fire Protection Association "approved," rather than "adopted," the National Electrical Code. The commenter also recommended changing "National Electrical Code" to "NFPA 70 - 2020 National Electrical Code."

Department Response: The Department appreciates the comment. The Department changed the proposed rule to replace the word "adopted" with "approved."

Comment: One commenter recommended that the Department stay one code cycle behind in adopting the NEC.

Department Response: The Department is required by statute to adopt the current version of the NEC. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter requested changes to the Department's fiscal impact analysis.

Department Response: The Department appreciates the comment. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter asked a question about examination requirements during the COVID-19 crisis.

Department Response: The question was forwarded to Department staff. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter requested assistance with scheduling an examination.

Department Response: The request was forwarded to Department staff. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter recommended statutory changes unrelated to the proposed rule.

Department Response: This comment was not relevant to the present rulemaking. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One commenter accused the Department of accepting bribes in connection with its adoption of the 2020 NEC.

Department Response: The Department disagrees with this comment. The Department did not make any changes to the proposed rule in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Electrical Safety and Licensing Advisory Board met on June 11, 2020, to discuss the proposed rule and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rule with changes. Most notably, the Advisory Board recommended an effective date of December 15,

2020, rather than the published effective date of September 1, 2020. At its meeting on June 30, 2020, the Commission agreed that an effective date of November 1, 2020, would be a suitable compromise between the published effective date and the effective date recommended by the Advisory Board. The Commission agreed that delaying the effective date until November 1, 2020, would protect against supply chain disruptions caused by the COVID-19 crisis while ensuring the greater health and safety protections of the 2020 NEC were in place reasonably soon.

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 1305, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

More specifically, Section 1305.101(a)(2) requires the Commission to adopt, every three years, the revised National Electrical Code as the electrical code for the state.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51 and 1305. No other statutes, articles, or codes are affected by the adopted rule.

§73.100. Technical Requirements.

Effective November 1, 2020, the department adopts the 2020 National Electrical Code as approved by the National Fire Protection Association, Inc. on August 25, 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.

Filed with the Office of the Secretary of State on July 10, 2020.

TRD-202002853
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: October 1, 2020
Proposal publication date: April 10, 2020
For further information, please call: (512) 475-4879

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CHAPTER 110. ATHLETIC TRAINERS

16 TAC §§110.21, 110.23, 110.30, 110.70

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 110, §§110.21, 110.23, 110.30, and 110.70, regarding the Athletic Trainers program, without changes to the proposed text as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1105). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 110 implement Texas Occupations Code, Chapter 451, Athletic Trainers.

The adopted rules consist of recommendations made by a workgroup of the Advisory Board of Athletic Trainers and recommendations from staff. The advisory board workgroup focused on improving the pass rate on the Texas written examination, and it recommended listing the domains that may be tested on the written exam in order to provide advance notice and guidance to students and education providers. The workgroup also recommended updating the required coursework and apprenticeship topics for applicants qualifying under §451.153(a)(1) of the Texas Occupations Code, as the adopted new educational requirements are essential knowledge areas for athletic trainers and are already being taught in athletic training programs across the state.

The remainder of the adopted rule changes were recommended by staff. These include clarification and clean-up changes, changing the term of a temporary license, removing the prohibition on athletic trainers using testimonials in advertising, and allowing the Department to accept Board of Certification (BOC) test results from applicants who successfully completed the exam at any time, not just on or after January 1, 2004. The adopted new end date of a temporary license closes a loophole that was inadvertently created when the rules were amended to require an applicant to pass the written exam before the applicant is eligible to take the practical exam. The adopted rules ensure that a temporary license is not valid indefinitely until the license holder passes the written exam. Instead, the temporary license is valid only until the results are released from the first practical exam that takes place at least 30 days after the temporary license was issued. The 30 days are a minimum window of time in which a temporary license holder could pass the written exam and register for the practical exam. This change also aligns with the intent of the existing rule, which is for the temporary license to expire when the results are released for the first practical examination for which the license holder could register. The adopted amendment removing the prohibition on testimonials in advertising is based on guidance from Office of the Attorney General opinions. Finally, the adopted amendment to accept BOC exam results from before 2004 would allow applicants who have extensive athletic training experience to gain Texas licensure without having to take the Texas exam. In one instance, the January 1, 2004 cut-off date presented a delay in licensure for an applicant who had been BOC certified for 17 years, had two graduate degrees, and had worked as athletic training faculty at two universities. The adopted amendment would save applicants such as this the time and expense of taking another examination, thereby eliminating an unnecessary burden and impediment to licensure.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §110.21 by adding human physiology as a required course area for licensure under Texas Occupations Code §451.153(a)(1), clarifying that an affiliated apprenticeship setting may be any setting where athletic training takes place, and adding administrative management and assessment of injuries as required apprenticeship topics. The adopted rules also remove from subsection (c)(3) the description of an affiliated setting as being in a collegiate, secondary school, or professional setting as that description includes every setting where athletic training might take place.

The adopted rules amend §110.23 by adding a non-exclusive list of the domains that may be tested on the Texas written examination. The adopted rules also remove the January 1, 2004 date by which an applicant must have passed the BOC examination, in order for the BOC exam results to be accepted in lieu of passing the Texas examination.

The adopted rules amend §110.30 by changing the term of a temporary license and making clean-up changes to better describe the process for issuing temporary licenses. The provision

for voiding a temporary license is not necessary because the license term does not extend past a point at which it would need to be voided.

The adopted rules amend §110.70 by removing a prohibition on athletic trainers including testimonials in their advertising and renumbering the section accordingly.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1105). The deadline for public comments was March 23, 2020. The Department received comments from 3 interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment--Billy Ray Laxton of Sul Ross State University did not an express an opinion on the proposed rules but suggested that §110.21 be re-worded to emphasize that the purpose of an apprenticeship is to provide clinical training experience for students. The commenter also inquired whether a spring semester apprenticeship could include pre-semester clinical opportunities.

Department Response--While the comment is beyond the scope of the proposed rules, the Department takes note of the comment for future rulemakings. The Department did not make any changes to the proposed rules in response to this comment.

Comment--Mike Carroll agreed with the proposed amendment to 16 Texas Administrative Code §110.23 to allow persons who passed the Board of Certification examination prior to 2004 to become licensed in Texas without having to sit for the Texas exam. Mr. Carroll also expressed that he is in favor of eliminating the apprenticeship route to licensure, as well as any route to licensure that does not require passing the BOC exam.

Department Response--The Department agrees with the portion of the comment that relates to the proposed changes to 16 Texas Administrative Code §110.23. The rest of the comment is beyond the scope of the proposed rules, and the Department notes that the apprenticeship route and other routes to licensure not requiring the BOC exam are permitted by statute. The Department did not make any changes to the proposed rules in response to this comment.

Comment--Richard M. Neider of the Hanger Clinic opposed the proposed rules, stating that athletic trainers and other licensees will not be seeing "this activity" in their practice. The commenter also stated that the proposed rules impose an unnecessary requirement and that the commenter is interested in legislators' reasons for the requirement.

Department Response--The Department disagrees and believes that this comment was intended for a different set of proposed rules, under a different regulatory program. The proposed rules do not implement any legislative requirements. The Department did not make any changes to the proposed rules in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Advisory Board of Athletic Trainers met on June 22, 2020, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register.* At its meeting on June 30, 2020, the Commission adopted the proposed rules as published in the *Texas Register.*

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51 and Chapter 451, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 451. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002830
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Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-4879

CHAPTER 111. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 111, Subchapter B, §111.13; Subchapter C, §111.20 and §111.23; Subchapter D, §111.35 and §111.37; Subchapter E, §§111.41, 111.42, 111.45, and 111.47; Subchapter F, §§111.52, 111.55, and 111.57; Subchapter H, §111.75 and §111.77; Subchapter I, §§111.81, 111.85, and 111.87; Subchapter J, §§111.92, 111.95, and 111.97; Subchapter L, §111.115 and §111.117; Subchapter N, §§111.130 - 111.132; Subchapter P, §§111.150, 111.151, 111.154, and 111.155; Subchapter Q, §111.160; Subchapter R, §111.171; Subchapter T, §111.192; Subchapter U, §111.201; and Subchapter V, §111.212; new rules at Subchapter M, §§111.120 - 111.125; and Subchapter R, §§111.172 - 111.176; and repeal of existing rules at Subchapter S, §§111.180 - 111.183; and Subchapter U, §111.200, regarding the Speech-Language Pathologists and Audiologists Program, without changes to the proposed text as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1109). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 111 implement Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists, and other applicable statutes. The adopted rules are necessary to implement bills from the 86th Legislature, Regular Session (2019) and from the 79th Legislature, Regular Session (2005); implement recommended changes from the Licensing Workgroup; and make terminology and other clean-up changes.

Bill Implementation Changes

The adopted rules are necessary to implement House Bill (HB) 1899, HB 2059, and HB 2847 (Article 7, §§7.001, 7.003, 7.004, and 7.008; and Article 10), 86th Legislature, Regular Session (2019).

HB 1899 requires automatic license denial or revocation for a person who is convicted of or placed on deferred adjudication community supervision for certain crimes or who is required to register as a sex offender. The new statutory provisions under Texas Occupations Code, Chapter 108, Subchapter B, apply to certain health care professionals, including speech-language pathologists, audiologists, interns, and assistants. The adopted rules add provisions providing notice of these new requirements.

HB 2059 requires certain health care practitioners to complete a human trafficking prevention training course approved by the Health and Human Services Commission as a condition for license renewal. Speech-language pathologists, audiologists, interns, and assistants are affected by this bill. The adopted rules implement HB 2059 and the new statutory provisions under Texas Occupations Code, Chapter 116 by requiring licensees under the Speech-Language Pathologists and Audiologists program to take the training course for each license renewal on or after September 1, 2020.

HB 2847 is an omnibus bill that affects multiple programs. Article 7 of the bill applies to multiple programs, including the Speech-Language Pathologists and Audiologists program. Article 7, §7.001 amended Texas Occupations Code, Chapter 51, the Texas Commission of Licensing and Regulation (Commission) and Department's enabling statute, to add new §51.203(b). This new section states that notwithstanding any other law, for each program regulated by the Department, the Commission by rule may establish the length of a license term, not to exceed two years. The adopted rules add references to new Texas Occupations Code §51.203(b) as the authority to have one-year licenses for interns. Notwithstanding Texas Occupations Code §401.351, which requires licenses under Chapter 401 to be two years, the license term for interns will remain at one year pursuant to new §51.203(b). The adopted rules also implement Article 7, §§7.003, 7.004, and 7.008 by providing notice to licensees regarding the new complaint-related provisions.

HB 2847, Article 10 applies to audiologists and interns in audiology who fit and dispense hearing instruments. Article 10 repealed statutory language, which required an audiologist or an intern in audiology, who fits and dispenses hearing instruments, to register with the Department the person's intention to fit and dispense hearing instruments. Article 10 also amended the existing contract requirements to require inclusion of the Department's website address in written contracts. The adopted rules implement these changes.

In addition, the adopted rules are necessary to implement HB 2680, Section 1, 79th Legislature, Regular Session (2005). This section of the bill created Texas Occupations Code, Chapter 112, which reduces the license requirements for certain retired health care practitioners whose only practice is performing voluntary charity care. The adopted rules create and implement retired voluntary charity care licenses and specify the requirements for applying for and holding this type of license. As required by the statute, the adopted rules define voluntary charity care and provide for reduced fees and continuing education requirements. The adopted rules apply to speech-language pathologists, assistants in speech-language pathology, audiologists, and assistants in audiology. The rules do not apply to interns in speech-language pathology or interns in audiology.

Licensing Workgroup Changes

The adopted rules are necessary to implement the changes recommended by the Speech-Language Pathologists and Audiologists Advisory Board's Licensing Workgroup. The adopted rules: (1) remove the prohibition on listing the American Speech-Language-Hearing Association (ASHA) Clinical Fellow (CF) credential in the intern's title under §111.42; (2) make a clean-up change to §111.75 to reflect the correct degree and area of study for an audiology license and to align with the current requirements under §111.70; (3) update the consumer information notice and the license posting requirements under §111.151; and (4) update the language regarding the licensee's "internship year" counting toward the two years of experience necessary to supervise under §111.154.

Terminology and Other Clean-up Changes

The adopted rules are necessary to make terminology and other clean-up changes to the rules. These changes include: replacing existing language with gender neutral language; updating references to the jurisprudence examination; updating cross-references to statutes and rules; inserting the standardized criminal history background check language and updating the provision regarding fingerprints; and consolidating the complaint and enforcement provisions into one subchapter.

SECTION-BY-SECTION SUMMARY

The adopted rules amend Subchapter B. Speech-Language Pathologists and Audiologists Advisory Board.

The adopted rules amend §111.13, Officers. The adopted rules update the terminology in subsection (b) to use gender neutral language. (Terminology and Other Clean-up Changes)

The adopted rules amend Subchapter C. Examinations.

The adopted rules amend §111.20, License Examination--General Requirements. The adopted rules amend this section to update the reference to the jurisprudence examination. (Terminology and Clean-up Changes)

The adopted rules amend §111.23, License Examination--Jurisprudence Examination. The adopted rules amend this section to update the references to the jurisprudence examination. (Terminology and Clean-up Changes)

The adopted rules amend Subchapter D. Requirements for Speech-Language Pathology License.

The adopted rules amend §111.35, Speech-Language Pathology License--Application and Eligibility Requirements. The adopted rules amend subsection (b) to update the reference to the jurisprudence examination. The adopted rules also amend subsection (c) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The adopted rules amend §111.37, Speech-Language Pathology License--License Terms; Renewals. The adopted rules amend subsection (d) to insert the standardized criminal history background check language. The adopted rules also update the provision on whether updated fingerprints will be required at renewal. (Terminology and Other Clean-up Changes) The adopted rules also add new subsection (e) to implement HB 2059 regarding the required human trafficking prevention training. (Bill Implementation Changes)

The adopted rules amend Subchapter E. Requirements for Intern in Speech-Language Pathology License.

The adopted rules amend §111.41, Intern in Speech-Language Pathology License--Internship and Supervision Requirements. The adopted rules amend the terminology in subsection (g) to use gender-neutral language. (Terminology and Other Clean-up Changes)

The adopted rules amend §111.42, Intern in Speech-Language Pathology License--Practice and Duties of Interns. The adopted rules restructure the current provisions and remove the prohibition on listing the American Speech-Language-Hearing Association (ASHA) Clinical Fellow (CF) credential in the intern's title. This change allows an individual to list the credential, in addition to the intern's license title. (Licensing Workgroup Changes)

The adopted rules amend §111.45, Intern in Speech-Language Pathology License--Application and Eligibility Requirements. The adopted rules amend subsection (b) to update the reference to the jurisprudence examination. The adopted rules also amend subsection (c) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The adopted rules amend §111.47, Intern in Speech-Language Pathology License--License Terms; Renewals. The adopted rules amend subsection (a) to add a reference to new Texas Occupations Code §51.203(b) as the authority to have one-year licenses for interns. The adopted rules also add new subsection (e) to implement HB 2059 regarding the required human trafficking prevention training. (Bill Implementation Changes)

The adopted rules under §111.47 also amend subsection (d) to insert the standardized criminal history background check language. The adopted rules also update the provision on whether updated fingerprints will be required at renewal. (Terminology and Other Clean-up Changes)

The adopted rules amend Subchapter F. Requirements for Assistant in Speech-Language Pathology License.

The adopted rules amend §111.52, Assistant in Speech-Language Pathology License--Practice and Duties of Assistants. The adopted rules amend the terminology in subsection (e) to use gender-neutral language. (Terminology and Other Clean-up Changes)

The adopted rules amend §111.55, Assistant in Speech-Language Pathology License--Application and Eligibility Requirements. The adopted rules amend subsection (b) to update the reference to the jurisprudence examination. The adopted rules also amend subsection (c) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The adopted rules amend §111.57, Assistant in Speech-Language Pathology License--License Terms; Renewals. The adopted rules amend subsection (d) to insert the standardized criminal history background check language. The adopted rules also update the provision on whether updated fingerprints will be required at renewal. (Terminology and Other Clean-up Changes) The adopted rules also add new subsection (e) to implement HB 2059 regarding the required human trafficking prevention training. (Bill Implementation Changes)

The adopted rules amend Subchapter H. Requirements for Audiology License.

The adopted rules amend §111.75, Audiology License--Application and Eligibility Requirements. The statute requires an applicant for an audiology license to hold a doctoral degree in audiology or a related hearing science. The adopted rules amend subsection (b)(4) to reflect the correct degree and area of study for an audiology license and to align with the current requirements under §111.70(c), Audiology License--Licensing Requirements. (Licensing Workgroup Changes)

The adopted rules under §111.75 also amend subsection (b) to update the reference to the jurisprudence examination. The adopted rules also amend subsection (c) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The adopted rules amend §111.77, Audiology License--License Terms; Renewals. The adopted rules amend subsection (d) to insert the standardized criminal history background check language. The adopted rules also update the provision on whether updated fingerprints will be required at renewal. (Terminology and Other Clean-up Changes) The adopted rules also add new subsection (e) to implement HB 2059 regarding the required human trafficking prevention training. (Bill Implementation Changes)

The adopted rules amend Subchapter I. Requirements for Intern in Audiology License.

The adopted rules amend §111.81, Intern in Audiology License--Internship and Supervision Requirements. The adopted rules amend the terminology in subsection (e) to use gender-neutral language. (Terminology and Other Clean-up Changes)

The adopted rules amend §111.85, Intern in Audiology License--Application and Eligibility Requirements. The adopted rules amend subsection (b) to update the reference to the jurisprudence examination. The adopted rules also amend subsection (c) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The adopted rules amend §111.87, Intern in Audiology License--License Terms; Renewals. The adopted rules amend subsection (a) to add a reference to new Texas Occupations Code §51.203(b) as the authority to have one-year licenses for interns. The adopted rules also add new subsection (e) to implement HB 2059 regarding the required human trafficking prevention training. (Bill Implementation Changes)

The adopted rules under §111.87 also amend subsection (d) to insert the standardized criminal history background check language. The adopted rules also update the provision on whether updated fingerprints will be required at renewal. (Terminology and Other Clean-up Changes)

The adopted rules amend Subchapter J. Requirements for Assistant in Audiology License.

The adopted rules amend §111.92, Assistant in Audiology License--Practice and Duties of Assistants. The adopted rules amend the terminology in subsections (d) and (f) to use gender-neutral language. (Terminology and Other Clean-up Changes)

The adopted rules amend §111.95, Assistant in Audiology License--Application and Eligibility Requirements. The adopted rules amend subsection (b) to update the reference to the jurisprudence examination. The adopted rules also amend subsection (c) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The adopted rules amend §111.97, Audiology Assistant License--License Terms; Renewals. The adopted rules amend subsection (d) to insert the standardized criminal history background check language. The adopted rules also update the provision

on whether updated fingerprints will be required at renewal. (Terminology and Other Clean-up Changes) The adopted rules also add new subsection (e) to implement HB 2059 regarding the required human trafficking prevention training. (Bill Implementation Changes)

The adopted rules amend Subchapter L. Requirements for Dual License in Speech-Language Pathology and Audiology.

The adopted rules amend §111.115, Dual License in Speech-Language Pathology and Audiology--Application and Eligibility Requirements. The adopted rules amend subsection (b) to update the reference to the jurisprudence examination. The adopted rules also amend subsection (c) to insert the standardized criminal history background check language. (Terminology and Other Clean-up Changes)

The adopted rules amend §111.117, Dual License in Speech-Language Pathology and Audiology--License Terms; Renewals. The adopted rules amend subsection (d) to insert the standardized criminal history background check language. The adopted rules also update the provision on whether updated fingerprints will be required at renewal. (Terminology and Other Clean-up Changes) The adopted rules also add new subsection (e) to implement HB 2059 regarding the required human trafficking prevention training. (Bill Implementation Changes)

The adopted rules add new Subchapter M. Retired Voluntary Charity Care Status License.

The adopted rules under new Subchapter M create and implement the retired voluntary charity care license and specify the requirements for applying for and holding this type of license. As required by the statute, the adopted rules define voluntary charity care and provide for reduced fees and continuing education requirements for a retired health care practitioner whose only practice is voluntary charity care. (Bill Implementation Changes)

The adopted rules add new §111.120, Applicability of Subchapter. The adopted rules specify the license types under Chapter 401 that are eligible for retired voluntary charity care status. This subchapter does not apply to the intern licenses. The definition of "volunteer health care provider" under Civil Practice and Remedies Code §84.003, which was referenced in other sections of HB 2680, includes the active and retired versions of the four license types listed in §111.120. Section 84.003 does not include interns. (Bill Implementation Changes)

The adopted rules add new §111.121, Definitions. The adopted rules define "voluntary charity care" and "compensation." (Bill Implementation Changes)

The adopted rules add new §111.122, Eligibility and Initial Application. The adopted rules establish the eligibility and application requirements for obtaining a retired voluntary charity care status license. (Bill Implementation Changes)

The adopted rules add new §111.123, Practice and Disciplinary Actions. The adopted rules establish the practice restrictions for a person holding a retired voluntary charity care status license and specify that a person holding this license is subject to disciplinary action. (Bill Implementation Changes)

The adopted rules add new §111.124, License Term; Renewal. The adopted rules establish a two-year license term for the retired voluntary charity care status license and specify the license renewal requirements, which include reduced continuing education hours. (Bill Implementation Changes)

The adopted rules add new §111.125, Returning to Active Status. The adopted rules establish the requirements for a person who holds a retired voluntary charity care status license and who wants to return to active status. These requirements include completing any additional hours of continuing education to meet the active license renewal requirements and submitting the license renewal fee for the applicable active license. (Bill Implementation Changes)

The adopted rules amend Subchapter N. Continuing Professional Education.

The adopted rules amend §111.130, Continuing Professional Education--Requirements and Hours. The adopted rules amend subsection (e) to specify the reduced continuing education hours for the retired voluntary charity care status licenses. The required hours are half of the continuing education hours required for active licenses. (Bill Implementation Changes)

The adopted rules amend §111.131, Continuing Professional Education--Courses and Credits. The adopted rules amend subsection (d) to update the reference to the jurisprudence examination. (Terminology and Other Clean-up Changes)

The adopted rules amend §111.132, Continuing Professional Education--Records and Audits. The adopted rules update the terminology in subsection (a) to use gender-neutral language; change the references from "license holder" to "licensee" in subsection (d) for consistency purposes within the section; and make other clean-up changes to subsection (d). (Terminology and Other Clean-up Changes)

The adopted rules amend Subchapter P. Responsibilities of the Licensee and Code of Ethics.

The adopted rules amend §111.150, Changes of Name, Address, or Other Information. The adopted rules separate existing subsection (b) into two subsections. Subsection (b) addresses the requirements for submitting name changes. New subsection (c) addresses obtaining a duplicate license. (Terminology and Other Clean-up Changes)

The adopted rules amend §111.151, Consumer Information and Display of License. The adopted rules update the consumer information notice and the license posting requirements. The adopted rules allow a licensee, who does not have a primary office or place of employment or who is employed in multiple locations, to carry a current license identification card. The adopted rules prohibit a licensee from displaying a photocopy of a license certificate or carrying a photocopy of an identification card in lieu of the original document. The adopted rules also make clean-up changes. (Licensing Workgroup Change)

The adopted rules amend §111.154, Requirements, Duties, and Responsibilities of Supervisors and Persons Being Supervised. The adopted rules update subsection (a) regarding the licensee's "internship year" counting toward the two years of experience necessary to supervise. This change clarifies that one year of the licensee's internship shall count toward the supervision requirements. (Licensing Workgroup Changes) The adopted rules also update the terminology in subsection (h) to use gender-neutral language. (Terminology and Other Clean-up Changes)

The adopted rules amend §111.155, Standards of Ethical Practice (Code of Ethics). The adopted rules update the statutory cross-references in subsections (a) and (b); update the terminology in subsection (b) to use gender-neutral language; and remove outdated references to "registrant" in subsections (a) and (b). (Terminology and Other Clean-up Changes)

The adopted rules amend Subchapter Q. Fees.

The adopted rules amend §111.160, Fees. The adopted rules add a new subsection (i) to specify the reduced fees for the retired voluntary charity care status license. (Bill Implementation Changes)

The adopted rules amend Subchapter R. Complaints.

The adopted rules amend the title of Subchapter R to read "Complaints and Enforcement Provisions." The adopted rules combine Subchapters R and S into one subchapter. The enforcement sections under Subchapter S are being relocated to Subchapter R. (Terminology and Other Clean-up Changes)

The adopted rules amend §111.171, Complaints. The adopted rules update the title of §111.171 to reflect the expanded scope of the section. The adopted rules add new subsection (b) as a notice to licensees and to the public regarding qualified persons, including licensees and advisory board members, assisting the Department in reviewing and investigating complaints and being immune from liability related to those activities. (HB 2847, §7.003)

The adopted rules under §111.171 also add new subsection (c) as a notice to licensees and to the public regarding the confidentiality of complaint and disciplinary information. Former Texas Occupations Code §401.2535 addressed these issues for speech-language pathologists, audiologists, interns, and assistants. HB 2847, Article 7, §7.008, repealed §401.2535 and similar confidentiality provisions in other health professions statutes. HB 2847, Article 7, §7.004, added a new standardized confidentiality provision in Texas Occupations Code, Chapter 51 that is applicable to certain specified health professions, including speech-language pathologists, audiologists, interns, and assistants. (HB 2847, §7.004). (Bill Implementation Changes)

The adopted rules add new §111.172, Administrative Penalties and Sanctions. This new section was former §111.180. There are no adopted changes to the text. (Terminology and Other Clean-up Changes)

The adopted rules add new §111.173, Enforcement Authority. This new section was former §111.181. There are no adopted changes to the text. (Terminology and Other Clean-up Changes)

The adopted rules add new §111.174, Refunds. This new section was former §111.182. There are no adopted changes to the text. (Terminology and Other Clean-up Changes)

The adopted rules add new §111.175, Surrender of License. This new section was former §111.183. The adopted rules add a new subsection (d) to clarify that §111.175 (former §111.183) does not apply to licenses that are subject to the new §111.176, which implements HB 1899. (Bill Implementation Changes)

The adopted rules add new §111.176, Automatic Denials and Revocations. This new section implements HB 1899, Section 8, and specifically new Texas Occupations Code §108.052 and §108.053. These provisions apply to all licenses under this chapter. (Bill Implementation Changes)

The adopted rules repeal Subchapter S. Enforcement Provisions.

Subchapter S is being eliminated, and the complaints and enforcement provisions are being combined under Subchapter R. (Terminology and Other Clean-up Changes)

The adopted rules repeal §111.180, Administrative Penalties and Sanctions. This section has been relocated to new §111.172. (Terminology and Other Clean-up Changes)

The adopted rules repeal §111.181, Enforcement Authority. This section has been relocated to new §111.173. (Terminology and Other Clean-up Changes)

The adopted rules repeal §111.182, Refunds. This section has been relocated to new §111.174. (Terminology and Other Clean-up Changes)

The adopted rules repeal §111.183, Surrender of License. This section has been relocated to new §111.175. (Terminology and Other Clean-up Changes)

The adopted rules amend Subchapter T. Screening Procedures.

The adopted rules amend §111.192, Newborn Hearing Screening. The adopted rules update the cross-reference to the applicable rules. The cross-referenced rules require referral as soon as possible, but in no case more than 7 days after identification. The adopted rules remove the two-day referral requirement and the specific section citations. The adopted rules cite to the appropriate rule chapters and require licensees to comply with the requirements contained within. (Terminology and Other Clean-up Changes)

The adopted rules amend Subchapter U. Fitting and Dispensing of Hearing Instruments.

The adopted rules repeal §111.200, Registration of Audiologists and Interns in Audiology to Fit and Dispense Hearing Instruments. The adopted rules implement HB 2847, Article 10 by repealing the requirement for an audiologist or an intern in audiology, who fits and dispenses hearing instruments, to register with the Department the person's intention to fit and dispense hearing instruments. (Bill Implementation Changes)

The adopted rules amend §111.201, General Practice Requirements of Audiologists and Interns in Audiology Who Fit and Dispense Hearing Instruments. The adopted rules implement HB 2847, Article 10 by removing language regarding the audiologist or the intern in audiology being "registered" to fit and dispense hearing instruments and by requiring inclusion of the Department's website address in written contracts. Any changes to the written contract provisions in §111.220, Joint Rules on Fitting and Dispensing Hearing Instruments, will need to be made separately in conjunction with the Hearing Instrument Fitters and Dispensers Advisory Board. (Bill Implementation Changes)

The adopted rules under §111.201 also update the terminology in paragraph (2) to use gender-neutral language and make other clean-up changes in paragraph (2). (Terminology and Other Clean-up Changes)

The adopted rules amend Subchapter V. Telehealth.

The adopted rules amend §111.212, Requirements for the Use of Telehealth by Speech-Language Pathologists. The adopted rules make clean-up changes to subsections (e) and (j). (Terminology and Other Clean-up Changes)

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1109). The deadline for public comments was March 23, 2020. During the 30-day public comment period the Department received 11 comments. The Department also re-

ceived three comments after the public comment period closed (late comments). The public comments received are summarized below.

Comment: The Department received one comment opposing the new required human trafficking prevention training. The commenter questioned how this training was relevant to orthotists or prosthetists, athletic trainers, or hearing and speech personnel. The commenter stated that this activity would not be seen in these practices and that the training is an additional, unnecessary requirement.

Department Response: The Department disagrees with this comment. The new human trafficking prevention training is required by statute, Texas Occupations Code, Chapter 116. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Department received five comments during the comment period and one late comment wanting the Department to amend §111.213 regarding tele-supervision for speech-language pathology interns in light of the COVID-19 pandemic. The commenters urged the Department to act quickly to allow tele-health meetings and direct supervision of speech-language pathology interns and to allow interns to continue their education through directly supervised telehealth appointments. The commenters stated that it was irresponsible to continue to force in person meetings with vulnerable members of the community. The commenters requested that §111.213, Limitations on the Use of Telecommunications Technology by Speech-Language Pathologists, be amended to ensure safe health practices continue in the community.

Department Response: These comments are related to the COVID-19 pandemic, the Governor's disaster declaration issued March 13, 2020, and the waiver of certain telehealth and tele-supervision requirements for speech-language pathology interns and assistants. The Department submitted waiver requests to the Governor's Office to allow for expanded use of telehealth and tele-supervision during the COVID-19 pandemic. Those requests were granted, and the Department posted notices on its website and social media sites and sent out emails to GovDelivery subscribers notifying them of the specific waivers. These waivers will continue until terminated by the Governor's Office.

Regarding amending §111.213, these comments are outside the scope of the current rulemaking, since §111.213 is not part of this rulemaking. The Department did not make any changes to the proposed rules in response to these comments.

Comment: The Department received one comment asking the Department to consider allowing speech-language pathology assistants and interns to perform services via telepractice during this unprecedented time to ensure quality of care and consistent care for children. The commenter stated that speech-language pathology assistants and interns are vital during these times in order to continue to provide necessary care.

Department Response: This comment is related to the COVID-19 pandemic, the Governor's disaster declaration issued March 13, 2020, and the waiver of certain telehealth and tele-supervision requirements for speech-language pathology interns and assistants. The Department submitted waiver requests to the Governor's Office to allow for expanded use of telehealth and tele-supervision during the COVID-19 pandemic. Those requests were granted, and the Department posted notices on its website and social media sites and sent out emails to GovDelivery subscribers notifying them of the specific waivers. These waivers will continue until terminated by the Governor's Office.

Regarding amending the rules to expand the use of telehealth and tele-supervision for speech-language pathology interns and assistants, this comment is outside the scope of the current rulemaking. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Department received one comment asking about whether a person may practice speech-language pathology without a current license if the person holds a Texas Teaching Certificate.

Department Response: This comment is outside the scope of the current rulemaking, and it was forwarded to the appropriate division for a response. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Department received one comment asking about how to reapply for a license if the person was previously licensed in Texas.

Department Response: This comment is outside the scope of the current rulemaking, and it was forwarded to the appropriate division for a response. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Department received one comment expressing concerns regarding the process and the commenter's experience in trying to add a speech-language pathology assistant through the online supervision system.

Department Response: This comment is outside the scope of the current rulemaking, and it was forwarded to the appropriate division for a response. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Department received one comment requesting information on the number of licensed speech-language pathologists in Texas. The commenter also asked to distribute the commenter's research survey through the Department's network.

Department Response: This comment is outside the scope of the current rulemaking, and it was forwarded to the appropriate divisions for a response. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Department received one late comment looking for the wording of §111.212(p).

Department Response: This comment is outside the scope of the current rulemaking, and it was forwarded to the appropriate division for a response. The Department did not make any changes to the proposed rules in response to this comment.

Comment: The Department received one late comment asking for clarifications on whether speech-language pathology assistants can provide teletherapy. The person asked if assistants are able to receive supervision via teletherapy, are they then allowed to provide teletherapy.

Department Response: This comment is related to the COVID-19 pandemic, the Governor's disaster declaration issued March 13, 2020, and the waiver of certain telehealth and tele-supervision requirements for speech-language pathology interns and assistants. The Department submitted waiver requests to the Governor's Office to allow for expanded use of telehealth and tele-supervision during the COVID-19 pandemic. Those requests were granted, and the Department posted

notices on its website and social media sites and sent out emails to GovDelivery subscribers notifying them of the specific waivers. These waivers will continue until terminated by the Governor's Office.

This comment is outside the scope of the current rulemaking, and it was forwarded to the appropriate division for a response. The Department did not make any changes to the proposed rules in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Speech-Language Pathologists and Audiologists Advisory Board (Advisory Board) met on January 24, 2020, to discuss the proposed rules. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment. The Advisory Board did not hold a second meeting to discuss the public comments, due to circumstances caused by the COVID-19 pandemic.

At its meeting on June 30, 2020, the Commission adopted the proposed rules as published in the *Texas Register.*

SUBCHAPTER B. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS ADVISORY BOARD

16 TAC §111.13

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002834
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-4879

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SUBCHAPTER C. EXAMINATIONS

16 TAC §111.20, §111.23

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the adopted rules.

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Filed with the Office of the Secretary of State on July 10, 2020.

TRD-202002835
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-4879

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SUBCHAPTER D. REQUIREMENTS FOR SPEECH-LANGUAGE PATHOLOGY LICENSE

16 TAC §111.35, §111.37

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002836
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-4879

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SUBCHAPTER E. REQUIREMENTS FOR INTERN IN SPEECH-LANGUAGE PATHOLOGY LICENSE

16 TAC §§111.41, 111.42, 111.45, 111.47

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the adopted rules.

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Filed with the Office of the Secretary of State on July 10, 2020.

TRD-202002837
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-4879

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SUBCHAPTER F. REQUIREMENTS FOR ASSISTANT IN SPEECH-LANGUAGE PATHOLOGY LICENSE

16 TAC §§111.52, 111.55, 111.57

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the adopted rules.

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Filed with the Office of the Secretary of State on July 10, 2020.

TRD-202002838
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-4879

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SUBCHAPTER H. REQUIREMENTS FOR AUDIOLOGY LICENSE

16 TAC §111.75, §111.77

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the adopted rules.

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Filed with the Office of the Secretary of State on July 10, 2020.

TRD-202002839
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-4879

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SUBCHAPTER I. REQUIREMENTS FOR INTERN IN AUDIOLOGY LICENSE

16 TAC §§111.81, 111.85, 111.87

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the adopted rules.

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Filed with the Office of the Secretary of State on July 10, 2020.

TRD-202002840
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-4879

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SUBCHAPTER J. REQUIREMENTS FOR ASSISTANT IN AUDIOLOGY LICENSE

16 TAC §§111.92, 111.95, 111.97

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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Filed with the Office of the Secretary of State on July 10, 2020.

TRD-202002841
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-4879

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SUBCHAPTER L. REQUIREMENTS FOR DUAL LICENSE IN SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

16 TAC §111.115, §111.117

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

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Filed with the Office of the Secretary of State on July 10, 2020.

TRD-202002842
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-4879

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SUBCHAPTER M. RETIRED VOLUNTARY CHARITY CARE STATUS LICENSE

16 TAC §§111.120 - 111.125

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Commission,

the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002850
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-4879

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SUBCHAPTER N. CONTINUING PROFESSIONAL EDUCATION

16 TAC §§111.130 - 111.132

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002843
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-4879

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SUBCHAPTER P. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS

16 TAC §§111.150, 111.151, 111.154, 111.155

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002844
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-4879

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SUBCHAPTER Q. FEES

16 TAC §111.160

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002845
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-4879

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SUBCHAPTER R. COMPLAINTS AND ENFORCEMENT PROVISIONS

16 TAC §§111.171 - 111.176

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the adopted rules.

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Filed with the Office of the Secretary of State on July 10, 2020.

TRD-202002846
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-4879

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SUBCHAPTER S. ENFORCEMENT PROVISIONS

16 TAC §§111.180 - 111.183

STATUTORY AUTHORITY

The repeals are adopted under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The repeals are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the repeals are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002851
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-4879

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SUBCHAPTER T. SCREENING PROCEDURES

16 TAC §111.192

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 53, 108, 112, 116, and 401, and Texas Government Code, Chapter 411, Subchapter F. No other statutes, articles, or codes are affected by the adopted rules.

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Filed with the Office of the Secretary of State on July 10, 2020.

TRD-202002847

Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-4879

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SUBCHAPTER U. FITTING AND DISPENSING OF HEARING INSTRUMENTS

16 TAC §111.200

STATUTORY AUTHORITY

The repeals are adopted under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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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 July 10, 2020.

TRD-202002852
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-4879

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SUBCHAPTER U. FITTING AND DISPENSING OF HEARING INSTRUMENTS

16 TAC §111.201

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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Filed with the Office of the Secretary of State on July 10, 2020.

TRD-202002848
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-4879

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SUBCHAPTER V. TELEHEALTH

16 TAC §111.212

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51, 112, and 401, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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Filed with the Office of the Secretary of State on July 10, 2020.

TRD-202002849
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-4879

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CHAPTER 114. ORTHOTISTS AND PROSTHETISTS

16 TAC §114.40

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 114, §114.40, regarding the Orthotists and Prosthetists Program, without changes to the proposed text as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1142). The rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The adopted rule implements the requirements of House Bill (HB) 2059 of the 86th Texas Legislature, Regular Session (2019), and Texas Occupations Code Chapter 116, requiring human trafficking prevention training for health care practitioners prior to the renewal of a license. The adopted rule also amends the existing rule section's definition of "licensee" to reflect the definition used throughout Chapter 114 of the Department's rules for purposes of clarity and consistency.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §114.40, Renewal, by clarifying the rule section's definition of "licensee" in subsection (a) to reflect the definition used throughout Chapter 114. Additionally, the adopted rule amends the section to include new subsection (c)(7), a requirement for human trafficking prevention training prior to license renewal as required by HB 2059 and Texas Occupations Code §116.003.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1142). The deadline for public comments was March 23, 2020. The Department received comments from three interested parties on the proposed rule during the 30-day public comment period. The public comments are summarized below.

Comments: All three public comments opposed the requirement for human trafficking prevention training and expressed the opinion that such training was not necessary for orthotists and prosthetists.

Department Response: The Department disagrees with these comments. The proposed rule implements HB 2059, 86th Legislature Regular Session (2019). HB 2059 requires health care practitioners, including orthotists and prosthetists, to complete human trafficking training as a condition of license renewal. No change has been made to the proposed rule in response to these comments.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Orthotists and Prosthetists Advisory Board met on January 13, 2020, to discuss the proposed rule and recommended publishing the proposed rule without changes in the *Texas Register.* The Board did not hold a second meeting to discuss the public comments, due to circumstances caused by the COVID-19 situation. At its meeting on June 30, 2020, the Commission adopted the proposed rule as published in the *Texas Register.*

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 605, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51, 116, and 605. No other statutes, articles, or codes are affected by the adopted rule.

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 July 10, 2020.

TRD-202002872
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 463-3671

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CHAPTER 115. MIDWIVES

16 TAC §115.14, §115.70

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 115, §115.14 and §115.70, regarding the Midwives program, without changes to the proposed text as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1143). The rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rules are necessary to implement House Bill (HB) 2059 and Senate Bill (SB) 1531.

HB 2059 amends the Occupations Code by adding new Chapter 116, Training Course on Human Trafficking Prevention, which requires certain health care practitioners, including midwives, to successfully complete a training course approved by the Executive Commissioner of the Health and Human Services Commission (HHSC) on identifying and assisting victims of human trafficking as a condition for renewal of a license on or after September 1, 2020.

SB 1531 amends Occupations Code, Chapter 203, by removing conviction of a "misdemeanor of moral turpitude or a felony" from the list of items in Occupations Code §203.404 that authorize the Commission or the Executive Director of the Department to discipline a midwife or deny an application for a midwife license or its renewal.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §115.14, License Renewal, by adding new subsection (b) to include proof of completion of the human trafficking prevention training in the list of items that must be submitted to the Department for renewal of a midwife license on or after September 1, 2020.

The adopted rules amend §115.70, Standards of Conduct, by removing "conviction of a felony or a misdemeanor involving moral turpitude" from subparagraph (1)(C) and re-labeling the remaining subparagraphs appropriately.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the February 21, 2020, issue of the *Texas*

Register (45 TexReg 1143). The deadline for public comments was March 23, 2020. The Department received comments from two interested parties on the proposed rules during the 30-day public comment period. The public comments are summarized below.

Comment: One comment supported the proposed rules and requested an additional change to the list of medications a midwife may carry without standing orders from a physician.

Department Response: The Department appreciates the comment's support of the proposed rules. The requested change regarding medications is outside the scope of the proposed rules. The Department did not make any changes to the proposed rules in response to this comment.

Comment: One comment asked a series of questions about the proposed rules, including where the accepted training can be accessed, how much the training will cost, whether the training can be done online, and whether there are some courses that are free.

Department Response: New Occupations Code §116.002(b) requires the list of approved training courses to be posted on the website of the HHSC, and the list must include at least one course that is available without charge. Currently, the website includes an approved course that can be completed online. The Department did not make any changes to the proposed rules in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Midwives Advisory Board met on January 30, 2020, to discuss the proposed rules and recommended publishing the proposed rules without changes in the *Texas Register.* The Advisory Board did not hold a second meeting to discuss the public comments, due to circumstances caused by the COVID-19 situation. At its meeting on June 30, 2020, the Commission adopted the proposed rules as published in the *Texas Register.*

STATUTORY AUTHORITY

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

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 116, and 203. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002871
Brad Bowman
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Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 463-3671

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CHAPTER 116. DIETITIANS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 116, Subchapter A, §116.2; Subchapter C, §116.20; Subchapter E, §§116.40 and 116.42; Subchapter F, §§116.50, 116.51, and 116.53; Subchapter I, §§116.80 - 116.82; Subchapter K, §§116.100, 116.101, 116.104, and 116.105; Subchapter M, §116.120; and Subchapter O, §§116.141 and 116.142; repeal of existing rules at Subchapter C, §116.21; Subchapter D, §116.30; Subchapter J, §116.90; and Subchapter N, §§116.130 - 116.132; and new rules at Subchapter C, §116.22; and Subchapter M, §§116.121 - 116.123, regarding the Dietitians program, without changes to the proposed text as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1145) but with the correction of error as published in the March 6, 2020, issue of the *Texas Register* (45 TexReg 1738). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 116, implement Texas Occupations Code, Chapter 701, Dietitians. The adopted rules are necessary to implement three categories of changes: bill implementation changes, Licensing Workgroup changes, and terminology and other clean-up changes.

Bill Implementation Changes

The adopted rules implement House Bill (HB) 2847 and HB 2059, 86th Legislature, Regular Session, 2019. HB 2847 was an omnibus bill that affected multiple programs. Article 12 of the bill made clean-up changes to the Dietitians statute. Article 7 of the bill applied to multiple programs, including Dietitians. The adopted rules implement Article 7, §§7.003, 7.004, and 7.008 by providing notice to licensees regarding the new complaint-related provisions.

HB 2059 requires certain health care practitioners to complete a human trafficking prevention training course approved by the Health and Human Services Commission as a condition for license renewal. Dietitians are affected by this bill. The adopted rules implement HB 2059 by requiring dietitians to take the training course for each license renewal on or after September 1, 2020.

Licensing Workgroup Changes

The adopted rules also implement the changes recommended by the Dietitians Advisory Board Licensing Workgroup and Department staff. These changes: streamline the license application process requirements; consolidate the education and experience requirements into one subchapter; update the experience requirements; remove the jurisprudence exam requirement at renewal; revise and clean up the continuing education requirements; update the license fitness requirements; remove the license registry information; and update the advertising rule requirements.

Terminology and Other Clean-up Changes.

Finally, the adopted rules make terminology and other clean-up changes. These changes: replace existing language with gender neutral language and "person first respectful language"; remove unnecessary provisions; clean-up terminology and statutory cross-references; and consolidate the complaint and enforcement provisions into one subchapter.

SECTION-BY-SECTION SUMMARY

The adopted rules amend Subchapter A. General Provisions.

The adopted rules amend §116.2, Definitions. The adopted rules add a definition for "Accreditation Council for Education in Nutrition and Dietetics (ACEND)," remove the definition of "CPE" (continuing professional experience), and renumber the definitions accordingly. (Licensing Workgroup Changes)

The adopted rules amend Subchapter C. Education Requirements.

The adopted rules amend the title of Subchapter C to read "Education and Experience Requirements." The adopted rules combine Subchapters C and D into one subchapter. The experience requirements under Subchapter D are being relocated to Subchapter C. (Licensing Workgroup Changes)

The adopted rules amend the title of §116.20 to "Education Requirements--Degrees and Course Work." With the addition of the experience requirements to this subchapter, the adopted rules clarify that §116.20 contains the education requirements.

The adopted rules also amend §116.20 to streamline the license application process and restructure and clarify the existing provisions.

The adopted rules amend subsections (c) and (d) regarding "an equivalent major course of study approved by the Department" as prescribed under Texas Occupations Code §701.254(1)(B). The Department has determined that a major course of study that is acceptable to the Commission on Dietetic Registration (CDR) to qualify to take the CDR examination is "an equivalent major course of study approved by the Department" and is acceptable to the Department for licensure. The adopted rules amend subsection (c) to clearly state the statutory requirements under §701.254(1) and amend subsection (d) to remove the option that details specific course work and semester hours. The adopted rules eliminate the need for the applicant to send the applicant's transcripts to the Department.

The adopted rules add new subsection (e) that requires the applicant to provide an active CDR registration number at the time of license application to show proof of meeting the education requirements under this section. This change will streamline the license application process. New subsection (e) aligns with the requirements under §§116.22(c), 116.42(e), and 116.50(b).

The adopted rules delete former subsections (e), (f), and (g), since these provisions were no longer necessary. (Licensing Workgroup Changes)

The adopted rules repeal §116.21, Transcripts. The adopted rules streamline the license application process by eliminating the submission of transcripts to the Department. CDR has already reviewed the applicant's transcripts to determine eligibility to take the CDR examination. Transcripts, degrees, and coursework that are acceptable to CDR for qualifying to take the CDR exam are acceptable to the Department for licensure. The applicant only needs to provide the active CDR registration number to the Department. (Licensing Workgroup Changes)

The adopted rules add new §116.22, Experience Requirements--Internships and Professional Experience Programs. This new section was former §116.30. It has been relocated from Subchapter D, Experience Requirements. (Licensing Workgroup Changes)

The adopted rules under subsection (a) restate the statutory requirements under Texas Occupations Code §701.254(2). The adopted rules under subsection (b) update the current rule requirements regarding internships in dietetics practice and preplanned, documented, professional experience programs in dietetics practice. The new adopted rules reflect the possible experience options that are still within the authority and scope of the Dietitians statute.

The adopted rules under subsection (c) have been updated to require the applicant to provide an active CDR registration number, instead of a copy of the CDR registration card, at the time of license application to show proof of meeting the experience requirements under this section. This change will streamline the license application process. New subsection (c) aligns with the requirements under §§116.20(e), 116.42(e), and 116.50(b). (Licensing Workgroup Changes)

The adopted rules repeal Subchapter D. Experience Requirements.

Subchapter D is eliminated, and the education and experience requirements are combined under Subchapter C. (Licensing Workgroup Changes)

The adopted rules repeal §116.30, Preplanned Professional Experience Programs and Internships, and relocate the experience requirements to Subchapter C with the education requirements. The provisions under this section are located under new §116.22. (Licensing Workgroup Changes)

The adopted rules amend Subchapter E. Examination Requirements.

The adopted rules amend §116.40, License Examination Requirements--General. The adopted rules streamline and clarify the license examination requirements. The adopted rules remove former subsection (c), which was unnecessary in the rules since the Department-required examination is the CDR examination. (Licensing Workgroup Changes)

The adopted rules amend §116.42, License Examination Process. The adopted rules streamline and clarify the license examination requirement. The adopted rules require the applicant to submit the CDR registration number as proof of passing the examination. No other documentation must be provided to the Department. The adopted new subsection (e) aligns with the requirements under §§116.20(e), 116.22(c), and 116.50(b). (Licensing Workgroup Changes)

The adopted rules amend Subchapter F. Licensed Dietitians.

The adopted rules amend §116.50, Licensed Dietitians--Application and Eligibility Requirements. The adopted rules streamline and clarify the license application requirements. Under subsection (b), the applicant no longer has to submit transcripts or a copy of the active CDR registration card. The applicant only needs to provide the active CDR registration number to the Department to show proof of meeting the education, experience, and examination requirements. Under subsection (c), clarifying language has been added regarding the criminal history background checks. (Licensing Workgroup Changes) In addition, the adopted rules delete former subsection (e) to implement HB 2847, Article 12, which repealed §701.151(b)(4). (Bill Implementation Changes)

The adopted rules amend §116.51, Licensed Dietitians--Fitness of Applicants for Licensure. The adopted rules update the cross-reference in subsection (a) to implement HB 2847, Article 12. (Bill Implementation Changes) In addition, the adopted rules update the fitness requirements that are prescribed by statute. The adopted rules eliminate unnecessary requirements and include

disciplinary actions taken by CDR. The adopted rules also make clean-up changes. (Licensing Workgroup Changes)

The adopted rules amend §116.53, Licensed Dietitians--License Term; Renewals. The adopted rules under subsection (c) remove the requirement to submit proof of completing the jurisprudence exam for a license renewal. The adopted rules also relocate the criminal history and fitness provisions from subsection (c) to mirror the initial application structure. The adopted rules under subsection (d) add clarifying language regarding the criminal history background checks. (Licensing Workgroup Changes)

In addition, the adopted rules under §116.53 implement HB 2059 and HB 2847, Article 12. New subsection (f) was added to implement HB 2059 regarding the required human trafficking prevention training. Former subsection (e) was eliminated to implement HB 2847, Article 12, by removing the reference to §701.151. While §701.151(b)(4) was repealed by HB 2847, §701.401 still exists. Section 701.401 includes a mandatory refusal to renew provision. (Bill Implementation Changes)

Finally, the adopted rules under §116.53 consolidate former subsections (d), (e), and (f) into one subsection that is re-lettered as subsection (g). The text of former subsections (e) and (f) was removed and replaced with cross-references to the statutory provisions. The cross-reference to §701.151 was replaced with the cross-reference to §701.401. (Terminology and Other Clean-up Changes)

The adopted rules amend Subchapter I. Continuing Education.

The adopted rules amend §116.80, Continuing Education--General Requirements and Hours. The adopted rules remove an unnecessary provision under former subsection (a). Provisional licenses no longer exist, so it is no longer necessary to specify the applicability of this section. The adopted rules remove former subsection (c) since §116.81(c) and §116.83(b) address continuing education hours completed before and after the license term. (Licensing Workgroup Changes)

The adopted rules amend §116.81, Continuing Education--Approved Courses and Credits. The adopted rules under subsection (c) make clean-up changes. The adopted rules under subsection (d) allow the jurisprudence exam to be taken as part of continuing education hours, but the jurisprudence exam is no longer required for renewal. The adopted rules under subsection (d) grant one hour of continuing education credit for taking the jurisprudence exam. The adopted rules under subsection (e) eliminate the requirement to take the jurisprudence exam at renewal. (Licensing Workgroup Changes)

The adopted rules amend §116.82, Continuing Education--Records and Audits. The adopted rules update the terminology in subsection (a) to use gender neutral language. The adopted rules update the references in subsections (a) and (b) from "license holder" to "licensee" for consistency purposes throughout this section and the chapter. (Terminology and Other Clean-up Changes)

The adopted rules amend Subchapter J. Responsibilities of the Commission and the Department.

The adopted rules repeal §116.90, Registry. The adopted rules repeal the registry rule due to changes in the licensee information that is posted on the Department website. The registry is required by statute under Texas Occupations Code §701.1511. The registry is still available, but a rule is not necessary. The adopted rules eliminate provisions referencing specific information that will be included in the registry or posted on the Department website. (Licensing Workgroup Changes)

The adopted rules amend Subchapter K. Responsibilities of the Licensee and Code of Ethics.

The adopted rules amend §116.100, Display of License. The adopted rules remove an unnecessary provision under former subsection (a). Provisional licenses no longer exist, so it is no longer necessary to specify the applicability of this section. The remaining subsections are re-lettered. (Terminology and Other Clean-up Changes)

The adopted rules amend §116.101, Changes of Name or Address. The adopted rules remove an unnecessary provision under former subsection (a). Provisional licenses no longer exist, so it is no longer necessary to specify the applicability of this section. The remaining subsections are re-lettered. Re-lettered subsection (b) has been separated into two subsections. Re-lettered subsection (b) addresses name changes and updates the language regarding the submission of changes. New subsection (c) addresses obtaining a duplicate license. (Terminology and Other Clean-up Changes)

The adopted rules amend §116.104, Unlawful, False, Misleading, or Deceptive Advertising. The adopted rules update the terminology under subsection (a) to use gender neutral language. (Terminology and Other Clean-up Changes) In addition, the adopted rules remove the blanket prohibition on testimonials under subsection (b) in accordance with Texas Attorney General Opinion JC-0458 (February 8, 2002). The remaining provisions are renumbered. (Licensing Workgroup Changes)

The adopted rules amend §116.105, Code of Ethics. The adopted rules update the terminology in subsections (a) and (b) to use gender neutral language and to use "person first respectful terminology." The adopted rules also update the cross-references to other statutes in subsections (a) and (e). (Terminology and Other Clean-up Changes)

The adopted rules amend Subchapter M. Complaints.

The adopted rules amend the title of Subchapter M to read "Complaints and Enforcement Provisions." The adopted rules combine Subchapters M and N into one subchapter. The enforcement sections under Subchapter N are relocated to Subchapter M. (Terminology and Other Clean-up Changes)

The adopted rules amend the title of §116.120 to read "Complaints." This change reflects the expanded scope of the section.

The adopted rules under §116.120 also add new subsection (b) as a notice to licensed dietitians and to the public regarding qualified persons, including licensees and advisory board members, assisting the Department in reviewing and investigating complaints and being immune from liability related to those activities. (HB 2847, §7.003)

In addition, the adopted rules under §116.120 add new subsection (c) as a notice to licensed dietitians and to the public regarding the confidentiality of complaint and disciplinary information. Former Texas Occupations Code §701.2041 addressed these issues for dietitians. HB 2847, Article 7, §7.008, repealed §701.2041 and similar confidentiality provisions in other health professions statutes. HB 2847, Article 7, §7.004, added a new standardized confidentiality provision in Texas Occupations Code, Chapter 51 that is applicable to certain specified health professions, including dietitians. (HB 2847, §7.004). (Bill Implementation Changes)

The adopted rules add new §116.121, Administrative Penalties and Sanctions. This new section was former §116.130. There are no adopted changes to the text. (Terminology and Other Clean-up Changes)

The adopted rules add new §116.122, Enforcement Authority. This new section was former §116.131. There are no adopted changes to the text. (Terminology and Other Clean-up Changes)

The adopted rules add new §116.123, License Surrender. This new section was former §116.132. There are no adopted changes to the text. (Terminology and Other Clean-up Changes)

The adopted rules repeal Subchapter N. Enforcement Provisions.

Subchapter N is eliminated, and the complaints and enforcement provisions are combined under Subchapter M. (Terminology and Other Clean-up Changes)

The adopted rules repeal §116.130, Administrative Penalties and Sanctions. This section was relocated to new §116.121. (Terminology and Other Clean-up Changes)

The adopted rules repeal §116.131, Enforcement Authority. This section was relocated to new §116.122. (Terminology and Other Clean-up Changes)

The adopted rules repeal §116.132, License Surrender. This section was relocated to new §116.123. (Terminology and Other Clean-up Changes)

The adopted rules amend Subchapter O. The Dietetic Profession.

The adopted rules amend §116.141, Provider of Nutrition Services. The adopted rules update the terminology in subsections (b) and (c) to use gender neutral language. (Terminology and Other Clean-up Changes.)

The adopted rules amend §116.142, Licensed Dietitians Providing Diabetes Self-Management Training. The adopted rules update the terminology in subsection (c) to use gender neutral language. (Terminology and Other Clean-up Changes.)

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1145). A correction of error (publication error) was published in the March 6, 2020, issue of the *Texas Register* (45 TexReg 1738). The deadline for public comments was March 23, 2020. The Department received comments from one interested party on the proposed rules during the 30-day public comment period. The public comment is summarized below.

Comment: The Department received one public comment from the Texas Academy of Nutrition and Dietetics (Texas Academy), which supports the proposed rules. The Texas Academy stated that the proposed rules accurately and efficiently implement legislation enacted by the 86th Legislature, including the new human trafficking prevention training. The Texas Academy believes that this training is timely and reasonable for the dietitians profession. The Texas Academy also stated that the proposed rules make substantial progress toward streamlining the initial license application and license renewal processes and eliminating time-consuming impediments. The proposed rules also more closely align dietitian education and experience requirements with current standards and requirements in the dietetics profession. The Texas Academy supports the common-sense recommendation for the Commission on Dietetic Registration (CDR) to be increasingly relied upon to stay abreast of evolving standards in the dietetics profession. The Texas Academy believes that the proposed rules are straightforward and easy to understand, and that they eliminate unnecessary or unclear provisions that make it potentially more difficult for dietitians to practice.

Department Response: The Department appreciates the comment in support of the proposed rules. The Department did not make any changes to the proposed rules in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Dietitians Advisory Board (Advisory Board) met on January 16, 2020, to discuss the proposed rules. The Advisory Board did not make any changes to the proposed rules. The Advisory Board voted and recommended that the proposed rules be published in the *Texas Register* for public comment. The Advisory Board did not hold a second meeting to discuss the public comments, due to circumstances caused by the COVID-19 pandemic. At its meeting on June 30, 2020, the Commission adopted the proposed rules as published in the *Texas Register,* with the published correction.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §116.2

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002858
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 463-3671

SUBCHAPTER C. EDUCATION REQUIREMENTS

16 TAC §116.20, §116.22

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to

adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002859
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 463-3671

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16 TAC §116.21

STATUTORY AUTHORITY

The repeal is adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002867
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 463-3671

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SUBCHAPTER D. EXPERIENCE REQUIREMENTS

16 TAC §116.30

STATUTORY AUTHORITY

The repeal is adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002868
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 463-3671

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SUBCHAPTER E. EXAMINATION REQUIREMENTS

16 TAC §116.40, §116.42

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002860
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 463-3671

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SUBCHAPTER F. LICENSED DIETITIANS

16 TAC §§116.50, 116.51, 116.53

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The adopted rules are also adopted under Texas Government Code, Chapter 411, Subchapter F, and Texas Occupations Code, Chapters 51 and 53, which establish the Department's statutory authority to conduct criminal history background checks on an

applicant for or a holder of a license, certificate, registration, title, or permit issued by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002861
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 463-3671

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SUBCHAPTER I. CONTINUING EDUCATION

16 TAC §§116.80 - 116.82

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002863
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 463-3671

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SUBCHAPTER J. RESPONSIBILITIES OF THE COMMISSION AND THE DEPARTMENT

16 TAC §116.90

STATUTORY AUTHORITY

The repeal is adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002869
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 463-3671

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SUBCHAPTER K. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS

16 TAC §§116.100, 116.101, 116.104, 116.105

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002864
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 463-3671

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SUBCHAPTER M. COMPLAINTS AND ENFORCEMENT PROVISIONS

16 TAC §§116.120 - 116.123

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002865
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 463-3671

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SUBCHAPTER N. ENFORCEMENT PROVISIONS

16 TAC §§116.130 - 116.132

STATUTORY AUTHORITY

The repeals are adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002870
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 463-3671

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SUBCHAPTER O. THE DIETETIC PROFESSION

16 TAC §116.141, §116.142

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 701, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51, 116, and 701. No other statutes, articles, or codes are affected by the adopted 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 July 10, 2020.

TRD-202002866
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 463-3671

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CHAPTER 120. LICENSED DYSLEXIA THERAPISTS AND LICENSED DYSLEXIA PRACTITIONERS

16 TAC §120.26

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 120, §120.26, regarding the Dyslexia Therapy program, without changes to the proposed text as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1160). The rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 120, implement Texas Occupations Code, Chapter 403, Licensed Dyslexia Practitioners and Licensed Dyslexia Therapists.

The adopted rule is necessary to implement House Bill (HB) 2059, 86th Legislature, Regular Session (2019). HB 2059 amends the Occupations Code by adding new Chapter 116, Training Course on Human Trafficking Prevention, which requires certain health care practitioners, including licensed dyslexia therapists and licensed dyslexia practitioners, to successfully complete a training course approved by the executive commissioner of the Health and Human Services Commission (HHSC) on identifying and assisting victims of human trafficking as a condition for renewal of a license on or after September 1, 2020. The adopted rule adds proof of completion of such training to the list of items required for renewal of a licensed dyslexia therapist license and a licensed dyslexia practitioner license on or after September 1, 2020.

SECTION-BY-SECTION SUMMARY

The adopted rule amends §120.26, Renewal, by changing subsection (b) to include the requirement for proof of completion of the human trafficking prevention training to be submitted to the Department for renewal of a license on or after September 1, 2020. The previously existing language in subsections (b) - (d) is transferred to subsections (c) - (e), respectively, resulting in the creation of new subsection (e).

PUBLIC COMMENTS

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposed rule was

published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1160). The deadline for public comments was March 23, 2020. The Department received comments from four interested parties on the proposed rule during the 30-day public comment period. The public comments are summarized below.

Comment: One comment opposing the proposed rule suggests that the training course requirement should be limited to licensees working in a public school setting or to those having more than eight private practice students.

Department Response: The Department disagrees with the comment. The training course requirement was imposed by the Texas Legislature through the passage of HB 2059 and the creation of new Texas Occupations Code, Chapter 116. The Department does not have the authority to limit the applicability of the requirement as the comment suggests. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One comment opposing the proposed rule states that dyslexia therapists do not need any training beyond that which they already receive for detecting child abuse or neglect.

Department Response: The Department disagrees with the comment. The training requirement was imposed by the Texas Legislature through the passage of HB 2059 and the creation of new Texas Occupations Code, Chapter 116. Because licensed dyslexia therapists are health care practitioners under Title 3 of the Texas Occupations Code, they are subject to the requirement. The Department does not have the authority to limit the applicability of the requirement as the comment suggests. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One comment opposing the proposed rule states that the training requirement should not apply to dyslexia therapists because it is an unnecessary burden and human trafficking is not associated with dyslexia.

Department Response: The Department disagrees with the comment. The training requirement was imposed by the Texas Legislature through the passage of HB 2059 and the creation of new Texas Occupations Code, Chapter 116. Because licensed dyslexia therapists are health care practitioners under Title 3 of the Texas Occupations Code, they are subject to the requirement. The Department does not have the authority to limit the applicability of the requirement as the comment suggests. The Department did not make any changes to the proposed rule in response to this comment.

Comment: One comment supports the proposed rule as long as the required training course is free of charge and available online.

Department Response: Occupations Code §116.002(b)(1) does require at least one of the approved training courses to be available without charge. There is no requirement in new Occupations Code, Chapter 116, for the training courses to be available online; however, HHSC currently has an approved online training course listed on its website. The Department did not make any changes to the proposed rule in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Dyslexia Therapy Advisory Committee met on January 27, 2020 to discuss the proposed rule and recommended publishing the proposed rule without changes in the *Texas Register.* The Advisory Committee did not hold a second meeting to discuss the public comments, due to circumstances caused by the COVID-19 situation. At its meeting on June 30, 2020, the Commission adopted the proposed rules as published in the *Texas Register.*

STATUTORY AUTHORITY

The adopted rule is adopted under Texas Occupations Code, Chapters 51 and 403, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rule are those set forth in Texas Occupations Code, Chapters 51, 116, and 403. No other statutes, articles, or codes are affected by the proposed rule.

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 July 10, 2020.

TRD-202002833
Brad Bowman
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512)475-4879

CHAPTER 121. BEHAVIOR ANALYST

16 TAC §§121.10, 121.21, 121.22, 121.26, 121.70, 121.75, 121.95

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 121, §§121.10, 121.21, 121.22, 121.26, 121.70, 121.75, and 121.95, regarding the Behavior Analysts program, without changes to the proposed text as published in the February 21, 2020, issue of the *Texas Register* (45 TexReg 1161). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The adopted rules implement House Bill (HB) 2847, Article 7, §7.003, 86th Legislature, Regular Session (2019), which amends Texas Occupations Code, Chapter 51, adding new subsection 51.252(e) regarding contracting with and providing immunity for individuals assisting in complaint investigations. The adopted rules also implement HB 2059, §1, 86th Legislature, Regular Session (2019), which adds Chapter 116 to the Texas Occupations Code, imposing a requirement for a training course on human trafficking prevention as a condition for certain license renewals on or after September 1, 2020. The adopted rules also implement recommendations from the Behavior Analyst Advisory Board (Advisory Board) to significantly reorganize, expand, and provide specifics for the responsibilities and ethics code of license holders, including expanding the definitions section.

The Board and staff also included specific requirements for acceptable abbreviation of license holders' titles under the Act, new

and updated references to statutes and rules, editorial corrections, and rewording.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §121.10 by adding definitions for "authorized representative," "multiple relationship," "service agreement," and "treatment plan," and expand the definition of "client." The section is renumbered accordingly.

The adopted rules amend §121.21 by providing for acceptable abbreviations of the licensed behavior analyst title.

The adopted rules amend §121.22 by providing for acceptable abbreviations of the licensed assistant behavior analyst title.

The adopted rules amend §121.26 by adding the new requirement for human trafficking prevention training as a condition for license renewals on or after September 1, 2020, and renumbers the section.

The adopted rules amend §121.70 by reorganizing, expanding, clarifying, and adding specificity to the responsibilities of license holders. The section is renumbered accordingly.

The adopted rules amend §121.75 by reorganizing, expanding, clarifying, and adding specificity for minimum standards of ethical practice for behavior analysis. The section is renumbered accordingly.

The adopted rules amend §121.95 by implementing Texas Occupations Code §51.252, which provides immunity for assisting in the review and investigation of complaints. The adopted rules also remove a requirement for display of the license because the requirement has been moved to §121.70. References to relevant statutes and rules are added and corrected, and the section is renumbered accordingly.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the February 21, 2020 issue, of the *Texas Register* (45 TexReg 1161). The deadline for public comments was March 23, 2020. The Department did not receive any comments from interested parties on the proposed rules during the 30-day public comment period and no changes were made to the proposed rule text.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Department consulted with the Presiding Officer of the Behavior Analyst Advisory Board, who agreed that an additional Board meeting was not necessary to again consider the proposed rules. The Presiding Officer expressed the desire for the Department to proceed to present the proposed rules to the Commission for adoption as published in the *Texas Register.* At its meeting on June 30, 2020, the Commission adopted the proposed rules as supported by the Advisory Board.

STATUTORY AUTHORITY

The rules are adopted under Texas Occupations Code, Chapters 51 and 506, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 506. No other statutes, articles, or codes are affected by the adopted 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 July 9, 2020.

TRD-202002825
Brad Bowman
General Counsel
Texas Commission of Licensing and Regulation
Effective date: August 1, 2020
Proposal publication date: February 21, 2020
For further information, please call: (512) 475-4879

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1003

The Texas Education Agency (TEA) adopts new §61.1003, concerning the career and technology education allotment for Pathways in Technology Early College High School (P-TECH) and New Tech Network campuses. The new section is adopted without changes to the proposed text as published in the May 8, 2020 issue of the *Texas Register* (45 TexReg 3005) and will not be republished. The adopted new section reflects changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by explaining how TEA will calculate and make available funding under Texas Education Code (TEC), §48.106(a)(2)(B) and (C).

REASONED JUSTIFICATION: HB 3, 86th Texas Legislature, 2019, added to the calculation of the career and technology education allotment under TEC, §48.106(a)(2)(B) and (C), $50 for each full-time equivalent student enrolled in a campus designated as a P-TECH school under TEC, §29.556, or a campus that is a member of the New Tech Network and that focuses on project-based learning and work-based education. The fiscal note for HB 3 contemplated a school district entitlement under this provision of $50 per student in average daily attendance (ADA). There were concerns that the new language may only authorize an additional amount for a career and technical education course taken at one of those schools, significantly less than the $50 per ADA the fiscal note contemplated in the district funding analysis.

Adopted new §61.1003 adjusts entitlement as calculated under TEC, §48.106(a)(2)(B) and (C), to reflect $50 per student in ADA attending either a school designated as a P-TECH or a school that is a member of the New Tech Network.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 8, 2020, and ended June 8, 2020. No public comments were received.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §48.004, as transferred, redesignated, and amended by House Bill (HB) 3, 86th Texas Legis-

lature, 2019, which specifies that the commissioner shall adopt rules that are necessary to implement and administer the Foundation School Program; TEC, §48.011, as added by HB 3, 86th Texas Legislature, 2019, which provides the commissioner authority to resolve unintended consequences from school finance formulas upon approval from the Legislative Budget Board and the office of the governor; and TEC, §48.106, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which details the calculation of the career and technology education allotment that school districts and open-enrollment charter schools are entitled to under the Foundation School Program.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§48.004, 48.011, and 48.106, as added 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.

Filed with the Office of the Secretary of State on July 10, 2020.

TRD-202002829
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: July 30, 2020
Proposal publication date: May 8, 2020
For further information, please call: (512) 475-1497

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19 TAC §61.1004

The Texas Education Agency (TEA) adopts new §61.1004, concerning special education funding for open-enrollment charter schools. The new section is adopted without changes to the proposed text as published in the May 8, 2020 issue of the *Texas Register* (45 TexReg 3006) and will not be republished. The adopted new section reflects changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by explaining how TEA will calculate and make available additional special education funding for open-enrollment charter schools and how the regular program allotment will be impacted.

REASONED JUSTIFICATION: HB 3, 86th Texas Legislature, 2019, changed the calculation of the basic allotment, the special education allotment, and charter school funding generally, under Texas Education Code (TEC), §§48.051, 48.102, and 12.106, respectively. Even though overall funding levels for open-enrollment charter schools increased as a result of HB 3, these changes resulted in a statewide reduction in the specific special education allotment for open-enrollment charter schools relative to prior law.

Section 61.1004 calculates the difference between the special education allotment under former TEC, §42.151, and the special education allotment for each open-enrollment charter school under new TEC, §48.102, and delivers additional funds to ensure that the overall level of funds made available for special education for each open-enrollment charter school is not reduced by the implementation of HB 3. The adopted rule sets aside the funds described above from each open-enrollment charter school's regular program allotment, as calculated under TEC, §48.051.

Section 61.1004 will expire after five years.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 8, 2020, and ended June 8, 2020. Following is a summary of the public comment received and the corresponding agency response.

Comment: The Texas American Federation of Teachers commented that the proposed rule should include an end-of-year requirement that charter schools report any enrollment changes among their special education students and should account for how special education funds were spent on their students throughout the preceding year.

Response: The agency disagrees. Charter schools already report similar information through the Texas Student Data System Public Education Information Management System.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §12.106, as amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which details the calculation of state funding that open-enrollment charter schools are entitled to under the Foundation School Program; TEC, §48.011, as added by HB 3, 86th Texas Legislature, 2019, provides the commissioner authority to resolve unintended consequences from school finance formulas upon approval from the Legislative Budget Board and the office of the governor; TEC, §48.051, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which details the calculation of the regular program allotment that school districts and open-enrollment charter schools are entitled to under the Foundation School Program; and TEC, §48.102, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which details the calculation of the special education allotment that school districts and open-enrollment charter schools are entitled to under the Foundation School Program.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§12.106, 48.011, 48.051, and 48.102, as added 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.

Filed with the Office of the Secretary of State on July 10, 2020.

TRD-202002831
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: July 30, 2020
Proposal publication date: May 8, 2020
For further information, please call: (512) 475-1497

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19 TAC §61.1005

The Texas Education Agency (TEA) adopts new §61.1005, concerning additional state aid for staff salary increases at regional education service centers (RESCs). The new section is adopted without changes to the proposed text as published in the May 8, 2020 issue of the *Texas Register* (45 TexReg 3007) and will not be republished. The adopted new section reflects changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by explaining how TEA will calculate and make available funding under former Texas Education Code (TEC), §42.2513.

REASONED JUSTIFICATION: HB 3, 86th Texas Legislature, 2019, repealed additional state aid for staff salary increases under former TEC, §42.2513. Prior law provided a staff supplement of $500 for full-time and $250 for part-time staff who were neither classified as administrators nor subject to the minimum salary schedule. These provisions provided a funding entitlement to RESCs. HB 3 repealed the staff salary supplement as a separate allotment and provided the funding through the basic allotment.

RESCs, however, do not receive a basic allotment, and the repeal of the allotment results in the loss of entitlement to these entities. None of the fiscal analyses of HB 3 noted this impact. HB 3 incorporates service centers into many of its reforms. Ongoing training and staffing obligations are created in the bill that contradict an attempt to reduce RESCs' funding. As a result, the loss of funding constitutes an unanticipated loss of entitlement.

Section 61.1005 adjusts entitlement under the authority of TEC, §48.011, to flow funding to RESCs in the amount of the prior staff salary supplement as calculated under former TEC, §42.2513, for the 2018-2019 school year.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began May 8, 2020, and ended June 8, 2020. No public comments were received.

STATUTORY AUTHORITY. The new section is adopted under House Bill (HB) 3, §4.001(39), 86th Texas Legislature, 2019, which repealed Texas Education Code (TEC), §42.2513, that detailed the calculation of additional state aid for staff salary increases that school districts and regional education service centers were entitled to under the Foundation School Program; TEC, §48.004, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which specifies that the commissioner shall adopt rules that are necessary to implement and administer the Foundation School Program; and TEC, §48.011, as added by HB 3, 86th Texas Legislature, 2019, which provides the commissioner authority to resolve unintended consequences from school finance formulas upon approval from the Legislative Budget Board and the office of the governor.

CROSS REFERENCE TO STATUTE. The new section implements House Bill (HB) 3, §4.001(39), 86th Texas Legislature, 2019, and Texas Education Code, §48.004 and §48.011, as added by HB 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.

Filed with the Office of the Secretary of State on July 10, 2020.

TRD-202002832
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: July 30, 2020
Proposal publication date: May 8, 2020
For further information, please call: (512) 475-1497

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 300. MANUFACTURE, DISTRIBUTION, AND RETAIL SALE OF CONSUMABLE HEMP PRODUCTS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts new §§300.100 - 300.104; 300.201 - 300.203; 300.301 - 300.303; 300.401 - 300.404; 300.501 and 300.502; and 300.601 - 300.606, concerning the Manufacture, Distribution, and Retail Sale of Consumable Hemp Products.

Sections 300.101, 300.201, 300.301, 300.303, 300.402, and 300.601 are adopted with changes to the proposed text as published in the May 8, 2020, issue of the *Texas Register* (45 TexReg 3010) and will be republished. Sections 300.100, 300.102 - 300.104; 300.202 and 300.203; 300.302; 300.401, 300.403 and 300.404; 300.501 and 300.502; and 300.602 - 300.606 are adopted without changes to the proposed text as published in the May 8, 2020, issue of the *Texas Register* (45 TexReg 3010) and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The adoption complies with House Bill (H.B.) 1325, 86th Legislature, Regular Session, 2019, which added Texas Health and Safety Code, Chapter 443, relating to the manufacture, distribution, and sale of consumable hemp products.

Under the authority of Texas Health and Safety Code, Chapter 443, DSHS regulates the manufacture, processing, distribution, and sale of consumable hemp products. Consumable hemp product regulations are intended to ensure that consumable hemp products are safe to consume and properly labeled. DSHS requires and issues a license for the manufacture, processing, and distribution of consumable hemp products, and a registration for retailers of consumable hemp products containing cannabinoids.

PUBLIC COMMENT

The 31-day comment period ended June 8, 2020.

During this period, DSHS received comments regarding the proposed rules from 1,726 commenters, some with multiple comments. A summary of comments relating to the rules and DSHS's responses follows.

Businesses submitting comments and represented in the individual comments include: Texas Hemp Growers' Association; Rich Global Hemp; Crown Distributing; Happy Hippy Haus Cannabis Dispensary; (ten) American Shaman locations; Hemp Texas Organization; Elevated Wellness CBD; Natural Ways CBD; Sacred Leaf; TPAGE ENTERPRIZES LLC; NAVA POUCH, INC.; Grandma Deb's CBD; Aggieland CBD; Bless Your Body Massage; Integrity Lifestyle Center LLC; Whole Life Holistic's; CBD Sacred Leaf Zero; Sunfire Nutrition; Oils R Us; Subling Well; A2LA; EXHEMPLARY LIFE.com; Clean Remedies; Ability Solutions; 5 Royal Trees; Sacred Leaf Wellness Studio; Genuine Hemp Oils; Jessie Water Store; Sinsemilla LLC; Texas Hemp Industries; BillCo; Chai Life CBD; Green Cross; Prolific Brands; Texas Botanicals; Flower of Hope; PuffnPretty; Releaf Downtown; Triple S Tree Farm; Forty Texas Hemp Company; Sundown Farms; Xochicalli Gardens; Hill Country Pharm Haus; American Shaman of Cedar Hill; Mora Hemp LLC; Natural Health Products; Hotzen Hemp; Gruene Leaf; Angel Botanicals; Hill Country Pharm Haus; Early Fruit Hemp Co; Revive Farming Technologies; Green Mountain flower.com; Hill Country Harvest

Farm LLC; 5W Land & Cattle; West Texas Hemp LLC.; Twenty Something SA; Grassroot Botanicals LLC; CANYON HEMP COMPANY; Gruene Cross Kyle; CBD Country; Ziggy Boone Farms; Royal Organix; Precision Engraving; Legal Loud CBD; Texas Star Hemp Farms; Hopewell Farms; The CBD Store By Nature Pure Life; Southwest Crop Consultants; The Emerald Triangle CBD; Whole Organix; Green Wellness; Euphoria Botanicals; Better Body Healthy You; Cornbread Hemp; Surterra Texas; Crown Distributing LLC; Sweet Island Botanicals; Austin Insurance Group; Grand Avenue Compounding Pharmacy; Analytical Food Laboratories; Coats and Rose Law Firm; and the Texas Medical Association.

Comment: A commenter disagreed with statement (8) under the "Government Growth Impact Statement" in the proposed preamble, stating that there will be no positive economic benefit to the State of Texas if the ban on smokable hemp products remains in rule.

Response: DSHS disagrees with the commenter and declines to revise the preamble. H.B. 1325 requires DSHS to develop rules regulating the manufacture, distribution, and sale of consumable hemp products. This legislation authorizes an expansion of hemp agriculture and creates an expanded hemp products inventory manufactured and sold in the State of Texas, thereby resulting in positive economic benefits.

Comment: A commenter encouraged DSHS to consider rules allowing farmers to sell consumable hemp products directly to the public from farms and through farmers' markets.

Response: DSHS does not agree that a rule change is necessary to address the sale of consumable hemp products from a farm. If a farm manufactures a consumable hemp product, the owner will be required to acquire a consumable hemp manufacturer/distributor license from DSHS and register as a consumable hemp retailer with DSHS to sell consumable hemp products from the farm, at a farmer's market, or directly to a consumer.

Comment: Seven commenters recommended the State of Texas not adopt rules concerning the production or sale of hemp products.

Response: DSHS disagrees with these commenters. H.B. 1325 (Texas Health and Safety Code, Chapter 443) requires DSHS to develop rules regulating the manufacture, distribution, and sale of consumable hemp products.

Comment: Four commenters requested rules to legalize marijuana in the state of Texas.

Response: DSHS considers these comments outside the scope of rulemaking for this chapter. H.B. 1325 (Texas Health and Safety Code, Chapter 443) requires DSHS to develop rules regulating the manufacture, distribution, and sale of consumable hemp products in Texas. H.B. 1325 contains no authorization for the legalization of marijuana in Texas.

Comment: A commenter requested revision and clarification throughout the proposed rules of the term "processor" as opposed to the term "manufacturer."

Response: DSHS does not agree with the commenter and declines to revise the proposed rules. DSHS followed Texas Health and Safety Code, Chapters 443 and 431 in the definitions of "processor" and "manufacturer."

Comment: A commenter requested that the defined terms for gas chromatography, good manufacturing processes, high performance liquid chromatography (HPLC), and non-consumable hemp processor in §300.101 be removed because they are not used within the body of the rules.

Response: DSHS agrees with the commenter and accordingly deletes the definitions from §300.101.

Comment: A commenter requested retaining language from H.B. 1325 regarding the inclusion of "institutions of higher education" in the definition of "accredited laboratory."

Response: DSHS agrees with the request and accordingly revises the proposed rule text in §300.101(2) and §300.303(f) to add "including at an institution of higher education."

Comment: A commenter disagreed with the definition of the term "consumable hemp product," stating that it deviates from the statute definition and does not include language related to distribution and sale and does not capture the notion of human consumption.

Response: DSHS disagrees with the commenter and declines to revise §300.101(8). The statute refers to the definitions of "food, drug, cosmetic, and device" in Texas Health and Safety Code, Chapter 431. The definition of "drug" in Texas Health and Safety Code, Chapter 431 includes drugs for animals. Therefore, the definition of consumable hemp product in the proposed rule cannot refer strictly to human consumption.

Comment: A commenter requested an exception to the definition of "consumable hemp product" at §300.101(8) for intermediate products in the extraction process that may have a delta-9 tetrahydrocannabinol (THC) content exceeding 0.3%.

Response: DSHS does not agree with the commenter and declines to revise the proposed rule. The definition of consumable hemp product in the Texas Health and Safety Code, Chapter 443 refers to the definitions of food, drugs, cosmetics, and devices in Texas Health and Safety Code, Chapter 431, which, along with the definition of "manufacture," includes in-process product that is not necessarily consumer-ready. Furthermore, DSHS has no authority to allow intermediate or finished products to exceed 0.3% THC.

Comment: A commenter stated that the term "distributor" is not clearly defined and that "distributors" should be required to obtain a retail registration instead of a manufacturer/distributor license.

Response: DSHS disagrees with the commenter and declines to revise the rule. Section 300.101(12) clearly defines the term "distributor" as "a person who distributes consumable hemp products for resale" as opposed to a retail outlet that sells to consumers.

Comment: A commenter requested revision of the proposed definition of "independent contractor" located at §300.101(20) to include wholesale distributors.

Response: DSHS disagrees with the commenter and declines to revise the proposed rule. The proposed rule follows the statute, Texas Health and Safety Code, §443.2025(b) and (d), that allows a registration exemption for independent contractors of retail registrants.

Comment: A commenter requested a revision of the defined term "license holder" to clarify and clean up the definition in §300.101(21).

Response: DSHS disagrees with this commenter and declines to revise the proposed definition. DSHS considers the definition of "license holder" to be stated with sufficient clarity in the rule.

Comment: A commenter requested that the defined term "lot number" in §300.101(22) be revised to "lot" because "lot number" is not used in the body of the proposed rule but "lot" is used.

Response: DSHS agrees with the commenter that there is an inconsistency and revised the rule text to remove the word "identification" from §300.402(a)(1) to state "lot number." This clears up the inconsistency, to which the commenter refers, between §300.101(22) and §300.402(a)(1).

Comment: A commenter requested a revision to proposed §300.103 for clarity and remove duplicative language.

Response: DSHS disagrees with the commenter and declines to make the revision. DSHS considers the rule to be stated with sufficient clarity, which is aided by the duplicative language.

Comment: 1690 commenters opposed the prohibition of the retail sale of smokable hemp products contained in §300.104. Of the total, 1,425 comments were in form of emails, 184 were emails from individuals, one was by letter, 10 were by telephone, and 70 were emails from businesses.

Reasons for opposition to the prohibition of the retail sale of smokable hemp products contained in §300.104 include:

-A deleterious effect on the overall Consumable Hemp Product business in Texas, particularly on those businesses already selling the products.

-A negative impact on individuals who depend on smoking for rapid delivery of cannabidiol (CBD) to relieve medical conditions.

-Lack of authority for DSHS to include the retail ban in the proposed rule when it was not included in the language of Texas Health and Safety Code, Chapter 443.

-Lack of constitutionality under the Texas Farm Bill.

Response: DSHS disagrees with these commenters. H.B. 1325 (Texas Health and Safety Code, Chapter 443) requires DSHS to develop rules regulating the manufacture, distribution, and sale of consumable hemp products. DSHS cannot reasonably approve the retail sale of products of which H.B. 1325 clearly prohibits the manufacture in Texas Health and Safety Code, §443.204(4). DSHS considers the retail ban in proposed §300.104 a logical extension of the manufacturing ban in Texas Health and Safety Code, §443.204(4). No change was made to the rule in response to these comments.

Comment: Two commenters supported the prohibition of the retail sale of smokable hemp products contained in §300.104. One commenter's reason is due to the burden placed on law enforcement officers in the field when faced with the need to distinguish between smokable hemp flower and marijuana. The other commenter's reason is due to the negative impact of smoking on the health of the smokers.

Response: DSHS agrees with the commenters and is not removing the prohibition of the retail sale of smokable hemp products contained in §300.104.

Comment: One commenter requested that DSHS not remove hemp flower. The comment is brief, and the commenter does not indicate whether the intention is to use hemp flower for smoking or as a food product.

Response: DSHS does not agree with the commenter and declines to revise the rule. Properly tested and labeled hemp flower, marketed for use other than smoking (e.g. as a tea or a food additive) does not fall under the retail ban contained in §300.104.

Comment: A commenter requested revision of proposed §300.201(b) by including "hemp-derived products" in the rule text to make it consistent with §300.201(a).

Response: DSHS agrees with the commenter and revised the proposed rule text to remove the phrase "hemp-derived" from §300.201(a). The phrase is superfluous, since all products required to hold the license are consumable hemp products.

Comment: A commenter requested clarification on how a location will be required to be described in the application for a consumable hemp products license as required under proposed §300.201(b)(1). Additionally, the commenter requested clarification on how a location will be required to be described for independent contractors.

Response: DSHS disagrees with the commenter and declines to make the revision. The proposed rule follows Texas Health and Safety Code, §443.103(1).

Comment: Three commenters suggested that disqualification for a manufacturer/distributor license due to a felony drug conviction within the previous ten years (§300.201(c)) unfairly impacts minority applicants, who have been "disproportionately criminalized." One of the commenters suggested that five years would be better. The same commenter made comments regarding certain Texas Department of Agriculture (TDA) requirements for farmers.

Response: The disqualification due to a felony drug conviction in the previous ten years is statutory and found in Texas Health and Safety Code, §443.102(a)(1). DSHS declines to revise the proposed rule. Comments regarding TDA requirements for farmers are outside the scope of DSHS rulemaking.

Comment: Five commenters opposed §300.202, License Term and Fees, and §300.502, Application, requiring payment of fees for licensure and registration for the manufacture, distribution, and retail sale of consumable hemp products.

Response: DSHS does not agree with the commenters and declines to revise the rule. H.B. 1325 (Texas Health and Safety Code, Chapter 443) authorizes DSHS to collect fees under Texas Health and Safety Code §443.103, Application; Issuance, and §443.2025, Registration Required For Retailers Of Certain Products. Furthermore, Texas Health and Safety Code, Chapter 12, §12.0111, requires DSHS to adopt and collect a fee for issuing or renewing a license to allow DSHS to recover DSHS's direct and indirect costs.

Comment: Four commenters recommended revision of proposed §300.301 to require specific analytical techniques.

Response: DSHS does not agree with the commenters and declines to revise the proposed rule. Texas Health and Safety Code §443.202 and §443.151 do not prescribe testing methods.

Comment: A commenter requested revision of §300.301(a) and §300.303(l), suggesting that the language is vague and implies that every consumable hemp product must be tested for every substance listed in Table 1.

Response: While DSHS does not agree with the commenter, the language has been revised to note that testing can be done for substances that are appropriate for the product and process.

Comment: A commenter requested revision of §300.301 to delete *Campylobacter* and *Yersinia* from the list of pathogens

in Table 1 at §300.303(l), stating that these are unnecessary tests for the kinds of products expected to be produced. The commenter also states that the language contained in §300.301(a)(3) implies that every product must be tested for all the pathogens in Table 1.

Response: DSHS disagrees with this commenter and declines to make the requested revision. The requirement in §300.301(a)(3) to test for "harmful pathogens" is deliberately broad to address multiple products, processes, and environmental contaminants. It should be noted §300.303(l) states, directly preceding Table 1, that "the department *may* utilize the table to test consumable hemp products." It does not state that the department will test every consumable hemp product for every substance or pathogen on the table.

Comment: A commenter requested revision of proposed §300.301(b)(1) to remove awkwardness of expression, stating that a firm cannot manufacture or process "into commerce."

Response: DSHS does not agree with the commenter's reading of the passage in question and declines to make the revision.

Comment: One commenter requested clarification of language in §300.301(b) regarding whether a Certificate of Analysis must show the results of all testing conducted for a product or only the presence and content of CBD and THC.

Response: DSHS agrees and has deleted §300.301(b)(2) to clear up the contradiction.

Comment: A commenter requested that DSHS revise the proposed §300.302(b)(1) to allow 10% THC content.

Response: DSHS does not agree with the commenter and declines to revise the proposed rule. The requirement for a THC content not to exceed 0.3% is set in statute, Texas Health and Safety Code, Chapter 443.

Comment: A commenter requested that DSHS include safety requirements for extraction facilities in Subchapter C of the proposed rules.

Response: DSHS does not consider this within the scope of current requirements contained in Texas Health and Safety Code, Chapter 443. These requirements fall within the jurisdiction of other agencies, such as the Occupational Safety and Health Administration and local fire departments. DSHS is not opposed to the development of guidance documents for this purpose outside the framework of the rules.

Comment: One commenter opposed the requirement for the use of QR (Quick Response) codes on labeling in §300.402.

Response: DSHS disagrees with the commenter and declines to revise the rule. The statute allows, but does not require, the use of QR codes and uniform resource locators (URLs) in Texas Health and Safety Code, §443.205.

Comment: One commenter opposed local enforcement of labeling on consumable hemp products.

Response: DSHS does not agree that a rule change is necessary. The statute, Texas Health and Safety Code, §443.003 does not permit regulation of consumable hemp products by local regulatory agencies.

Comment: A commenter stated that language in proposed §300.402(a) is narrower than the language in the analogous section of the statute, Texas Health and Safety Code, §443.205(a). The result is that the proposed language might give the impression that only consumable hemp products containing CBD need to comply with the packaging and labeling requirements. This would conflict with the statute, which requires compliance from any consumable hemp product that contains or is marketed as containing "more than trace amounts of cannabinoids."

Response: DSHS agrees with the commenter and has revised §300.402(a) to be more consonant with the language in Texas Health and Safety Code, §443.205(a).

Comment: A commenter requested that proposed §300.402 be revised because the labeling requirements as written would affect the ability of companies to "white-label" (i.e. private label) consumable hemp products. The commenter stated that the rule may lead to a loss of competitive advantage as the label would require the "white label" product to reveal their source.

Response: DSHS disagrees with the commenter and declines to make the revision. Texas Health and Safety Code, §443.205(a)(5) requires the name of the manufacturer.

Comment: A commenter requested language in §300.402 requiring that consumable hemp product labels be prominently placed and highly visible. The same commenter requested language requiring warning labels for pregnant or breast-feeding women.

Response: The labeling requirements in the proposed rule follow the labeling requirements in Texas Health and Safety Code, §443.204. DSHS declines to revise the rule.

Comment: A commenter requested that DSHS include additional options for the disposal of an article that meets schedule I drug due to THC content.

Response: DSHS does not agree with the commenter and declines to revise the rule. DSHS will follow statutory guidance to work with the Texas Department of Public Safety for the disposition of consumable hemp products with confirmed THC content exceeding 0.3%.

Comment: A commenter requested a clarification regarding whether e-commerce is covered by this chapter as it is not addressed in the rules.

Response: The statute makes no distinction between brick-and-mortar commerce and e-commerce. Therefore, e-commerce, like brick-and-mortar, with a recipient in Texas is required to obtain a license or registration from DSHS and to comply with Texas Health and Safety Code, Chapter 443 as well as this chapter.

Comment: A commenter requested that DSHS consider adding a laboratory licensing or registration requirement to the proposed rules.

Response: DSHS disagrees with the commenter and declines to make the revision. Texas Health and Safety Code, Chapter 443 does not give DSHS authority to license or register laboratories to conduct testing of consumable hemp products.

Comment: A commenter requested more definitive and prescriptive testing standards and requirements, so they are clear to all laboratories, license holders, and registrants.

Response: DSHS disagrees with the commenter and declines to make the revision. The proposed testing requirements are designed to be minimum standards. Businesses may conduct more robust testing at their own discretion.

Comment: A commenter requested a revision of the fee structure for registrants with multiple locations. The commenter

stated that the fees for large scale retailers would be exorbitant and recommended a tiered fee system for registrants with a significant number of locations.

Response: DSHS disagrees with the commenter and declines to make the revision. License or registration fees for each location is consistent with the method operated by other DSHS licensing programs.

Comment: A commenter expressed concern over Subchapter F in the proposed rules related to enforcement. The commenter stated that the penalty for acting in violation of the requirements are not clear and asked if any violations of the proposed rules would result in criminal enforcement action.

Response: DSHS does not agree with the commenter and declines to make the revision. DSHS will publish an administrative penalty matrix in the *Texas Register* in the future. All enforcement action taken by DSHS is administrative or civil rather than criminal.

Comment: One commenter opposed the registration requirements in §300.502 for out-of-state sellers.

Response: DSHS disagrees with the commenter and declines to revise the rule. The requirement is statutory. Texas Health and Safety Code, §443.2025(b) clearly states that the retail sale of consumable hemp products containing CBD in Texas requires a retail registration. The statute does not distinguish between in-state and out-of-state retailers.

Comment: A commenter noted that §300.602(1) appears to make it illegal for a consumable hemp product contained in a package to be in commerce.

Response: DSHS agrees with the commenter and revises §300.602(1) and (2) for greater clarity.

Comment: A commenter suggested that the notice of violation contained in §300.606(e) be by email as well as certified mail.

Response: The proposed language requiring the notice of violation to be sent by certified mail is consistent with current DSHS compliance procedures. DSHS declines to revise the rule.

A minor editorial change was made to §300.601(a)(1) to correct a reference title to §300.201.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §§300.100 - 300.104

STATUTORY AUTHORITY

The new rules are authorized by H.B. 1325 that added Texas Health and Safety Code, Chapter 443, which provides that the Executive Commissioner of HHSC may adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 443; and Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

§300.101. Definitions.

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

(1) Acceptable hemp THC level--A delta-9 tetrahydrocannabinol content concentration level on a dry weight basis, that, when reported with the accredited laboratory's measurement of uncertainty, produces a distribution or range that includes a result of 0.3 percent or less.

(2) Accredited laboratory--A laboratory, including at an institution of higher education, accredited in accordance with the International Organization for Standardization ISO/IEC 17025 or a comparable or successor standard.

(3) Act--House Bill 1325, 86th Legislature, Regular Session, 2019, relating to the production and regulation of hemp in Texas, codified in Texas Health and Safety Code, Chapter 443.

(4) Analyte--A chemical, compound, element, bacteria, yeast, fungus, mold, or toxin identified and measured by accredited laboratory analysis.

(5) Approved hemp source--Hemp and hemp products grown for human use and consumption produced under a state or a compatible federal, foreign, or Tribal plan, approved by the United States Department of Agriculture under 7 United States Code (U.S.C.) Chapter 38, Subchapter VII, or Texas Agriculture Code, Chapter 121, or in a manner that is consistent with federal law and the laws of respective foreign jurisdictions.

(6) Cannabidiol (CBD)--A phytocannabinoid identified as an extract from cannabis plants.

(7) Certificate of Analysis (COA)--An official document released by the accredited laboratory to the manufacturer, processor, distributor, or retailer of consumable hemp products, the public, or department, which contains the concentrations of cannabinoid analytes and other measures approved by the department, to also include data on levels of THC and state whether a sample passed or failed any limits of content analysis.

(8) Consumable hemp product (CHP)--Any product processed or manufactured for consumption that contains hemp, including food, a drug, a device, and a cosmetic, as those terms are defined by Texas Health and Safety Code, §431.002, but does not include any consumable hemp product containing a hemp seed, or hemp seed-derived ingredient being used in a manner that has been generally recognized as safe (GRAS) by the FDA.

(9) Consumable hemp products license--A license issued to a person or facility engaged in the act of manufacturing, extracting, processing, or distributing consumable hemp products for human consumption or use.

(10) Delta-9 tetrahydrocannabinol (THC)--The primary psychoactive component of cannabis. For the purposes of this chapter, the terms delta-9 tetrahydrocannabinol and THC are interchangeable.

(11) Department--Department of State Health Services.

(12) Distributor--A person who distributes consumable hemp products for resale, either through a retail outlet owned by that person or through sales to another retailer. A distributor is required to hold a consumable hemp products license.

(13) Facility--A place of business engaged in manufacturing, processing, or distributing consumable hemp products subject to the requirements of this chapter and Texas Health and Safety Code, Chapter 431. A facility includes a domestic or foreign facility that is required to register under the Federal Food, Drug, and Cosmetic Act, Section 415 in accordance with the requirements of 21 Code of Federal Regulations Part 1, Subpart H.

(14) FDA--The United States Food and Drug Administration or its successor agency.

(15) Federal Act--Federal Food, Drug, and Cosmetic Act (Title 21 U.S.C. 301 et seq.).

(16) Hemp--The plant, Cannabis sativa L. and any part of that plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol content concentration level on a dry weight basis, that, when reported with the accredited laboratory's measurement of uncertainty, produces a distribution or range that includes a result of 0.3 percent or less.

(17) Independent contractor--A person or entity contracted to perform work or sales for a registrant.

(18) License holder--The person who is legally responsible for the operation as a consumable hemp manufacturer, processor, or distributor, and possesses a valid license.

(19) Lot number--A specific quantity of raw or processed hemp product that is uniform and intended to meet specifications for identity, strength, purity, and composition that shall contain the manufacturer's, processor's, or distributor's, number and a sequence to allow for inventory, traceability, and identification of the plant batches used in the production of consumable hemp products.

(20) Manufacturer--A person who makes, extracts, processes, or distributes consumable hemp product from one or more ingredients, including synthesizing, preparing, treating, modifying or manipulating hemp or hemp crops or ingredients to create a consumable hemp product. For farmers and persons with farm mixed-type facilities, manufacturing and processing does not include activities related to growing, harvesting, packing, or holding raw hemp product.

(21) Measurement of uncertainty--The parameter, associated with the results of an analytical measurement that characterizes the dispersion of the values that could reasonably be attributed to the quantity subjected to testing measurement. For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/- 0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance.

(22) Non-consumable hemp processor--A person who intends to process hemp products not for human consumption and is registered with the Texas Department of Agriculture.

(23) Non-consumable hemp product--As defined by Texas Agriculture Code, §122.001(8), means a product that contains hemp, other than a consumable hemp product as defined by Texas Health and Safety Code, §443.001. The term includes cloth, cordage, fiber, fuel, paint, paper, particleboard, construction materials, and plastics derived from hemp.

(24) Pathogen--A microorganism of public health significance, including molds, yeasts, Listeria monocytogenes, Campylobacter, Salmonella, E. coli, Yersinia, or Staphylococcus.

(25) Person--An individual, business, partnership, corporation, or association.

(26) Process--Extraction of a component of hemp, including CBD or another cannabinoid, that is:

(A) sold as a consumable hemp product;

(B) offered for sale as a consumable hemp product;

(C) incorporated into a consumable hemp product; or

(D) intended to be incorporated into a consumable hemp product.

(27) Processor--A person who operates a facility which processes raw agriculture hemp into consumable hemp products for manufacture, distribution, and sale. A hemp processor is required to hold a consumable hemp products license. A person issued a consumable hemp products license, which only engages in the manufacturing, processing, and distribution of consumable hemp products, is not required to hold a license under Texas Health and Safety Code, Chapter 431, Subchapter J.

(28) QR code--A quick response machine-readable code that can be read by a camera, consisting of an array of black and white squares used for storing information or directing or leading a user to product information regarding manufacturer data and accredited laboratory certificates of analysis.

(29) Raw hemp--An unprocessed hemp plant, or any part of that plant, in its natural state.

(30) Registrant--A person, on the person's own behalf or on behalf of others, who sells consumable hemp products directly to consumers, and who submits a complete registration form to the department for purposes of registering their place of business to sell consumable hemp products at retail to the public.

(31) Reverse distributor--A person registered with the federal Drug Enforcement Agency as a reverse distributor that receives controlled substances from another person or entity for return of the products to the registered manufacturer or to destroy adulterated or impermissible THC products.

(32) Smoking--Burning or igniting a consumable hemp product and inhaling the resultant smoke, vapor, or aerosol.

(33) Tetrahydrocannabinol (THC)--The primary psychoactive component of the cannabis plant.

(34) Texas Department of Agriculture--The state agency responsible for regulation of planting, growing, harvesting, and testing of hemp as a raw agricultural product.

(35) Texas.gov--The online registration system for the State of Texas found at https://www.texas.gov.

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 July 13, 2020.

TRD-202002880
Barbara L. Klein
General Counsel
Department of State Health Services
Effective date: August 2, 2020
Proposal publication date: May 8, 2020
For further information, please call: (512) 231-5653

SUBCHAPTER B. MANUFACTURE, PROCESSING, AND DISTRIBUTION OF CONSUMABLE HEMP PRODUCTS

25 TAC §§300.201 - 300.203

STATUTORY AUTHORITY

The new rules are authorized by H.B. 1325 that added Texas Health and Safety Code, Chapter 443, which provides that the Executive Commissioner of HHSC may adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 443; and Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

§300.201. Application for License or Renewal.

(a) A person must hold a consumable hemp products license issued by the department before engaging in the manufacture, processing, or distribution of consumable hemp products.

(b) A person shall apply for a consumable hemp products license under this subchapter by submitting an application to the department in the manner prescribed by the department for each location engaged in the manufacture, processing, or distribution of consumable hemp products. The application must be accompanied by:

(1) a legal description of each location to include the global positioning system coordinates for the perimeter of each location:

(A) where the applicant intends to manufacture or process consumable hemp products; and

(B) where the applicant intends to store consumable hemp products to include the global positioning system coordinates for the perimeter of each location;

(2) written consent from the applicant or the property owner, if the applicant is not the property owner, for the department, the Department of Public Safety, and any other state or local law enforcement agency, to enter all premises where consumable hemp is manufactured, processed, or delivered, to conduct a physical inspection or to ensure compliance with this chapter; and

(3) a fingerprint-based criminal background check from each applicant at the applicant's expense.

(c) If the applicant or person has been convicted of a felony relating to a controlled substance under federal law or the law of any state within ten years before the date of application, the department shall not issue a consumable hemp products license under this subchapter.

(d) If the department receives information that a license holder under this subchapter has been convicted of a felony relating to a controlled substance under federal law or the law of any state within ten years before the issue date of the license, the department shall revoke the consumable hemp products license.

(e) A person who holds a consumable hemp products license under this subchapter shall undergo a fingerprint-based criminal background check at his own expense.

(f) Applications must contain the following information:

(1) the name of the license applicant;

(2) the business name, if different than applicant name;

(3) the mailing address of the business;

(4) the street address of the facility;

(5) the primary business contact telephone number;

(6) the personal email address of the applicant; and

(7) the email address of the business, if different than the applicant's email address.

(g) If a person owns or operates two or more facilities, each facility shall be licensed separately by listing the name and address of each facility on separate application forms.

(h) Applicants must submit an application for a consumable hemp products license request under this subchapter electronically through www.Texas.gov. The department is authorized to collect fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through www.Texas.gov.

(i) All fees required by the department must be submitted with the application.

(j) Applicants must submit any other information required by the department, as evidenced and provided upon application forms.

(k) A consumable hemp products license issued by the department should be displayed in an obvious and conspicuous public location within the facility to which the license applies.

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 July 13, 2020.

TRD-202002881
Barbara L. Klein
General Counsel
Department of State Health Services
Effective date: August 2, 2020
Proposal publication date: May 8, 2020
For further information, please call: (512) 231-5653

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SUBCHAPTER C. TESTING OF CONSUMABLE HEMP PRODUCTS

25 TAC §§300.301 - 300.303

STATUTORY AUTHORITY

The new rules are authorized by H.B. 1325 that added Texas Health and Safety Code, Chapter 443, which provides that the Executive Commissioner of HHSC may adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 443; and Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

§300.301. Testing Required.

(a) All hemp or hemp derivatives used in the manufacture of a consumable hemp product must be tested as appropriate for the product and process by an accredited laboratory to determine:

(1) the presence and concentration of cannabinoids;

(2) the presence and concentration of THC; and

(3) the presence or quantity of residual solvents, heavy metals, pesticides, and harmful pathogens.

(b) A Certificate of Analysis documenting tests conducted under this subchapter shall:

(1) be made available to the department upon request in an electronic format before manufacture, processing, or distribution into commerce; and

(2) include measurement of uncertainty analysis parameters.

§300.303. Provisions Related to Testing.

(a) A consumable hemp product that exceeds the acceptable hemp THC level or is adulterated in a manner harmful to human consumption shall not be sold at retail or otherwise introduced into commerce in this state.

(b) A hemp manufacturer, processor, or distributor shall provide the results of testing required by §300.301 of this subchapter (relating to Testing Required) to the department upon request.

(c) The registrant shall provide the testing results required under §300.301 of this subchapter to a consumer or the department upon request.

(d) A license holder shall not use an independent testing accredited laboratory unless the license holder has:

(1) no ownership interest in the accredited laboratory; or

(2) holds less than a ten percent ownership interest in the accredited laboratory if the accredited laboratory is a publicly-traded company.

(e) A license holder must pay the costs of raw and finished hemp product testing in an amount prescribed by the accredited laboratory selected by the license holder.

(f) The department shall recognize and accept the results of a test performed by an accredited laboratory, including at an institution of higher education.

(g) The department may require that a copy of the test results be sent directly to the department and the license holder.

(h) The department shall notify the license holder of the results of the test not later than the 14th day after the date testing results are made available to the department.

(i) A license holder shall retain results from samples for a period of no less than three years from the date that testing results are made available to the license holder.

(j) A manufacturer or processor of consumable hemp products shall conduct sampling and testing using acceptance criteria that are protective of public health.

(k) A consumable hemp product is not required to be tested under §300.301 of this subchapter if each hemp-derived ingredient of the product:

(1) has been tested;

(2) includes the results that are available upon request from the department before distribution or sale; and

(3) contains an acceptable hemp THC level.

(l) The department may utilize Table 1 to test raw or finished consumable hemp products as appropriate for the product and the process:

Figure: 25 TAC §300.303(l)

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 July 13, 2020.

TRD-202002882
Barbara L. Klein
General Counsel
Department of State Health Services
Effective date: August 2, 2020
Proposal publication date: May 8, 2020
For further information, please call: (512) 231-5653

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SUBCHAPTER D. RETAIL SALE OF CONSUMABLE HEMP PRODUCTS

25 TAC §§300.401 - 300.404

STATUTORY AUTHORITY

The new rules are authorized by H.B. 1325 that added Texas Health and Safety Code, Chapter 443, which provides that the Executive Commissioner of HHSC may adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 443; and Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

§300.402. Packaging and Labeling Requirements.

(a) All consumable hemp products marketed as containing more than trace amounts of cannabinoids must, in addition to the requirements of §300.102 of this chapter (relating to Applicability of Other Rules and Regulations), be labeled in the manner provided by this section with the following information:

(1) lot number;

(2) lot date;

(3) product name;

(4) the name of the product's manufacturer;

(5) telephone number and email address of manufacturer; and

(6) a Certificate of Analysis that the delta-9 tetrahydrocannabinol content concentration level on a dry weight basis, that, when reported with the accredited laboratory's measurement of uncertainty, produces a distribution or range that includes a result of 0.3 percent or less.

(b) The label required by this section must appear on each product intended for individual retail sale.

(c) The label required by this section may be in the form of:

(1) a uniform resource locator (URL) for the manufacturer's Internet website that provides or links to the information required by this section; and

(2) a QR code or other bar code that may be scanned and that leads to the information required on the label.

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 July 13, 2020.

TRD-202002884

Barbara L. Klein
General Counsel
Department of State Health Services
Effective date: August 2, 2020
Proposal publication date: May 8, 2020
For further information, please call: (512) 231-5653

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SUBCHAPTER E. REGISTRATION FOR RETAILERS OF CONSUMABLE HEMP PRODUCTS

25 TAC §300.501, §300.502

STATUTORY AUTHORITY

The new rules are authorized by H.B. 1325 that added Texas Health and Safety Code, Chapter 443, which provides that the Executive Commissioner of HHSC may adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 443; and Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

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

Filed with the Office of the Secretary of State on July 13, 2020.

TRD-202002885
Barbara L. Klein
General Counsel
Department of State Health Services
Effective date: August 2, 2020
Proposal publication date: May 8, 2020
For further information, please call: (512) 231-5653

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SUBCHAPTER F. ENFORCEMENT

25 TAC §§300.601 - 300.606

STATUTORY AUTHORITY

The new rules are authorized by H.B. 1325 that added Texas Health and Safety Code, Chapter 443, which provides that the Executive Commissioner of HHSC may adopt rules for the efficient enforcement of Texas Health and Safety Code, Chapter 443; and Texas Government Code, §531.0055 and Texas Health and Safety Code, §1001.075, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

§300.601. Violation of Department License or Registration Requirement.

(a) A person commits a violation if the person manufactures, processes, distributes, or sells a consumable hemp product into commerce without a license or registration required by the department under:

(1) §300.201 of this chapter (relating to Application for License or Renewal) for the manufacture, processing, or distributing of consumable hemp products; or

(2) §300.502 of this chapter (relating to Application) for the retail sale of consumable hemp products.

(b) Each day a violation continues or occurs is a separate violation for purposes of imposing an administrative 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.

Filed with the Office of the Secretary of State on July 13, 2020.

TRD-202002886
Barbara L. Klein
General Counsel
Department of State Health Services
Effective date: August 2, 2020
Proposal publication date: May 8, 2020
For further information, please call: (512) 231-5653

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

DIVISION 2. DEFINITIONS

34 TAC §20.25

The Comptroller of Public Accounts adopts amendments to §20.25, concerning definitions, without changes to the proposed text as published in the May 22, 2020, issue of the *Texas Register* (45 TexReg 3429). The rule will not be republished.

These amendments are to clarify the procurement rules in light of the restructure of the electric utility industry implemented with Senate Bill 7, 76th Legislature, 1999, and to provide clarity regarding the applicable procurement rules referenced in Chapter 20, Statewide Procurement and Support Services.

The restructure of the electric utility industry allowed for consumers' choice, therefore, the inclusion of the purchase of services from a retail electric provider in a deregulated market, as described below, is proposed to clarify the procurement requisites applicable for such services in a competitive market and to help ensure state agencies comply with the purchasing requirements under Government Code, Title 10, Subtitle D.

The amendment to subsection (a), changes the generic reference from "these regulations" to "this chapter" to clarify that the reference is to Chapter 20 of this title. The amendments to subsection (b), adds definitions for: customer choice; public utility or utility; and retail electric provider. New paragraph (16) proposes the definition of "customer choice" as provided in Utilities Code, §31.002(4). New paragraph (46) proposes the definition of "public utility or utility" as provided in Utilities Code. §11.004. New paragraph (60) proposes the definition of "retail electric provider"

as provided in Utilities Code. §31.002(17). Subsequent paragraphs are renumbered accordingly.

No comments were received regarding adoption of the amendment.

These amendments are adopted under Government Code, §2155.0012 and §2156.0012, which authorize the comptroller by rule to efficiently and effectively administer state purchasing of goods and services.

These amendments implement Government Code, §§2151.003, 2155.001 and 2155.0011, which outline the general purchasing responsibility of the comptroller.

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 July 13, 2020.

TRD-202002874
Don Neal
Chief Counsel, Operations and Support Legal Services Division
Comptroller of Public Accounts
Effective date: August 2, 2020
Proposal publication date: May 22, 2020
For further information, please call: (512) 475-0387

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SUBCHAPTER B. PUBLIC PROCUREMENT AUTHORITY AND ORGANIZATION
DIVISION 1. PRIMARY AND DELEGATED PROCUREMENT AUTHORITY

34 TAC §20.81

The Comptroller of Public Accounts adopts amendments to §20.81, concerning general purchasing provisions, without changes to the proposed text as published in the May 22, 2020, issue of the *Texas Register* (45 TexReg 3433). The rule will not be republished.

These amendments are to clarify the procurement rules in light of the restructure of the electric utility industry implemented with Senate Bill 7, 76th Legislature, 1999, and to provide clarity regarding the applicable procurement rules referenced in Chapter 20, Statewide Procurement and Support Services.

The restructure of the electric utility industry allowed for consumers' choice, therefore, the inclusion of the purchase of services from a retail electric provider in a deregulated market, as described below, is proposed to clarify the procurement requisites applicable for such services in a competitive market and to help ensure state agencies comply with the purchasing requirements under Government Code, Title 10, Subtitle D.

The proposed amendments to §20.81 clarify that the purchase of services from a retail electric provider in an area with customer choice is subject to the procurement requirements under Government Code, Title 10, Subtitle D, and Chapter 20 of this title.

No comments were received regarding adoption of the amendment.

These amendments are adopted under Government Code, §2155.0012 and §2156.0012, which authorize the comptroller by rule to efficiently and effectively administer state purchasing of goods and services.

These amendments implement Government Code, §§2151.003, 2155.001 and 2155.0011, which outline the general purchasing responsibility of the comptroller.

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 July 13, 2020.

TRD-202002875
Don Neal
Chief Counsel, Operations and Support Legal Services Division
Comptroller of Public Accounts
Effective date: August 2, 2020
Proposal publication date: May 22, 2020
For further information, please call: (512) 475-0387

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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

Texas Board of Pardons and Paroles

Title 37, Part 5

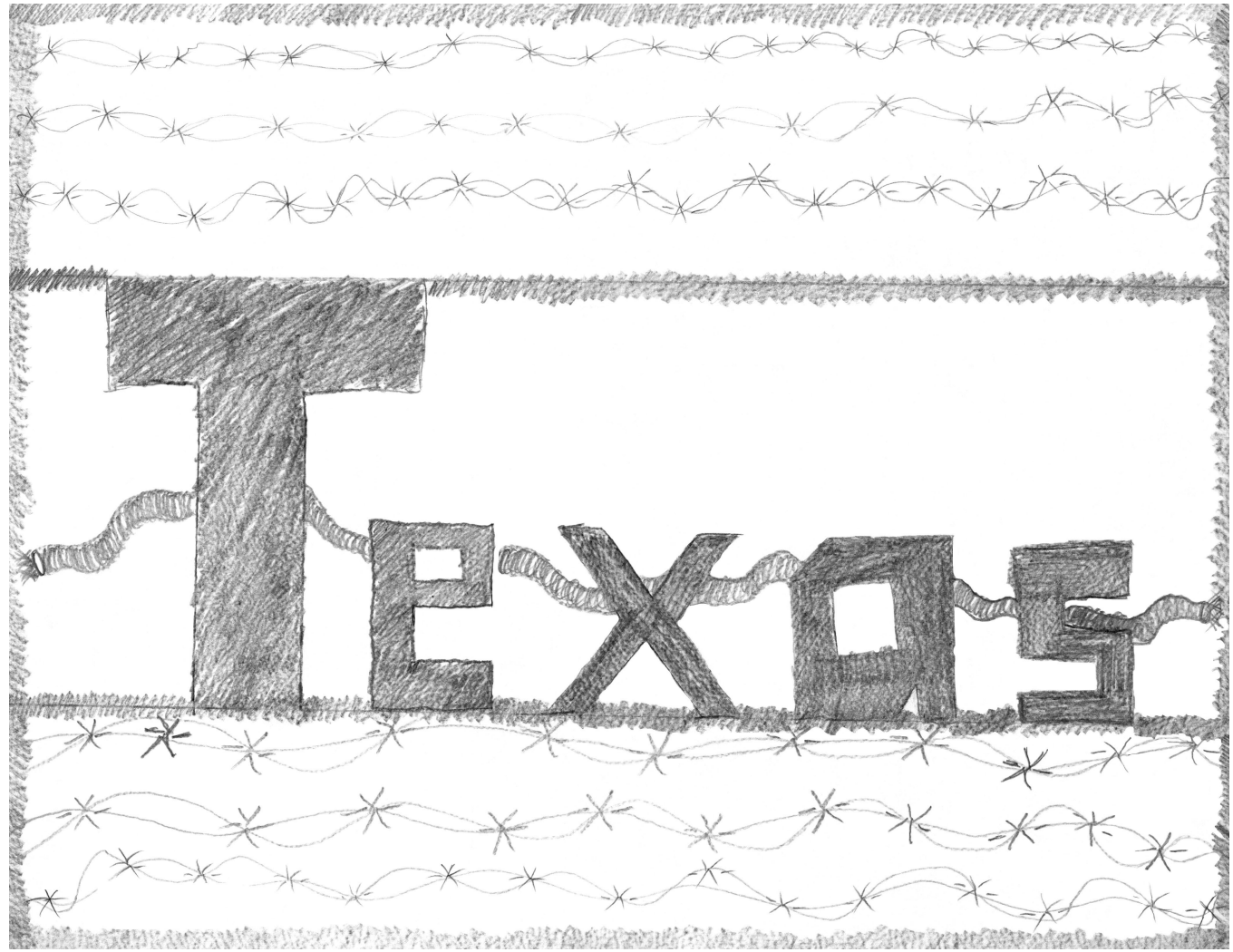
The Texas Board of Pardons and Paroles files this notice of intent to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 37, Public Safety and Corrections, Part 5, Chapter 141, General Provisions; and Chapter 148, Sex Offender Conditions of Parole or Mandatory Supervision.

The Board undertakes its review pursuant to Government Code, §2001.039. The Board will accept comments for 30 days following the publication of this notice in the *Texas Register* and will assess whether the reasons for adopting the sections under review continue to exist. Any proposed changes to the rules within Chapters 141 and 148 as a result of the rule review will be published in the Proposed Rules section of a subsequent issue of the *Texas Register.* The proposed rules will be open for public comment prior to final adoption by the Board, in accordance with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Any questions or written comments pertaining to this notice of intention to review should for the next 30-day comment period be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by email to *Bettie.Wells@tdcj.texas.gov.*

TRD-202002827
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Filed: July 10, 2020

♦ ♦ ♦


TEXAS

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 22 TAC §102.1

Fiscal Year 2021						
	Board Fee	Texas Online	NPDB	PMP	Peer Assistance	Total Fee
DENTIST	Effective October 2020					
Application by Exam	$ 330.00	$ 5.00		$ 15.00	$ 10.00	$ 360.00
Renewal	$ 411.00	$ 20.00	$ 2.00	$ 15.00	$ 10.00	$ 458.00
Renewal - Late 1 to 90 days	$ 486.00	$ 20.00	$ 2.00	$ 15.00	$ 10.00	$ 533.00
Renewal - Late 91 to 365 days	$ 561.00	$ 20.00	$ 2.00	$ 15.00	$ 10.00	$ 608.00
Licensure by Credentials	$ 2,915.00	$ 5.00		$ 15.00	$ 10.00	$ 2,945.00
Temporary Licensure by Credentials	$ 865.00	$ 5.00		$ 15.00	$ 10.00	$ 895.00
Temporary Licensure by Credentials renewal	$ 261.00	$ 4.00	$ 2.00	$ 15.00	$ 10.00	$ 292.00
Provisional License	$ 100.00					$ 100.00
Faculty Initial Application	$ 230.00	$ 3.00		$ 15.00	$ 10.00	$ 258.00
Faculty Renewal	$ 305.00	$ 8.00	$ 2.00	$ 15.00	$ 10.00	$ 340.00
Faculty Renewal - Late 1 to 90 days	$ 352.00	$ 8.00	$ 2.00	$ 15.00	$ 10.00	$ 387.00
Faculty Renewal - Late 91 to 365 days	$ 399.00	$ 8.00	$ 2.00	$ 15.00	$ 10.00	$ 434.00
Conversion Fee - Faculty to Full Privilege	$ 161.00	$ 2.00	$ 2.00	$ 15.00	$ 10.00	$ 190.00
Nitrous Oxide Permit	$ 32.00					$ 32.00
Level 1 Permit	$ 32.00					$ 32.00
Level 2 Permit	$ 260.00					$ 260.00
Level 3 Permit	$ 260.00					$ 260.00
Level 4 Permit	$ 260.00					$ 260.00
Nitrous Level 1 Permit Renewal	$ 10.00					$ 10.00
Level 2 Permit Renewal	$ 60.00					$ 60.00
Level 3 Permit Renewal	$ 60.00					$ 60.00
Level 4 Permit Renewal	$ 60.00					$ 60.00
Application to Reactivate a Retired License	$ 186.00	$ 3.00		$ 15.00	$ 10.00	$ 214.00
Reinstatement of a Canceled Dental License	$ 411.00	$ 5.00		$ 15.00	$ 10.00	$ 441.00
Duplicate License / Renewal	$ 25.00	$ 2.00				$ 27.00
Conversion Fee - Full Privilege to Faculty	$ 161.00	$ 2.00	$ 2.00	$ 15.00	$ 10.00	$ 190.00
Conversion Fee - Temporary Licensure by Credentials to Full Privilege	$ 2,165.00	$ 5.00	$ 2.00	$ 15.00	$ 10.00	$ 2,197.00
DENTAL HYGIENIST						
Application by Exam	$ 120.00	$ 3.00			$ 2.00	$ 125.00
Renewal	$ 216.00	$ 6.00	$ 2.00		$ 2.00	$ 226.00
Renewal - Late 1 to 90 days	$ 266.00	$ 6.00	$ 2.00		$ 2.00	$ 276.00
Renewal - Late 91 to 365 days	$ 316.00	$ 6.00	$ 2.00		$ 2.00	$ 326.00
Licensure by Credentials	$ 635.00	$ 5.00			$ 2.00	$ 642.00
Temporary Licensure by Credentials	$ 225.00	$ 5.00			$ 2.00	$ 232.00
Temporary Licensure by Credentials renewal	$ 101.00	$ 3.00	$ 2.00		$ 2.00	$ 108.00

Fiscal Year 2021						
	Board Fee	Texas Online	NPDB	PMP	Peer Assistance	Total Fee
Faculty Initial Application	$ 120.00	$ 3.00			$ 2.00	$ 125.00
Faculty Renewal	$ 201.00	$ 6.00	$ 2.00		$ 2.00	$ 211.00
Faculty Renewal - Late 1 to 90 days	$ 243.00	$ 6.00	$ 2.00		$ 2.00	$ 253.00
Faculty Renewal - Late 91 to 365 days	$ 285.00	$ 6.00	$ 2.00		$ 2.00	$ 295.00
Conversion Fee - Faculty to Full Privilege	$ 51.00	$ 2.00	$ 2.00		$ 2.00	$ 57.00
Application to Reactivate a Retired License	$ 76.00	$ 3.00			$ 2.00	$ 81.00
Reinstatement of a Canceled Dental Hygiene Li	$ 213.00	$ 5.00			$ 2.00	$ 220.00
Duplicate License / Renewal	$ 25.00	$ 2.00				$ 27.00
Nitrous Oxide Monitoring Application	$ 25.00					$ 25.00
Conversion Fee - Full Privilege to Faculty	$ 55.00	$ 2.00	$ 2.00		$ 2.00	$ 61.00
Conversion Fee - Temporary Licensure by Credentials to Full Privilege	$ 415.00	$ 5.00	$ 2.00		$ 2.00	$ 424.00
DENTAL ASSISTANT						
Initial Application	$ 36.00	$ 2.00			$ 1.00	$ 39.00
Renewal	$ 63.00	$ 4.00	$ 2.00		$ 1.00	$ 70.00
Renewal - Late 1 to 90 days	$ 78.00	$ 4.00	$ 2.00		$ 1.00	$ 85.00
Renewal - Late 91 to 365 days	$ 93.00	$ 4.00	$ 2.00		$ 1.00	$ 100.00
Duplicate License / Renewal	$ 25.00	$ 2.00				$ 27.00
Nitrous Oxide Monitoring Renewal	$ 63.00	$ 4.00	$ 2.00			$ 69.00
Nitrous Oxide Monitoring Late 1 to 90 days	$ 78.00	$ 4.00	$ 2.00			$ 84.00
Nitrous Oxide Monitoring Late 91 to 365 days	$ 93.00	$ 4.00	$ 2.00			$ 99.00
Nitrous Oxide Monitoring Application	$ 25.00					$ 25.00
DENTAL LABORATORIES						
Application	$ 125.00					$ 125.00
Renewal	$ 134.00	$ 4.00				$ 138.00
Renewal - Late 1 to 90 days	$ 200.00	$ 5.00				$ 205.00
Renewal - Late 901 to 365 days	$ 266.00	$ 5.00				$ 271.00
Duplicate Certificate	$ 25.00	$ 2.00				$ 27.00
OTHER						
Mobile Application	$ 121.00					$ 121.00
Mobile Renewal	$ 63.00	$ 2.00				$ 65.00
Mobile Renewal - 1 to 90 days	$ 93.00	$ 3.00				$ 96.00
Mobile Renewal - 91 to 365 days	$ 123.00	$ 4.00				$ 127.00
Duplicate Certificate Mobile Certificate	$ 25.00	$ 2.00				$ 27.00
Dentist Intern / Resident Prescription Privileges	$ 51.00		$ 2.00	$ 15.00	$ 15.00	$ 83.00
Jurisprudence	$ 54.00					$ 54.00
Licensure Verification with Seal	$ 9.00	$ 2.00				$ 11.00
Criminal History Evaluation	$ 25.00					$ 25.00
Board Scores	$ 25.00					$ 25.00

Figure: 25 TAC §265.184(n)(2)

CONSTRUCTION TOLERANCES	
Design Aspect	Construction Tolerance
Depth-deep area, including diving area	± 3 inches
Depth – shallow area	± 2 inches
Length – overall	±3 inches
Step treads and risers	± 1/2 inch
Wall Slopes	± 3 degrees
Waterline – pools with adjustable weir skimmers	± 1/4 inch
Waterline – pools with nonadjustable skimming systems (gutters)	± 1/8 inch
Width – overall	± 3 inches
All dimensions not otherwise specified	± 2 inches

Figure: 25 TAC §265.184(o)(2)

Maximum Numbers of Users in Class A Pools Not Being Used for Competitive Events and Class B and Class C Pools and Spas.

Pool and Area	Shallow or Wading Areas	Deep Area (Not Including the Diving Area)	Diving Area (Per Each Diving Board)
Pools with Minimum Deck Area	15 sq. ft. per user	20 sq. ft. per user	300 sq. ft.
Pools with Deck Area Equal to Water Surface Area	12 sq. ft. per user	15 sq. ft. per user	300 sq. ft.
Pools with Deck Area at Least Twice Water Surface Area	8 sq. ft. per user	10 sq. ft. per user	300 sq. ft.
Maximum Number of Users in Spas and Wade Pools with PIWFs	10 sq. ft. per user	NA	NA

Figure: 25 TAC §265.185(f)(9)

Drainage Slopes for Deck Surfaces		
Surface	Minimum Drainage Slope	Maximum Drainage
Artificial turfs that are designed for use at aquatic facilities, are waterproof, cleanable, and do not support biologic growth	1/2 inch per foot	1/2 inch per foot
Exposed aggregate (moderate finish)	1/8 inch per foot	1/2 inch per foot
Textured, hand-finished concrete (smooth finish)	1/8 inch per foot	1/2 inch per foot
Travertine / brick set pavers (heavy finish)	1/8 inch per foot	1/2 inch per foot

Figure: 25 TAC §265.187(b)

Entry and Exit Locations for Specific Pools.	
Class of Pool	Entry and Exit Locations
Wave Pool	Entry at beach end only; exit at beach end, sides or end wall.
Activity Pool	Entry and exit determined by designer
Catch Pools	Entry prohibited from deck areas; exit by ladders, steps, or ramps as determined by designer
Leisure River	Entry and exit determined by designer
Vortex Pool	Entry and exit determined by designer
Pool with Interactive Water Feature or Fountain	Entry and exit determined by designer

Figure: 25 TAC §265.188(b)(8)(A)

Diving Board Height and Dimensions				
Diving Board Height	1.64 ft. (0.5 m)	2.46 ft. (0.75 m)	3.28 ft. (1.0 m)	3.84 ft. (3.0 m)
Minimum Diving Board Length	10.0 ft. (3.05 m)	12.0 ft. (3.66 m)	16 ft. (4.88 m)	16.0 ft. 4.88 m).
Minimum Diving Board Width	20.0 in (50.8 cm)	20.0 in. (50.8 cm)	20.0 in (50.8 cm)	20.0 in. (50.8 cm)

Figure: 25 TAC §265.188(b)(8)(B)

Minimum Dimensions of Components Related to Diving Wells by Diving Board Height

	Diving Board Height	0.5 Meter	0.75 Meter	1.0 Meter	3.0 Meters
A	Distance from plummet back to pool wall	3.0 ft. (0.91 m)	4.5 ft. (1.37m)	6.0 ft. (1.83 m)	6.0 ft. (1.83 m)
B	Distance from plummet to pool wall at side	10.0 ft. (3.05 m)	10.0 ft. (3.05m)	10.0 ft. (3.05 m)	11.5 ft. (3.51 m)
C	Distance from plummet to adjacent plummet	8.83 ft. (2.69 m)	8.83 ft. (2.69 m)	8.83 ft. (2.69 m)	8.54 ft. (2.60 m)
D	Distance from plummet to pool wall ahead	26.0 ft. (7.92m)	27.83 ft. (8.48 m)	29.58 ft. (9.02 m)	33.67 ft. (10.26 m)
E	Height, diving board to ceiling at plummet & distances F and G	16.0 ft. (4.88 m)	16.0 ft. (4.88 m)	16.0 ft. (4.88 m)	16.0 ft. (4.88 m)
F	Clear overhead distance behind and each side of plummet	8.0 ft. (2.34 m)	8.0 ft. (2.34 m)	8.0 ft. (2.34 m)	8.0 ft. (2.34 m)
G	Clear overhead distance ahead of plummet	16.0 ft. (4.88 m)	16.0 ft. (4.88 m)	16.0 ft. (4.88 m)	16.0 ft. (4.88 m)
H	Depth of water at plummet	9.5 ft. (2.90 m)	10.75 ft. (3.28 m)	12.0 ft. (3.66 m)	12.5 ft. (3.81 m)
J	Distance ahead of plummet to depth K	12.0 ft. (3.66 m)	14.25 ft. (4.34 m)	16.5 ft. (5.03 m)	19.75 ft. (6.02 m)
K	Depth at distance J ahead of plummet	8.75 ft. (2.67 m)	10.0 ft. (3.05 m)	11.28 ft. (3.44 m)	12.17 ft. (3.71 m)
L	Distance at each side of plummet to depth M	8.0 ft. (2.34 m)	(8.13 ft. (2.48 m)	8.25 ft. (2.51 m).	9.92 ft. (3.02 m)
M	Depth at distance L on each side of plummet	9.08 ft. (2.77 m)	10.33 ft. (3.15 m)	11.63 ft. (3.54 m)	12.17 ft. (3.71 m)
N	Maximum slope to reduce height E	30 degrees	30 degrees	30 degrees	30 degrees
P	Maximum floor slope to reduce depth ahead of K, to sides of M or back to pool wall behind H	3:1	3:1	3:1	3:1

Figure: 25 TAC §265.188(b)(8)(C)

Not drawn to scale.

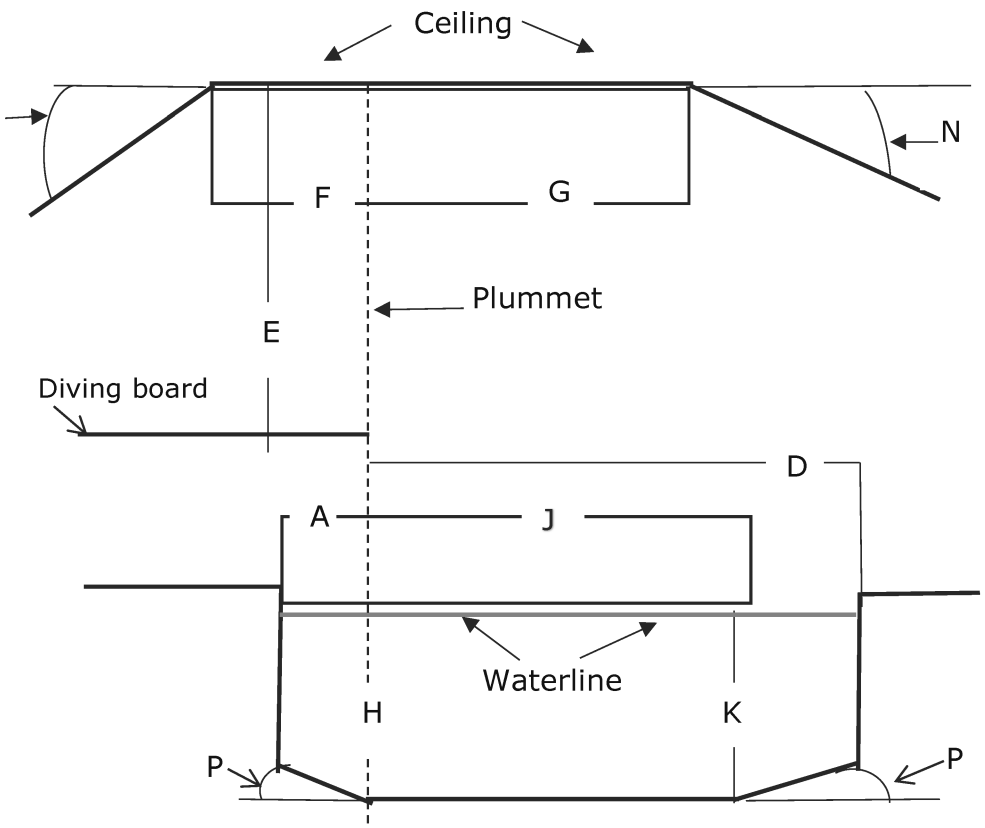


Figure:25 TAC §265.188(b)(8)(D)

Not to scale

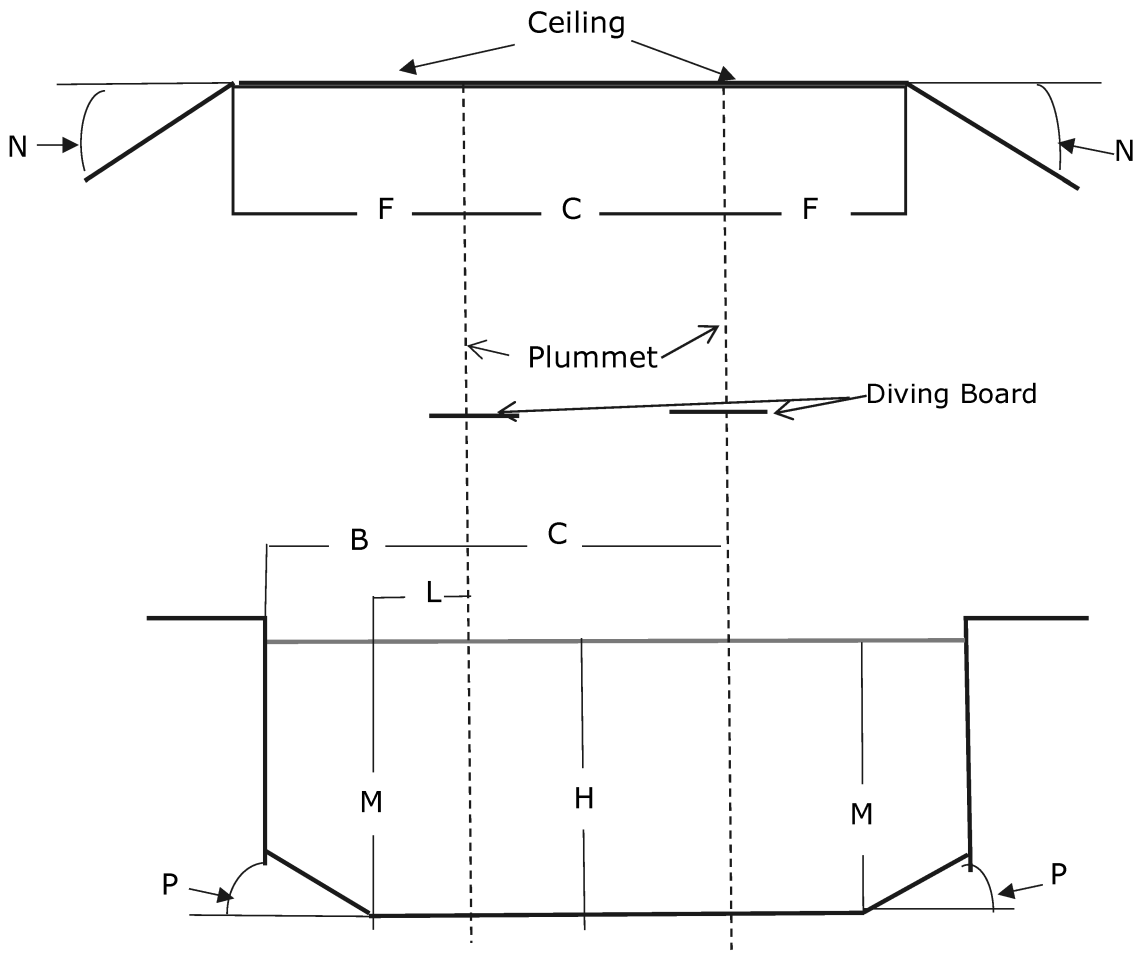


Figure: 25 TAC §265.190(c)(1)

Turnover Times for Pools and Spas.	
CATEGORY	MAXIMUM TURNOVER RATE
Class A, B and C pools	Turnover rate is equal to 1.5 times the average depth of pool in feet not to exceed 6 hours
Wading Pools	1 Hour
Activity Pools with 24 inches or less water depth	1 Hour
Activity Pools with water depths more than 24 inches	2 Hours
Runout Slide, Plunge Pool, Catch Pool	1 Hour
Leisure Rivers	2 Hours
Vortex Pools	1 Hour
Surf Pools, Wave Action Pools with less than 20,000 sq. ft. pool surface area	2 Hours or as per Licensed Engineer
Spas	30 minutes

Figure: 25 TAC §265.190(i)

Piping and Fittings	
Material	Standard
Acrylonitrile butadiene styrene (ABS)	ASTM D1527
Chlorinated polyvinyl chloride (CPVC) plastic pipe and tubing	ASTM D2846; CSA B137.6
Copper or copper-alloy tubing	ASTM B88; ASTM B447
Polyvinyl chloride (PVC) hose	ASTM D1785; ASTM D2241; ASTM D2672; CSA B137.3
Polyvinyl chloride (PVC) plastic pipe	ASTM D1785, CSA B137.3
Stainless steel pipe, types 304, 304L, 316 & 316L	ASTM A312

Figure: 25 TAC §265.190(j)

Fittings	
Material	Standard
Acrylonitrile butadiene styrene (ABS) plastic pipe	ASTM D1527
Chlorinated polyvinyl chloride (CPVC) plastic pipe and tubing	ASTM D2846, ASTM F437, ASTM F438, ASTM F349, CSA B137.6
Copper or copper-alloy tubing	ASME B16.15
Polyvinyl chloride (PVC) plastic pipe	ASTM D2464, ASTM D2466, ASTM D2467, CSA B137.2; CSA B 137.3
Stainless steel pipe, Types 304, 304L, 316, 316L	ASTM A182, ASTM A403

Figure: 25 TAC §265.197(e)

Water Heater Listings	
Electric Water Heater	UL 1261, UL 1563 or CSA C22.2 No.218.1
Gas-fired Water Heater	ANSI Z21.56/CSA 4.7a
Heat Exchanger	AHRI 400
Heat Pump Water Heater	UL 1995, AHRI 1160, CSA C22.2 No. 236

Figure: 25 TAC §265.201(j)(6)

Required Pool Sign or Signs	Letter and Symbol Size
"WARNING-NO LIFEGUARD ON DUTY" (Where no lifeguard required or provided.)	4 inches
"NO DIVING" and International no diving symbol (Where no lifeguard required or provided.)	4 inches
"IN CASE OF EMERGENCY, DIAL 911"	4 inches
Precise Location of the Pool on or with the Emergency Phone (address, or directions, or GPS location, or building number, as appropriate)	Minimum 1-inch
Hours of Operation	Minimum 1-inch
Directions to and Location of Emergency Phone if Phone Not Visible in Pool Yard	Minimum 2-inches
Maximum User Load Limit	Minimum 2-inches
"NON-SERVICE ANIMALS PROHIBITED"	Minimum 2-inches
"DO NOT SWIM IF YOU ARE ILL OR HAVE BEEN ILL WITH DIARRHEA OR HAVE HAD IT WITHIN THE PAST 2 WEEKS;"	Minimum 2-inches
"CHANGING DIAPERS WITHIN 6 FEET OF THE POOL IS PROHIBITED"	Minimum 2-inches
"GLASS ITEMS NOT ALLOWED IN THE POOL YARD"	Minimum 2-inches
"EXTENDED BREATH HOLDING ACTIVITIES ARE DANGEROUS AND PROHIBITED"	Minimum 2-inches

Figure: 25 TAC §265.204(f)

Number of Fixtures at Class A, Class B, and Class C Pools and Spas constructed on or after the effective date of this subchapter.

Fixture Schedule for Facilities with Water Surface Areas Less than 7500 sq. ft.	Females per 7500 sq. ft.	Males per 7500 sq. ft.	Fixture Schedule for Facilities with Water Surface Areas 7500 sq. ft. or More	Females[1]	Males[1]
Water Closets	1	1	Water Closets	2	0.7
Urinals	NA	1	Urinals	NA	1
Lavatories[2]	1	1	Lavatories[2]	1	0.85
Cleansing showers[3]	1	1	Cleansing Showers[3]	1	1
Rinsing showers[3]	1	1	Rinsing Showers[3]	1	1
Baby Changing Table[4]	1	1	Baby Changing Table[4]	1	1

[1]Number of fixtures per 7500 sq. ft. or portion thereof. Where the result of the fixture calculation is a portion of a whole number, the result shall be rounded up to the nearest whole number.

[2] Lavatories shall be provided with hot and cold running water.

[3]Rinsing showers can be tower showers or single showers without heated water. Not less than one and not more than half of the total number of showers required shall be located on the deck or at the entrance of each pool or spa. Tower rinsing showers are not required to provide heated water.

[4]One for each male or female sanitary facility.

Figure: 25 TAC §265.206(b)

Required Chemical Levels			
Disinfectant Level	Minimum	Ideal	Maximum
Pool Free Available Chlorine	1.0 ppm	2.0 – 3.0 ppm	8.0 ppm
Spa Free Available Chlorine	2.0 ppm	3.0 ppm	8.0 ppm
Pool Bromine	3.0 ppm	4.0 – 5.0 ppm	10.0 ppm
Spa Bromine	4.0 ppm	5.0 ppm	10.0 ppm
Combined Chlorine	None	None	0.4 ppm
pH	Not less than 7.0	7.2 – 7.6	7.8
Cyanuric Acid	None	10.0 – 30.0 ppm	50.0 ppm
ORP	600 mV	650 – 750 mV	900 mV
Alkalinity	50 ppm	60 ppm – 180 ppm	>180 ppm
Calcium Hardness	150 ppm	>150 – 400 ppm	1000 ppm
Algae	None	None	None

Figure: 25 TAC §265.208(e)

Required Spa Signs	Letter and Symbol Size
"WARNING – NO LIFEGUARD ON DUTY" (if no lifeguard is provided or required)	4 inches
"DO NOT USE THE SPA IF THE WATER TEMPERATURE IS ABOVE 104 DEGREES FAHRENHEIT"	Minimum 1-inch
Maximum User Load	Minimum 1-inch
Location of the Nearest emergency phone or device.	Minimum 2-inches
EMERGENCY SPA SHUTOFF	Minimum 2-inches
ALARM INDICATES SPA PUMPS ARE OFF (Where required)	Minimum 2-inches
DO NOT USE SPA WHEN ALARM SOUNDS AND LIGHT IS ILLUMINATED UNTIL ADVISED OTHERWISE (Where required)	Minimum 2-inches

Figure: 25 TAC §300.303(l)

Table 1

Analyte	Acceptable Limit
Metals	
Arsenic	1.5 ppm
Cadmium	0.3ppm
Lead	1.0ppm
Mercury	0.5ppm
Microbial Impurities	Total Aerobic Count
Total combined yeast molds count	
E-Coli	No detection
Campylobacter	No detection
Listeria monocytogenes	No detection
Salmonella	No detection
Shiga-Toxin	No detection
Staphylococcus	No detection
Yersinia	No detection
Pesticides	Chemical Abstract Services Number (CAS)
Acetamiprid	0.2ppm
Aldicarb	0.4ppm
Azoxystrobuin	0.2ppm
Bifenzate	0.2ppm
Boscalid	0.2ppm
Carbaryl	0.5ppm
Carbofuran	0.2ppm

Chlorantraniliprole	0.2ppm
Chloropyrifos	0.6ppm
Cypermethrin	18ppm
Diazinon	2.6ppm
Dichlorovos	0.1ppm
Ethoprophos	0.4ppm
Etofenprox	0.4ppm
Fipronil	1.0ppm
Flonicamid	1.0ppm
Imidacloprid	0.4ppm
Metalaxyl	0.2ppm
Methiocarb	0.4ppm
Methomyl	0.4ppm
Methyl parathion	8.5ppm
Myclobutanil	0.3ppm
Oxamyl	1ppm
Permethrin I	1.1ppm
Pyridaben	0.2ppm
Spiroxamine I	2ppm
Tebuconazole	0.4ppm
Thiacloprid	0.2ppm
Thiamethoxam	0.2ppm

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Settlement of a Texas Water Code and Texas Health and Safety Code Enforcement Action

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate or inconsistent with the requirements of the law.

Case Title: *United States of America and State of Texas v. E.I. Du Pont de Nemours and Co.,* Case No. 4:20-cv-02423, in the U.S. District Court for the Southern District of Texas.

Background: This suit seeks civil penalties and injunctive relief from E.I. Du Pont de Nemours and Co. ("Du Pont"), due to environmental violations at its agrichemicals manufacturing facility located at 12501 Strang Road, La Porte, Harris County, Texas ("the Facility"). The Complaint alleges that DuPont violated provisions of the Texas Clean Air Act, the Texas Solid Waste Disposal Act, the Texas Water Code, related federal statutes, and supporting state and federal regulations at the Facility.

Proposed Settlement: The lawsuit is to be settled by a Consent Decree in the U.S. District Court providing for payment of $1,710,000 in civil penalties and attorneys' fees to the State of Texas, plus an equal amount to the United States, and injunctive relief.

For a complete description of the settlement, the proposed Consent Decree should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Thomas Edwards, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Email: Thomas.Edwards@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202002873
Lesley French
General Counsel
Office of the Attorney General
Filed: July 11, 2020

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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 07/20/20 - 07/26/20 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/20/20 - 07/26/20 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-202002893
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 14, 2020

♦ ♦ ♦

Credit Union Department

Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application for a change to its name was received from Pasadena Postal Credit Union, Pasadena, Texas. The credit union is proposing to change its name to Priority Postal Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202002911
John J. Kolhoff
Commissioner
Credit Union Department
Filed: July 15, 2020

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Application to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and is under consideration.

An application was received from Neighborhood Credit Union, Dallas, Texas, to expand its field of membership. The proposal would permit persons who work, reside, worship or attend school in Grayson County, Texas, to be eligible for membership in the credit union.

An application was received from Plus4 Credit Union, Houston, Texas, to expand its field of membership. The proposal would permit persons who live, work, attend school or worship in and businesses located within 10 miles of 19506 Eastex Fwy., Humble, Texas, to be eligible for membership in the credit union.

An application was received from EECU #1, Fort Worth, Texas, to expand its field of membership. The proposal would permit persons who live work, worship, or attend school and businesses and other legal entities in Dallas County, Texas, to be eligible for membership in the credit union.

An application was received from EECU #2, Fort Worth, Texas, to expand its field of membership. The proposal would permit persons who live work, worship, or attend school and businesses and other legal entities in Jack, Wise, Denton and Ellis Counties, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.cud.texas.gov/page/bylaw-charter-applications. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202002910
John J. Kolhoff
Commissioner
Credit Union Department
Filed: July 15, 2020

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

Texas Bay Credit Union, #1, Houston, Texas - See *Texas Register* issue dated April 24, 2020.

Texas Bay Credit Union, #2, Houston, Texas - See *Texas Register* issue dated April 24, 2020.

Articles of Incorporation Change - Approved

Coastal Community And Teachers Credit Union (Corpus Christi) - See *Texas Register* issue dated May 29, 2020.

Merger or Consolidation - Approved

National Oilwell Varco Employees Credit Union (Houston) and MemberSource Credit Union (Houston) - See *Texas Register* issue dated January 3, 2020.

TRD-202002909
John J. Kolhoff
Commissioner
Credit Union Department
Filed: July 15, 2020

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Employees Retirement System of Texas

Correction of Error

The Employees Retirement System of Texas proposed amendments to 34 TAC §81.1 and §81.7 as well as new §81.12 in the July 10, 2020, issue of the *Texas Register* (45 TexReg 4711). Due to an error by the Texas Register, some portions of the text were published incorrectly.

The Statutory Authority should read as follows:

"The amendments are proposed under Texas Insurance Code, §1551.052, which provides authorization for the ERS Board of Trustees to adopt rules necessary to carry out its statutory duties and responsibilities. The amendments are also proposed in accordance with the ERS Board of Trustees' authority to administer and implement Chapter 1551, Texas Insurance Code, and under Texas Insurance Code, §1551.055 in connection with the Board's general powers regarding coverage plans.

No other statutes are affected by the proposed amendments."

Section 81.12(d)(1)(E) should read as follows:

"on the date of the search, the participant and the GBP member, if the participant is not the GBP member, must meet all eligibility requirements set forth in subsection (c)(2) and (3) of this section."

Section 81.12(f) should read as follows:

"Standing. A person has no standing to submit a grievance or appeal regarding HealthSelectShoppERS under §81.9(c) of this title or any other rule or statutory provision that provides for the submission of a grievance or appeal to ERS."

TRD-202002862

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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 **August 24, 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 **August 24, 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: 43 VENTURES, LLC dba Corner Market TX0341; DOCKET NUMBER: 2020-0454-PST-E; IDENTIFIER: RN102371903; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(a), by failing to ensure the underground storage tanks (USTs) are operated, maintained, and managed in a manner that will prevent releases of regulated substances; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every 30 days; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: A & S Dynamics, LLC dba Diesel of Houston; DOCKET NUMBER: 2020-0462-AIR-E; IDENTIFIER: RN110944980; LOCATION: Houston, Harris County; TYPE OF FACILITY: commercial motor vehicle sales facility; 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: $5,338; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: BFI Waste Systems of North America, LLC dba Hardin County Landfill; DOCKET NUMBER: 2020-0325-MSW-E; IDENTIFIER: RN103759643; LOCATION: Kountze, Hardin County; TYPE OF FACILITY: landfill; RULES VIOLATED: 30 TAC §330.121(a) and municipal solid waste (MSW) Permit Number 2214B, Site Operating Plan (SOP), Section 3.1: Personnel and Training, Table 3-1: Site Personnel Summary, by failing to comply with the operational requirement regarding the minimum required personnel; 30 TAC §330.121(a) and MSW Permit Number 2214B, SOP, Section 4.0: Equipment, Table 4-1: Equipment dedicated to the Hardin County Landfill, by failing to comply with the minimum required equipment; 30 TAC §330.137 and MSW Permit Number 2214B, Part IV, SOP, Section 8.5: Site Sign, by failing to display at all entrances through which wastes are received, a sign measuring at least four feet by four feet with letters at least three inches in height stating the type of site, the hours and days of operation, an emergency 24-hour contact phone number, the local emergency fire department phone number, and the permit number; and 30 TAC §330.143(a) and MSW Permit Number 2214B, Part IV, SOP, Section 8.8: Landfill Markers and Benchmark, by failing to maintain the visibility of all required landfill markers; PENALTY: $2,439; ENFORCEMENT COORDINATOR: Alain Elegbe, (512) 239-6924; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Blanchard Refining Company LLC; DOCKET NUMBER: 2019-1222-AIR-E; IDENTIFIER: RN102535077; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §117.310(c)(1)(A) and §122.143(4), Federal Operating Permit Number O1541, General Terms and Conditions and Special Terms and Conditions Number 1.A, and Texas Health and Safety Code, §382.085(b), by failing to comply with the concentration limit; PENALTY: $13,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $6,562; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: City of Bryson; DOCKET NUMBER: 2020-0526-PWS-E; IDENTIFIER: RN101399699; LOCATION: Bryson, Jack County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $990; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: City of Clyde; DOCKET NUMBER: 2020-0452-MWD-E; IDENTIFIER: RN102186855; LOCATION: Clyde, Callahan 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 WQ0010149001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $2,750; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 1977 Industrial Boulevard Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: City of Copperas Cove; DOCKET NUMBER: 2019-1174-WQ-E; IDENTIFIER: RN101702074; LOCATION: Copperas Cove, Coryell County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System (TPDES) Multi-Sector General Permit (MSGP) Number TXR05BM07, Part III, Section A(4)(f)(1), by failing to conduct training for all employees who are responsible for implementing or maintaining activities defined in the stormwater pollution prevention plan (SWP3) at least once per year; 30 TAC §281.25(a)(4) and TPDES MSGP Number TXR05BM07, Part III, Section B(1)(b-c), by failing to conduct a survey for potential non-stormwater sources and properly record the results of the survey in the SWP3 within 180 days of filing a Notice of Intent for coverage; 30 TAC §281.25(a)(4) and TPDES MSGP Number TXR05BM07, Part III, Section B(2)(a), by failing to conduct periodic routine facility inspections at least once per quarter; 30 TAC §281.25(a)(4) and TPDES MSGP Number TXR05BM07, Part III, Section B(3), by failing to conduct visual monitoring inspections of the stormwater discharges from each outfall at least once per quarter; and 30 TAC §281.25(a)(4) and TPDES MSGP Number TXR05BM07, Part III, Section B(5), by failing to conduct a comprehensive site compliance inspection at least once per permit year; PENALTY: $8,890; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $7,112; ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: City of East Tawakoni; DOCKET NUMBER: 2020-0531-PWS-E; IDENTIFIER: RN101387058; LOCATION: East Tawakoni, Rains County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; and 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the executive director for the January 1, 2017 - December 31, 2019, monitoring period; PENALTY: $1,754; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: DELISIAS 4 INC.; DOCKET NUMBER: 2020-0477-PST-E; IDENTIFIER: RN102452059; LOCATION:

Willow Park, Parker County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $4,997; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Frontier Feedlot Dublin, LLC; DOCKET NUMBER: 2020-0504-AGR-E; IDENTIFIER: RN101558518; LOCATION: Dublin, Erath County; TYPE OF FACILITY: dairy farm; RULES VIOLATED: 30 TAC §305.125(1) and (4) and §321.31(a), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System General Permit Number TXG921338, Part III, A.5(a)(2), by failing to prevent the unauthorized discharge of agricultural wastewater into or adjacent to any water in the state; PENALTY: $813; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Greg Campbell; DOCKET NUMBER: 2020-0470-WOC-E; IDENTIFIER: RN110942216; LOCATION: Apple Springs, Trinity County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: HAZARA ENTERPRISES, INC. dba Kenefick General Store; DOCKET NUMBER: 2020-0482-PST-E; IDENTIFIER: RN101210177; LOCATION: Dayton, Liberty County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,496; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Lower Colorado River Authority; DOCKET NUMBER: 2020-0559-AIR-E; IDENTIFIER: RN100226844; LOCATION: La Grange, Fayette County; TYPE OF FACILITY: power plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permit Numbers 51770 and PSDTX486M3, Special Conditions Number 1, Federal Operating Permit Number O21, General Terms and Conditions and Special Terms and Conditions Number 9, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: $2,813; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $2,251; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(14) COMPANY: Moms 8 Enterprises Inc.; DOCKET NUMBER: 2020-0529-PST-E; IDENTIFIER: RN101654879; LOCATION: Austin, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks; and 30 TAC §334.606, by failing to maintain required operator training certification records and make them available for inspection upon request by agency personnel; PENALTY: $3,385; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(15) COMPANY: Sensat, Billy W SR; DOCKET NUMBER: 2020-0572-OSS-E; IDENTIFIER: RN105474894; LOCATION: Bronson, Sabine County; TYPE OF FACILITY: installer; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(16) COMPANY: Targa Midstream Services LLC; DOCKET NUMBER: 2020-0538-AIR-E; IDENTIFIER: RN105897979; LOCATION: Big Lake, Reagan County; TYPE OF FACILITY: natural gas compressor station; RULES VIOLATED: 30 TAC §§101.20(1), 116.615(2), 116.620(a)(14), and 122.143(4), 40 Code of Federal Regulations §60.5397a(h)(1), Federal Operating Permit Number O3924/General Operating Permit Number 514, Site-wide Requirements Numbers (b)(2) and (9)(F)(2), and Texas Health and Safety Code, §382.085(b), by failing to repair or replace each identified source of fugitive emissions as soon as practicable, but no later than 30 calendar days after detection of the fugitive emissions; PENALTY: $6,375; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(17) COMPANY: US Lama, Inc dba Quick Track 66 and US Lama, Inc dba Quick Track 71; DOCKET NUMBER: 2020-0521-PST-E; IDENTIFIERS: RN102401585 and RN102404217; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tanks (USTs) recordkeeping requirements are met; 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; and 30 TAC §334.72, by failing to report a suspected release to the agency within 24 hours of discovery; PENALTY: $10,500; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(18) COMPANY: US Lama, Inc dba Quick Track 69; DOCKET NUMBER: 2020-0574-PST-E; IDENTIFIER: RN102409489; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (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 provide release detection for the pressurized piping associated with the UST system; PENALTY: $4,099; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(19) COMPANY: WESTBOUND WATER SUPPLY CORPORATION; DOCKET NUMBER: 2020-0456-PWS-E; IDENTIFIER: RN101195733; LOCATION: Cisco, Eastland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfection Level Quarterly Operating Report to the executive director by the tenth day of the month following the end of each quarter for the fourth quarter of 2019; and 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the locational running annual average; PENALTY: $1,670; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571;

REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(20) COMPANY: Willhelm, Clovis C; DOCKET NUMBER: 2020-0561-WQ-E; IDENTIFIER: RN107696890; LOCATION: Whitney, Hill County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Christopher Moreno, (254) 761-3038; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-202002889
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 14, 2020

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Combined Notice of Public Meeting and Notice of Application and Preliminary Decision (NAPD) for TPDES Permit for Municipal Wastewater Renewal: Revised Permit No. WQ0014477001

APPLICATION AND PRELIMINARY DECISION. City of Liberty Hill, 926 Loop 332, Liberty Hill, Texas 78642, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014477001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. TCEQ received this application on September 5, 2018.

The facility is located approximately 8,800 feet southeast of the intersection of U.S. Highway 29 and U.S. Highway 183, in Williamson County, Texas 78641. The treated effluent is discharged to South Fork San Gabriel River in Segment No. 1250 of the Brazos River Basin. The designated uses for Segment No. 1250 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use. This 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. For the exact location, refer to the application.

https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.861666%2C30.631944&level=12

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, 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 **City of Liberty Hill City Hall, 926 Loop 332, Liberty Hill, Texas.**

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments about this application. The TCEQ will hold a public meeting on this application because it was requested by a local legislator.

The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, August 17, 2020 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: https://www.gotomeeting.com/webinar/join-webinar and entering Webinar ID 425-924-003. It is recommended that you join the webinar and register for the public meeting at least 15 minutes before the meeting begins. You will be given the option to use your computer audio or to use your phone for participating in the webinar.

Those without internet access may call (512) 239-1201 at least one day prior to the meeting for assistance in accessing the meeting and participating telephonically. Members of the public who wish to only listen to the meeting may call, toll free, (415) 655-0052 and enter access code 632-568-123. Additional information will be available on the agency calendar of events at the following link: https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for

reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. **If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period. TCEQ may act on an application to renew a permit for discharge of wastewater without providing an opportunity for a contested case hearing if certain criteria are met.**

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www14.tceq.texas.gov/epic/eComment/ **within 30 days from the date of newspaper publication of this notice or by the date of the public meeting, whichever is later.**

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Search the database using the permit number for this application, which is provided at the top of this notice.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at 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. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application or the permitting process, please call the TCEQ 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.

Further information may also be obtained from City of Liberty Hill at the address stated above or by calling Mr. Wayne Bonnet, Utility Director, City of Liberty Hill, at (512) 778-5449.

Persons with disabilities who need special accommodations at the public meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Issuance Date: July 10, 2020

TRD-202002908

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 15, 2020

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Enforcement Orders

An agreed order was adopted regarding Carol Mahan, Tanner Mahan, Holly P. Wright, and Tyler O. Wright, Docket No. 2018-1447-WR-E on July 14, 2020, assessing $4,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Rosebud, Docket No. 2019-0353-PWS-E on July 14, 2020, assessing $525 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John S. Merculief II, 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 Pecos County State Bank, Docket No. 2019-0514-PST-E on July 14, 2020, assessing $5,900 in administrative penalties with $1,180 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 DLH Construction, Inc., Docket No. 2019-0621-PWS-E on July 14, 2020, assessing $52 in administrative penalties with $10 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 Martha Guidry, Docket No. 2019-0869-MSW-E on July 14, 2020, assessing $1,188 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Vas Manthos, 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 RK Hall, LLC, Docket No. 2019-1124-AIR-E on July 14, 2020, assessing $1,063 in administrative penalties with $212 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, 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 Allen Watts dba Lago Vista Water System, Docket No. 2019-1165-PWS-E on July 14, 2020, assessing $3,286 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, 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 Manvel Utilities Limited Partnership, Docket No. 2019-1270-MWD-E on July 14, 2020, assessing $5,750 in administrative penalties with $1,150 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 Calles Enterprises, Inc. dba Frio City Food Mart, Docket No. 2019-1314-PST-E on July 14, 2020, assessing $3,375 in administrative penalties with $675 deferred. Infor-

mation 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 City of Ferris, Docket No. 2019-1347-PWS-E on July 14, 2020, assessing $416 in administrative penalties with $63 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, 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 Trent Water Works, Inc., Docket No. 2019-1577-PWS-E on July 14, 2020, assessing $1,456 in administrative penalties with $291 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding JRM Water LLC, Docket No. 2019-1710-PWS-E on July 14, 2020, assessing $217 in administrative penalties with $43 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Port Comfort Power LLC, Docket No. 2019-1726-AIR-E on July 14, 2020, assessing $1,375 in administrative penalties with $275 deferred. Information concerning any aspect of this order may be obtained by contacting Richard 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 Utilities Investment Company, Inc., Docket No. 2020-0023-PWS-E on July 14, 2020, assessing $1,755 in administrative penalties with $351 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Conner, 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 Pearland Malibu Enterprises, LLC, Docket No. 2020-0048-PWS-E on July 14, 2020, assessing $175 in administrative penalties with $35 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Willow Park, Docket No. 2020-0049-PWS-E on July 14, 2020, assessing $157 in administrative penalties with $31 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, 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 Aqua Utilities, Inc., Docket No. 2020-0051-PWS-E on July 14, 2020, assessing $1,000 in administrative penalties with $200 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 Albemarle Corporation, Docket No. 2020-0059-AIR-E on July 14, 2020, assessing $6,874 in administrative penalties with $1,374 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 KISHAN N. KABIR, LLC, Docket No. 2020-0085-PWS-E on July 14, 2020, assessing $105 in administrative penalties with $21 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 High Point Village, Inc., Docket No. 2020-0086-PWS-E on July 14, 2020, assessing $635 in administrative penalties with $127 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 City of Odem, Docket No. 2020-0097-PWS-E on July 14, 2020, assessing $230 in administrative penalties with $46 deferred. Information concerning any aspect of this order may be obtained by contacting JÃ©e Willis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Melvin, Docket No. 2020-0121-PWS-E on July 14, 2020, assessing $765 in administrative penalties with $153 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 TRIANGLE ROTATING EQUIPMENT SPECIALIST, INC., Docket No. 2020-0127-PST-E on July 14, 2020, assessing $4,762 in administrative penalties with $952 deferred. Information concerning any aspect of this order may be obtained by contacting Hailey Johnson, 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 RURAL BARDWELL WATER SUPPLY CORPORATION, Docket No. 2020-0160-PWS-E on July 14, 2020, assessing $125 in administrative penalties with $25 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 Arkema Inc., Docket No. 2020-0235-AIR-E on July 14, 2020, assessing $5,137 in administrative penalties with $1,027 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rescar Companies, Docket No. 2020-0237-AIR-E on July 14, 2020, assessing $7,125 in administrative penalties with $1,425 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Julian Camacho, Docket No. 2020-0310-WOC-E on July 14, 2020, assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Samantha Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Blaine Murphy, Docket No. 2020-0328-WOC-E on July 14, 2020, assessing $175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Samantha Duncan, Enforcement Coordina-

tor at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202002913
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 15, 2020

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Enforcement Orders

An agreed order was adopted regarding Enterprise Products Operating LLC, Docket No. 2017-1118-AIR-E on July 15, 2020, assessing $210,938 in administrative penalties with $42,187 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Francisco Valenzuela dba Prontos Septic Services, Docket No. 2018-0752-SLG-E on July 15, 2020, assessing $12,000 in administrative penalties with $2,400 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, 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 Henry Rodriguez dba Gulf Coast Septic Waste, Docket No. 2018-0773-SLG-E on July 15, 2020, assessing $135,493 in administrative penalties with $131,893 deferred. Information concerning any aspect of this order may be obtained by contacting Jess Robinson, 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 River Acres Water Supply Corporation, Docket No. 2018-1128-PWS-E on July 15, 2020, assessing $168 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding RACE TRIP, LLC dba Hill Top Food Mart, Docket No. 2018-1387-PST-E on July 15, 2020, assessing $10,030 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jake Marx, 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 Citgo Pipeline Company, Docket No. 2018-1499-AIR-E on July 15, 2020, assessing $15,750 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Richard 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 MANCHACA BAPTIST CHURCH, INC., Docket No. 2018-1531-PWS-E on July 15, 2020, assessing $517 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, 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 NIROJ CORPORATION dba Cigarette Mart, Docket No. 2018-1581-PST-E on July 15, 2020, assessing $31,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Kevin R. Bartz, 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 Heidi Fensterbush dba Country View MHP and Michael D. Fensterbush dba Country View MHP, Docket No. 2018-1677-PWS-E on July 15, 2020, assessing $989 in administrative penalties with $742 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, 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 the City of Nocona, Docket No. 2019-0196-MWD-E on July 15, 2020, assessing $43,525 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 OCI Beaumont LLC, Docket No. 2019-0225-AIR-E on July 15, 2020, assessing $70,161 in administrative penalties with $14,032 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Seng Phet Souimaniphanh dba T L Water Jones Acres, Docket No. 2019-0275-MLM-E on July 15, 2020, assessing $22,779 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, 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 UNITED PARCEL SERVICE, INC., Docket No. 2019-0368-PST-E on July 15, 2020, assessing $34,552 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, 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 Lone Pine Enterprises, Inc., Docket No. 2019-0478-MLM-E on July 15, 2020, assessing $21,730 in administrative penalties with $4,346 deferred. Information concerning any aspect of this order may be obtained by contacting Carlos Molina, 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 Blanchard Refining Company LLC, Docket No. 2019-0487-AIR-E on July 15, 2020, assessing $39,375 in administrative penalties with $7,875 deferred. Information concerning any aspect of this order may be obtained by contacting Richard 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 Motiva Enterprises LLC, Docket No. 2019-0491-AIR-E on July 15, 2020, assessing $35,550 in administrative penalties with $7,110 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, 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 Pflugerville, Docket No. 2019-0614-MWD-E on July 15, 2020, assessing $33,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Equistar Chemicals, LP, Docket No. 2019-0620-AIR-E on July 15, 2020, assessing $46,439 in administrative penalties with $9,287 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Mesquite Tranquility, LLC, Docket No. 2019-0649-PWS-E on July 15, 2020, assessing $3,859 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, 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 Blaine Larsen Farms, Inc., Docket No. 2019-0690-AIR-E on July 15, 2020, assessing $39,343 in administrative penalties with $7,868 deferred. Information concerning any aspect of this order may be obtained by contacting Richard 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 American TieTek, LLC, Docket No. 2019-0714-WQ-E on July 15, 2020, assessing $30,001 in administrative penalties with $6,000 deferred. Information concerning any aspect of this order may be obtained by contacting Aaron Vincent, 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 Chevron Phillips Chemical Company LP, Docket No. 2019-0809-AIR-E on July 15, 2020, assessing $20,188 in administrative penalties with $4,037 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Luis Enrique Estrada, Docket No. 2019-0853-MSW-E on July 15, 2020, assessing $7,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting John Fennell, 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 Dale W. Haggard dba Spring Valley Subdivision, Docket No. 2019-0886-PWS-E on July 15, 2020, assessing $350 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jaime C. Garcia, 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 DCP Operating Company, LP, Docket No. 2019-1007-AIR-E on July 15, 2020, assessing $21,150 in administrative penalties with $4,230 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 Ha Van Nguyen dba Austin Aqua System, Docket No. 2019-1099-PWS-E on July 15, 2020, assessing $747 in administrative penalties. 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 Greenwood Utility District, Docket No. 2019-1113-MWD-E on July 15, 2020, assessing $14,625 in administrative penalties with $2,925 deferred. 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 Weir Brothers Contracting, LLC, Docket No. 2019-1171-WQ-E on July 15, 2020, assessing $18,750 in administrative penalties with $3,750 deferred. Information concerning any aspect of this order may be obtained by contacting Caleb Olson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Chevron Phillips Chemical Company LP, Docket No. 2019-1223-AIR-E on July 15, 2020, assessing $30,000 in administrative penalties with $6,000 deferred. Information concerning any aspect of this order may be obtained by contacting Richard 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 OILTON RURAL WATER SUPPLY CORPORATION THE STATE OF TEXAS, Docket No. 2019-1227-PWS-E on July 15, 2020, assessing $987 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, 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 Chevron Phillips Chemical Company LP, Docket No. 2019-1228-WDW-E on July 15, 2020, assessing $8,100 in administrative penalties with $1,620 deferred. Information concerning any aspect of this order may be obtained by contacting Berenice Munoz, 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 Longhorn Horizon, Inc. dba Star One, Docket No. 2019-1284-PST-E on July 15, 2020, assessing $7,648 in administrative penalties with $1,529 deferred. Information concerning any aspect of this order may be obtained by contacting Tyler Smith, 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 Eastman Chemical Company, Docket No. 2019-1295-AIR-E on July 15, 2020, assessing $93,713 in administrative penalties with $18,742 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 the City of Nacogdoches, Docket No. 2019-1439-MLM-E on July 15, 2020, assessing $9,813 in administrative penalties with $1,962 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, 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 Braskem America, Inc., Docket No. 2019-1464-AIR-E on July 15, 2020, assessing $15,180 in administrative penalties with $3,036 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, 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 SanBock, LLC dba Bristol General Store, Docket No. 2019-1627-PST-E on July 15, 2020, assessing $10,563 in administrative penalties with $2,112 deferred. Information concerning any aspect of this order may be obtained by con-

tacting Hailey Johnson, 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 Blanchard Refining Company LLC, Docket No. 2020-0026-AIR-E on July 15, 2020, assessing $13,125 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202002917
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 15, 2020

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Notice of Correction to Agreed Order Number 2

In the February 21, 2020, issue of the *Texas Register* (45 TexReg 1252), the Texas Commission on Environmental Quality (commission) published notice of Agreed Orders, specifically Item Number 2, for Antonio Trejo, Docket Number 2019-1489-WR-E. The error is as submitted by the commission.

The reference to the Company should be corrected to read: "Cobra Water Well Drilling LLC."

For questions concerning these errors, please contact Michael Parrish at (512) 239-2548.

TRD-202002890
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 14, 2020

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Notice of Public Meeting for Air Permit Renewal: Permit Number 8597

APPLICATION. Texas Materials Group, Inc., has applied to the Texas Commission on Environmental Quality (TCEQ) for renewal of Air Quality Permit Number 8597, which would authorize continued operation of a Hot Mix Asphalt Plant located at 14900 State Highway 121, Frisco, Collin County, Texas 75035-4604. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.122436&lng=-96.745894&zoom=13&type=r. The existing facility is authorized to emit the following air contaminants: 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.

The executive director has determined the application is administratively complete and will conduct a technical review of the application. Information in the application indicates that this permit renewal would not result in an increase in allowable emissions and would not result in the emission of an air contaminant not previously emitted.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application, and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the executive director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, August 6, 2020, at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: https://www.gotomeeting.com/webinar/join-webinar and entering Webinar ID 424-087-651. Those without internet access may call (512) 239-1201 before the meeting begins for assistance in accessing the meeting and participating telephonically. Members of the public who wish to only listen to the meeting may call, toll free, (415) 930-5321 and enter access code 695-826-593.

Additional information will be available on the agency calendar of events at the following link: https://www.tceq.texas.gov/agency/decisions/heari ngs/calendar.html.

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The application will be available for viewing and copying at the TCEQ central office, TCEQ Dallas/Fort Worth regional office, and the Frisco Public Library, 6101 Frisco Square Boulevard, Frisco, Collin County, Texas. The facility's compliance file, if any exists, is available for public review in the Dallas/Fort Worth regional office of the TCEQ. Further information may also be obtained from Texas Materials Group, Inc., 420 Decker Drive, Suite 200, Irving, Texas 75062-3988 or by calling Mr. Robert Brown, Environmental Manager at (903) 561-1321.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Notice Issuance Date: July 08, 2020

TRD-202002907
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 15, 2020

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Department of State Health Services

Abusable Volatile Chemical Penalty Matrix

Chapter 485 of the Texas Health and Safety Code (Code) authorizes the Department of State Health Services (department) to regulate abusable volatile chemicals (AVC) in this state. The regulatory goals are to protect human health and safety, to ensure standard practices, and to protect minors from AVC. To achieve these goals, the department performs routine inspections, complaint investigations, and other consumer protection activities. The department has rulemaking authority under §§485.002 and 485.012(b) of the Code to administer the Chapter, including the authority to adopt rules necessary to comply with labeling requirements established under the Federal Hazardous Substances Act and establish permit application fees, as well as standards for permit issuance and renewal. The department's AVC rules are promulgated in Texas Administrative Code (TAC), Title 25, Part 1, Chapter 205, Subchapter D, Inhalant Abuse. Additionally, the department has the authority under §485.101 of the Code to prescribe and impose administrative penalties to enforce violations of Chapter 485 of the Code and the AVC rules.

The department publishes the AVC Penalty Matrix (Matrix) to inform the public and the regulated AVC retail establishments about the department's compliance policies. The penalties set forth in the Matrix are created to promote compliance with the AVC statute and rules, promote public confidence in the retail sales AVC industry, and deter conduct detrimental to the health and safety of minors who may attempt to buy AVC. The Matrix promotes transparency in the department's compliance efforts to protect Texas consumers, and provides notice of these consumer protection standards to the public and the regulated AVC retail businesses.

As part of the department's commitment to the protection of minors from AVC in Texas, the department publishes the Matrix to encourage consistent, uniform, and fair assessment of penalties for violations of the AVC rules promulgated in Texas Administrative Code, Title 25, Part 1, Chapter 205, Subchapter D, Inhalant Abuse. The list of violations in the Matrix provides a corresponding citation to the appropriate section of the AVC rules for each violation. The actual penalty to be assessed in a particular compliance case remains within the discretion of the department.

Under 25 TAC §205.64(d), the department shall consider the following when assessing the amount of a penalty:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including, when applicable, whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require. Furthermore, 25 TAC §205.64(e) provides for three violation severity levels: Significant Violation - Severity Level I, Serious Violation - Severity Level II, and Critical Violation - Severity Level III. These three violation severity levels are reflected accordingly in the Matrix.

-Significant violation - Severity Level I includes violations that are of more than minor significance and, if left uncorrected, could lead to more serious circumstances.

-Serious violation - Severity Level II includes violations that are significant and which, if not corrected, could threaten public health and safety.

-Critical Violation - Severity Level III includes violations that are most significant and have a direct negative impact on public health and safety.

The department may offer to settle disputed claims as deemed appropriate, through various means including, but not limited to, Informal Conference, reduced penalty amounts, permit sanctions, or other appropriate lawful means, subject to approval of the Commissioner, on a case-by-case basis. All decisions made by the department related to violations of the AVC rules are based on current circumstances, including extant information and laws.

The proposed Matrix may be reviewed and revised from time to time. This Matrix shall be effective immediately upon publication in the *Texas Register* and shall supersede the current department procedures for assessing administrative penalties for violations of the AVC rules.

Abusable Volatile Chemical Penalty Matrix

The actual penalty amount to be assessed in a particular compliance case remains within the discretion of the Department of State Health Services (department). In determining the amount of the penalty, the department will take into account any aggravating or mitigating factors, and may reduce or increase the penalty amount, as justice may require.

Number	Violation	TAC § Number	Regulation	**Significant Level I** Penalties: $500-1st Offense $1,000-2nd Offense $5,000-3rd Offense	**Serious Level II** Penalties: $750-1st Offense $1,500-2nd Offense $5,000-3rd Offense	**Critical Level III** Penalties: $1,000-1st Offense $2,000-2nd Offense $5,000-3rd Offense License Revocation
1	Failure to obtain AVC sales Permit	25 TAC §205.54(a)	25 TAC §205.54(a) states, "A person may not sell an abusable volatile chemical at retail unless the person or the person's employer has, at the time of the sale, a valid volatile chemical sales permit for the location of the sale. A separate permit is required for each location at which an abusable volatile chemical is sold."			X
2	Failure to have AVC sales Permit available	25 TAC §205.54(d)(2)	25 TAC §205.54(d)(2) states, "permit holder must have the permit or a copy of the permit available for inspection at the location for which the permit is issued following the requirements of §205.59 of this title (relating to Permit Available for Inspection)"		X	
3	Failure to post AVC Warning Signs	25 TAC §205.54(d)(3)	25 TAC §205.54(d)(3) states, "permit holder shall post a volatile chemical warning sign at the location for which the permit is issued following the requirements of §205.60 of this title (relating to Requirement to Post Warning Sign)"		X	
4	Failure to restrict access to aerosol paint	25 TAC §205.61(a)	25 TAC §205.61(a)(1)(2) and (3) states, "A business establishment that holds a volatile chemical sales permit under §205.54 of this title (relating to Permit Requirements and Conditions) and that displays aerosol paint shall display the paint: (1) in a place that is in the line of sight of a cashier or in the line of sight from a workstation normally continuously occupied during business hours; (2) in a manner that makes the paint accessible to a patron of the business establishment only with the assistance of an employee of the establishment; or (3) in an area electronically protected, or viewed by surveillance equipment that is monitored, during business hours."		X	
5	Sale or delivery of AVC products to a minor	25 TAC §205.54(d)(1)	25 TAC §205.54(d)(1) states, "permit holder shall not sell or deliver abusable volatile chemicals to a person under 18 years of age."			X

AVC Matrix
Environmental Health Group/ PSQA

Abusable Volatile Chemical Penalty Matrix

The actual penalty amount to be assessed in a particular compliance case remains within the discretion of the Department of State Health Services (department). In determining the amount of the penalty, the department will take into account any aggravating or mitigating factors, and may reduce or increase the penalty amount, as justice may require.

Number	Violation	TAC § Number	Regulation	**Significant Level I** Penalties: $500-1st Offense $1,000-2nd Offense $5,000-3rd Offense	**Serious Level II** Penalties: $750-1st Offense $1,500-2nd Offense $5,000-3rd Offense	**Critical Level III** Penalties: $1,000-1st Offense $2,000-2nd Offense $5,000-3rd Offense License Revocation
6	Failure to comply with an inspection or investigation by delaying or denying access	25 TAC §205.63(c) and (d)	25 TAC §205.63(c) states, "A department representative, upon presenting the department identification card, shall have the right to enter all retail facilities during normal operating hours to inspect and investigate for compliance with these sections, including to review records, to question any person, or to locate or identify abusable volatile chemicals held for retail sale." 25 TAC §205.63(d) states, "A department representative is not required to notify in advance or seek permission to conduct inspections or investigations. It is a violation of this chapter for a person to interfere with, deny, or delay an inspection or investigation conducted by a department representative."			x
7	Failure to post AVC warning signs in conspicuous location	25 TAC §205.60(a), (b)	25 TAC §205.60(a) states, " A business establishment that sells abusable volatile chemicals at retail shall display a volatile chemical warning sign, in English and Spanish, that states the following: "It is unlawful for a person to sell or deliver abusable volatile chemicals to a person under 18 years of age. Except in limited situations, such an offense is a state jail felony. It is also unlawful for a person to abuse a volatile chemical by inhaling, ingesting, applying, using, or possessing with intent to inhale, ingest, apply, or use a volatile chemical in a manner designed to affect the central nervous system. Such an offense is a Class B misdemeanor." 25 TAC §205.60(b) states, "A current version of the volatile chemical warning sign shall be clearly posted in a conspicuous and prominent place at the location where the permit holder sells abusable volatile chemicals. At a minimum, at least one warning sign must be posted at the location for which the permit is issued. Permit holders may post additional warning signs at multiple sites within this location to ensure that the sign is easily visible to patrons of the establishment."	x		

AVC Matrix
Environmental Health Group/ PSQA

TRD-202002879
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: July 13, 2020

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Licensing Actions for Radioactive Materials

During the first half of June, 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
Cypress	Cardiovascular & Heart Rhythm Associates Corporation P.A. dba Cardiovascular & Heart Rhythm Associates P.A.	L07056	Cypress	00	06/05/20
Throughout TX	GI Encore Petroleum Engineering Services Co. Ltd.	L07058	Katy	00	
Throughout TX	ECS Southwest L.L.P.	L07057	San Antonio	00	06/10/20

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
Amarillo	BSA Hospital L.L.C. dba The Don & Sybil Harrington Cancer Center	L06556	Amarillo	13	06/01/20
Corpus Christi	Radiology & Imaging of South Texas L.L.P.	L05182	Corpus Christi	55	06/02/20
Houston	Harris County Hospital District dba Harris Health System	L01303	Houston	101	06/11/20
Houston	Texas Nuclear Imaging L.P. dba Excel Diagnostics and Nuclear Oncology Center	L05009	Houston	56	06/09/20
Houston	Memorial MRI & Diagnostic L.L.C.	L05997	Houston	13	06/10/20
Humble	North Houston Heart and Vascular Associates P.A. dba Houston Heart and Vascular Associates	L06121	Humble	05	06/01/20
Kingwood	KPH Consolidation Inc. dba Kingwood Medical Center	L04482	Kingwood	32	06/02/20
La Porte	Clean Harbors Deer Park L.L.C.	L02870	La Porte	29	06/15/20
Lewisville	Med Fusion L.L.C.	L06966	Lewisville	02	06/04/20
Orange	Performance Materials Na Inc.	L07026	Orange	02	06/11/20

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Plano	Heartplace P.A.	L05699	Plano	19	06/01/20
Plano	Physicians Medical Center L.L.C. dba Texas Health Center for Diagnostics and Surgery Plano	L06328	Plano	03	06/03/20
Shenandoah	Woodlands Elite Cardiology P.L.L.C.	L07022	Shenandoah	02	06/09/20
Sugar Land	TMH Physician Organization dba Methodist Sugar Land Cardiology Associates	L06575	Sugar Land	01	06/03/20
Sunnyvale	Texas Regional Medical Center L.L.C. dba Baylor Scott & White Medical Center Sunnyvale	L06692	Sunnyvale	06	06/03/20
Throughout TX	Halliburton Energy Services Inc.	L03284	Alvarado	45	06/11/20
Throughout TX	Weatherford International L.L.C.	L04286	Benbrook	128	06/10/20
Throughout TX	OQ Chemicals Bishop L.L.C.	L06079	Bishop	05	06/09/20
Throughout TX	Cardinal Health 414 L.L.C. dba Cardinal Health Nuclear Pharmacy Services	L01999	El Paso	130	06/05/20
Throughout TX	QES Wireline L.L.C.	L06620	Fort Worth	25	06/09/20
Throughout TX	Terracon Consultants Inc.	L05268	Houston	63	06/01/20
Throughout TX	American Diagnostic Tech L.L.C.	L05514	Houston	146	06/05/20
Throughout TX	IRISNDT Inc.	L06435	Houston	25	06/15/20
Throughout TX	Mistras Group Inc.	L06369	La Porte	34	06/04/20
Throughout TX	Phoenix Industrial Services 1 L.P.	L07015	La Porte	03	06/03/20
Throughout TX	Intertek Asset Integrity Management Inc.	L06801	Longview	14	06/09/20
Throughout TX	Empire Wireline L.L.C.	L06997	Manvel	01	06/01/20

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Throughout TX	B2Z Engineering L.LC.	L06996	McAllen	02	06/04/20
Throughout TX	PSI Wireline Inc.	L05911	San Angelo	11	06/04/20
Throughout TX	Raba-Kistner Consultants Inc. dba Raba-Kistner-Brytest Consultants Inc.	L01571	San Antonio	94	06/02/20
Throughout TX	Drash Consultants L.L.C.	L06544	San Antonio	04	06/11/20
Throughout TX	Project Management Associates P.L.L.C.	L06825	Southlake	02	06/01/20
Throughout TX	Schlumberger Technology Corporation	L00764	Sugar Land	164	06/02/20
Throughout TX	Ludlum Measurements Inc.	L01963	Sweetwater	110	06/03/20
Throughout TX	Cudd Pumping Services Inc.	L06989	The Woodlands	04	06/09/20
Tyler	Allens Nutech Inc. dba Nutech Inc.	L04274	Tyler	92	06/01/20
Wichita Falls	Kell West Regional Hospital L.L.C.	L05943	Wichita Falls	19	06/03/20

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
Sugar Land	Methodist Health Centers dba Houston Methodist Sugar Land Hospital	L06232	Sugar Land	17	06/09/20
Throughout TX	Pioneer Wireline Services L.L.C.	L06220	Converse	41	06/15/20
Throughout TX	Professional Services Industries Inc.	L02476	El Paso	32	06/08/20
Throughout TX	Peachtree Construction Ltd.	L05401	Fort Worth	11	06/08/20
Throughout TX	Testmasters Inc.	L03651	Houston	35	06/01/20

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
Houston	Integrity Solutions NDC L.L.C.	L06713	Houston	03	06/08/20
Corpus Christi	True Medical Imaging	L06191	Corpus Christi	10	06/10/20
Huntsville	Walker County Hospital Corporation dba Huntsville Memorial Hospital	L02822	Huntsville	27	06/15/20

TRD-202002919
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: July 15, 2020

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Licensing Actions for Radioactive Materials

During the second half of June, 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
Addison	TX Center for Interventional Surgery L.L.C.	L07062	Addison	00	06/30/20

NEW LICENSES ISSUED (continued):

Cypress	Cardiovascular Specialists of Willowbrook P.L.L.C.	L07059	Cypress	00	06/16/20
Huntsville	Huntsville Community Hospital Inc. dba Huntsville Memorial Hospital	L07060	Huntsville	00	06/18/20
Round Rock	Sage Veterinary Imaging P.L.L.C.	L07061	Round Rock	00	06/24/20

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
Angleton	Isotherapeutics Group L.L.C.	L05969	Angleton	42	06/29/20
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L00740	Austin	172	06/30/20
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L06335	Austin	35	06/25/20
Dallas	The University of Texas Southwestern Medical Center at Dallas	L00384	Dallas	133	06/23/20
Dallas	Sofie Co.	L06174	Dallas	31	06/16/20
Denison	Texomacare Specialty Physicians	L06504	Denison	05	06/16/20
Fort Worth	Tarrant County Hospital District dba JPS Health Network	L02208	Fort Worth	93	06/26/20
Fort Worth	Texas Health Huguley Inc.	L06514	Fort Worth	05	06/30/20
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	249	06/30/20

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Houston	Memorial Hermann Health System dba Memorial Hermann Northeast Hospital	L02412	Houston	137	06/30/20
Houston	Memorial Hermann Health System dba Memorial Hermann Katy Hospital	L03052	Houston	101	06/30/20
Houston	Memorial Hermann Health System dba Memorial Hermann Sugarland Hospital	L03457	Houston	70	06/16/20
Houston	Memorial Hermann Health System	L03772	Houston	161	06/30/20
Houston	Memorial Hermann Medical Group Department of Radiation Therapy	L06430	Houston	39	06/22/20
Houston	Memorial Hermann Health System dba Memorial Hermann Katy Hospital	L06430	Houston	40	06/30/20
Houston	Memorial Hermann Health System dba Memorial Hermann Cypress Hospital	L06832	Houston	23	06/30/20
Humble	Rajiv Agarwal M.D., P.A. dba Modern Heart and Vascular Institute	L06991	Humble	03	06/30/20
Irving	Texas Oncology P.A.	L06702	Irving	03	06/23/20
Kosse	U S Silica Company	L03150	Kosse	19	06/18/20
Lubbock	Methodist Diagnostic Imaging dba Covenant Diagnostic Imaging	L03948	Lubbock	56	06/24/20
Plano	San Angelo Hospital L.P. dba San Angelo Community Medical Center	L02487	Plano	60	06/16/20
Plano	Orano Med L.L.C.	L06781	Plano	18	06/22/20
Port Arthur	Motiva Enterprises L.L.C.	L05211	Port Arthur	26	06/18/20
Round Rock	St. David's Healthcare Partnership L.P. L.L.P. dba St David's Round Rock Medical Center	L03469	Round Rock	66	06/18/20

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Shenandoah	Texas Oncology P.A.	L07041	Shenandoah	01	06/17/20
The Woodlands	KBI Biopharma Inc.	L06851	The Woodlands	02	06/22/20
The Woodlands	Methodist Health Centers dba Houston Methodist The Woodlands Hospital	L07044	The Woodlands	01	06/29/20
Throughout TX	Water Remediation Technology L.L.C.	L06316	Arvada	09	06/18/20
Throughout TX	ECS Southwest L.L.P.	L05319	Austin	16	06/23/20
Throughout TX	Weatherford International L.L.C.	L00747	Benbrook	111	06/18/20
Throughout TX	Alliance Geotechnical Group Inc.	L05314	Dallas	41	06/18/20
Throughout TX	HVJ North Texas – Chelliah Consultants Inc.	L06807	Dallas	07	06/23/20
Throughout TX	Diamond J W Inc.	L06686	Fort Worth	01	06/26/20
Throughout TX	Gammatron Inc.	L02148	Friendswood	30	06/26/20
Throughout TX	A & R Engineering and Testing Inc.	L05318	Houston	09	06/23/20
Throughout TX	NIS Holdings Inc. dba Nuclear Imaging Services	L05775	Houston	110	06/17/20
Throughout TX	JRB Engineering L.L.C.	L06689	Houston	07	06/18/20
Throughout TX	Micro Motion Inc. dba Roxar	L06760	Houston	08	06/26/20
Throughout TX	U S Well Services L.L.C.	L06930	Houston	02	06/25/20
Throughout TX	Advanced Corrosion Technologies and Training L.L.C. dba ACTT – Advanced Corrosion Technologies and Training L.L.C.	L06508	La Porte	20	06/18/20
Throughout TX	J Z Russell Industries Inc.	L06459	Nederland	10	06/25/20
Throughout TX	NCS Multistage L.L.C.	L06361	Odessa	16	06/23/20

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Throughout TX	Pro Inspection Inc.	L06666	Odessa	11	06/24/20
Throughout TX	Hunting Titan Inc.	L06610	Pampa	09	06/18/20
Throughout TX	ECS Southwest L.L.P.	L07057	San Antonio	01	06/23/20
Throughout TX	Oilpatch NDT L.L.C.	L06718	Seabrook	16	06/24/20
Throughout TX	Schlumberger Technology Corporation	L00764	Sugar Land	165	06/18/20
Throughout TX	Schlumberger Technology Corporation	L00764	Sugar Land	166	06/25/20
Throughout TX	Schlumberger Technology Corporation	L01833	Sugar Land	219	06/23/20
Throughout TX	BJ Services L.L.C.	L06859	Tomball	04	06/29/20
Throughout TX	Allens Nutech Inc. dba Nutech Inc.	L04274	Tyler	93	06/16/20
Throughout TX	Allens Nutech Inc. dba Nutech Inc.	L04274	Tyler	94	06/25/20
Tyler	Mother Frances Hospital Regional Health Care Center dba Christus Mother Frances Hospital - Tyler	L01670	Tyler	216	06/16/20
Victoria	Performance Materials NA Inc.	L07038	Victoria	01	06/25/20
Waco	Waco Cardiology Associates	L05158	Waco	25	06/23/20
Waller	NRG Manufacturing Inc.	L06550	Waller	05	06/18/20

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
Flower Mound	Flower Mound Hospital Partners L.L.C. dba Texas Health Presbyterian Hospital Flower Mound	L06310	Flower Mound	10	06/16/20
Houston	Global Nucleonics L.L.C.	L06164	Houston	06	06/18/20

RENEWAL OF LICENSES ISSUED (continued):

Nacogdoches	TH Healthcare Ltd. dba Nacogdoches Medical Center	L02853	Nacogdoches	57	06/26/20
Throughout TX	The University of Texas Southwestern Medical Center at Dallas	L04943	Dallas	11	06/25/20
Throughout TX	Professional Service Industries Inc.	L06332	Grapevine	14	06/25/20
Throughout TX	General Inspection Services Inc.	L02319	Hempstead	52	06/18/20
Throughout TX	Professional Service Industries Inc.	L04946	San Antonio	19	06/25/20

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
Arlington	Texas Oncology P.A.	L05116	Arlington	36	06/30/20
Houston	Sabre Demolition Corporation	L06914	Houston	01	06/30/20
New Caney	Barry G. Willens MD PA	L06935	New Caney	01	06/29/20

TRD-202002920
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: July 15, 2020

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Texas Department of Housing and Community Affairs

Fourth Amendment to 2020-1 Multifamily Direct Loan Annual Notice of Funding Availability

I. Sources of Multifamily Direct Loan Funds.

Multifamily Direct Loan funds are made available in this Annual Notice of Funding Availability through program income generated from prior year HOME allocations, de-obligated funds from prior year HOME allocations, the 2019 Grant Year HOME allocation, and the 2018 and 2019 Grant Year National Housing Trust Fund (NHTF) allocations. The Department may amend this NOFA or the Department may release a new NOFA upon receiving additional de-obligated funds from HOME allocations, or upon receiving new funds from the 2020 HOME or NHTF allocations from HUD. These funds have been programmed for multifamily activities including acquisition, refinance, and preservation of affordable housing involving new construction, reconstruction and/or rehabilitation.

II. Notice of Funding Availability (NOFA).

The Texas Department of Housing and Community Affairs (the Department) announces the availability of up to $26,356,025.20 in Multifamily Direct Loan funding for the development of affordable multifamily rental housing for low-income Texans.

Of that amount, up to $12,509,857.20 will be available for applications proposing Supportive Housing in accordance with 10 TAC §11.1(d)(122) and §11.302(g)(4) of the 2020 Qualified Allocation Plan (QAP) or applications that commit to setting aside units for extremely low-income households as required by 10 TAC §13.4(a)(1)(A)(ii). The remaining funds will be available under the General set-aside for applications proposing eligible activities in non-Participating Jurisdictions.

At the Board meeting on June 25, 2020, the Department approved the Fourth Amendment to 2020-1 Multifamily Direct Loan Annual NOFA, whereby the $4,733,439 in HOME funds under the Community Housing Development Organization (CHDO) set-aside were reallocated to the General set-aside. Funds under the General set-aside will be available on a statewide basis through August 31, 2020 (if sufficient funds remain). At the same Board meeting, the Department also approved that, with Executive Director approval, future amendments may be made as needed in order to meet the upcoming federal commitment deadline for NHTF without Board approval.

The Multifamily Direct Loan program provides loans to for-profit and nonprofit entities to develop affordable housing for low-income Texans qualified earning 80 percent or less of the applicable Area Median Family Income. All funding is currently available on a statewide basis within each set-aside until August, 31, 2020 (if sufficient funds remain).

III. Application Deadline and Availability.

Based on the availability of funds, Applications may be accepted until 5 p.m. Austin local time on August 31, 2020. The "Amended 2020-1 Multifamily Direct Loan Annual NOFA" is posted on the Department's website: http://www.tdhca.state.tx.us/multifamily/nofas-rules.htm. Subscribers to the Department's LISTSERV will receive notification that the Fourth Amendment to the NOFA is posted. Subscription to the Department's LISTSERV is available at http://maillist.tdhca.state.tx.us/list/subscribe.html?lui=f9mu0g2g&mContainer=2&mOwner=G382s2w2r2p.

Questions regarding the 2020-1 Multifamily Direct Loan Annual NOFA may be addressed to Andrew Sinnott at (512) 475-0538 or andrew.sinnott@tdhca.state.tx.us.

TRD-202002921
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 15, 2020

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Texas Lottery Commission

Scratch Ticket Game Number 2261 "$200 MILLION CA$H"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2261 is "$200 MILLION CA$H". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2261 shall be $50.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2261.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, MONEY BAG SYMBOL, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, $50.00, $100, $200, $500, $1,000, $2,000, $10,000 and $5,000,000.

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. 2261 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO

33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
MONEY BAG SYMBOL	WIN$
2X SYMBOL	DBL
5X SYMBOL	WINX5
10X SYMBOL	WINX10
20X SYMBOL	WINX20
$50.00	FFTY$
$100	ONHN
$200	TOHN
$500	FVHN
$1,000	ONTH
$2,000	TOTH
$10,000	10TH
$5,000,000	TPPZ

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 (2261), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 020 within each Pack. The format will be: 2261-0000001-001.

H. Pack - A Pack of the "$200 MILLION CA$H" Scratch Ticket Game contains 020 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 020 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

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 "$200 MILLION CA$H" Scratch Ticket Game No. 2261.

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 "$200 MILLION CA$H" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose seventy-six (76) 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 "MONEY BAG" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES 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 seventy-six (76) 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 seventy-six (76) 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 seventy-six (76) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the seventy-six (76) 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. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to thirty-five (35) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $1,000, $10,000 and $5,000,000 will each appear at least once, except on Tickets winning thirty-five (35) times and with respect to other parameters, play action or prize structure.

E. No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

F. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

G. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

H. On all Tickets, a Prize Symbol will not appear more than five (5) times, except as required by the prize structure to create multiple wins.

I. On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

J. The "MONEY BAG" (WIN$) Play Symbol will never appear on the same Ticket as the "2X" (DBL), "5X" (WINX5), "10X" (WINX10) or "20X" (WINX20) Play Symbols.

K. The "2X" (DBL) Play Symbol will never appear more than three (3) times on a Ticket.

L. The "2X" (DBL) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

M. The "2X" (DBL) Play Symbol will never appear on a Non-Winning Ticket.

N. The "2X" (DBL) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

O. The "5X" (WINX5) Play Symbol will never appear more than once on a Ticket.

P. The "5X" (WINX5) Play Symbol will win 5 TIMES the prize for that Play Symbol and will win as per the prize structure.

Q. The "5X" (WINX5) Play Symbol will never appear on a Non-Winning Ticket.

R. The "5X" (WINX5) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

S. The "10X" (WINX10) Play Symbol will never appear more than once on a Ticket.

T. The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

U. The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

V. The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

W. The "20X" (WINX20) Play Symbol will never appear more than once on a Ticket.

X. The "20X" (WINX20) Play Symbol will win 20 TIMES the prize for that Play Symbol and will win as per the prize structure.

Y. The "20X" (WINX20) Play Symbol will never appear on a Non-Winning Ticket.

Z. The "20X" (WINX20) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

AA. The "MONEY BAG" (WIN$) Play Symbol will win the prize for that Play Symbol.

BB. The "MONEY BAG" (WIN$) Play Symbol will never appear more than once on a Ticket.

CC. The "MONEY BAG" (WIN$) Play Symbol will never appear on a Non-Winning Ticket.

DD. The "MONEY BAG" (WIN$) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "$200 MILLION CA$H" Scratch Ticket Game prize of $50.00, $100, $200 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, $200 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 "$200 MILLION CA$H" Scratch Ticket Game prize of $1,000 or $10,000, 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. To claim a "$200 MILLION CA$H" Scratch Ticket Game top level prize of $5,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers in Austin, Dallas, Fort Worth, Houston or San Antonio, Texas. 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 and proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). 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.

D. As an alternative method of claiming a "$200 MILLION CA$H" Scratch Ticket Game prize, including the top level prize of $5,000,000, 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 num-

ber 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.

E. 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.

F. 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 "$200 MILLION CA$H" 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 "$200 MILLION CA$H" 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 5,400,000 Scratch Tickets in Scratch Ticket Game No. 2261. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2261 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$50.00	675,000	8.00
$100	607,500	8.89
$200	216,000	25.00
$500	90,000	60.00
$1,000	6,300	857.14
$10,000	180	30,000.00
$5,000,000	4	1,350,000.00

*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 3.39. 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. 2261 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. 2261, 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-202002892
Bob Biard
General Counsel
Texas Lottery Commission
Filed: July 14, 2020

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Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transactions

Acquisition of Land - Jefferson County

Approximately 10 Acres at the J.D. Murphree Wildlife Management Area

In a meeting on August 27, 2020, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing an acquisition of approximately 10 acres at the J.D. Murphree Wildlife Management Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Stan David, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to stan.david@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at tpwd.texas.gov for the latest information.

Exchange of Land - Orange County

Approximately 2 Acres at the Old River Unit of the Lower Neches Wildlife Management Area

In a meeting on August 27, 2020, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing an exchange of land of approximately 2 acres in order to resolve boundary discrepancies at the Old River Unit of the Lower Neches Wildlife Management

Area. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Stan David, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to stan.david@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at tpwd.texas.gov for the latest information.

Acquisition of Land - Bastrop County

Approximately 600 Acres at Bastrop State Park

In a meeting on August 27, 2020, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of approximately 600 acres at Bastrop State Park. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to trey.vick@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at tpwd.texas.gov for the latest information.

Acquisition of Land - Bastrop County

Approximately 19 Acres at Bastrop State Park

In a meeting on August 27, 2020, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of approximately 19 acres at Bastrop State Park in Bastrop County. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to trey.vick@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at tpwd.texas.gov for the latest information.

Granting of Easement - Lubbock County

Approximately 0.10 Acres at the Texas Parks and Wildlife Department Law Enforcement Office

In a meeting on August 27, 2020, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing a utility easement of approximately .10 acres at the Texas Parks and Wildlife Department Law Enforcement Office in Lubbock, Lubbock County. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Trey Vick, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to trey.vick@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at tpwd.texas.gov for the latest information.

Granting of Pipeline Easement - Brazoria County

Approximately 6 Acres at the Justin Hurst Wildlife Management Area

In a meeting on August 27, 2020, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing a pipeline easement of approximately 6 acres at the Justin Hurst Wildlife Management Area in Brazoria County. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to ted.hollingsworth@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at tpwd.texas.gov for the latest information.

Grant of Easement - Starr County

Approximately 0.3 Acres at Falcon State Park

In a meeting on August 27, 2020, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing an easement of approximately 0.3 acres for the installation of mobile security infrastructure at Falcon State Park in Starr County. The public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to James Murphy, Legal Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or by email to james.murphy@tpwd.texas.gov, or via the department's website at www.tpwd.texas.gov. Please be aware that public participation options may change due to the COVID-19 pandemic. Visit the TPWD website at tpwd.texas.gov for the latest information.

TRD-202002916
Colette Barron-Bradsby
Acting General Counsel
Texas Parks and Wildlife Department
Filed: July 15, 2020

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Sam Houston State University

Consulting Services for Small Business Development Center

Notice of Intent to Seek Consulting Services

In compliance with the provisions of Texas Government Code, Chapter 2254, Sam Houston State University's Small Business Development Center- ("SHSU", "SBDC") in Huntsville, Texas, solicits Request for Qualifications ("RFQ") for independent consultant services to aid the SBDC to assist small businesses in our territory during the COVID-19 pandemic and its aftermath. Our goal is to help small businesses recover both during and after Stay Home Work Safe orders as the economy begins to recover, repair, and reopen.

The SBDC is part of a national program that provides technical assistance to existing small businesses and pre-venture entrepreneurs in the form of individualized, no-cost business counseling and advising, as well as business education through free or low cost live training classes, and on-line webinars and courses. The SBDC is a partnership program between the U.S. Small Business Administration, the State of Texas,

Sam Houston State University, and multiple universities and community colleges in the 32 counties in the upper Texas Gulf Coast Area.

The SBDC has consultant opportunities now available for knowledgeable, experienced individuals to augment our advising services in the following industries, including, but not limited to:

* General retail * Food and Hospitality industry * Healthcare and Fitness* Entertainment* Oil and Gas Suppliers * and Professional Services, such as those provided by physicians and dentists, accountants, and attorneys.

Services to be provided will include, but are not limited to:

* Access to Capital * Cash Flow Analysis and Financial Management * Accounting * Marketing * Human Resource Management * Business Plans * Business Strategy * Operations * Sales * Risk Management * Business Valuations.

These are temporary, non-benefits eligible independent consulting positions that require a four (4) year degree and seven (7) years of directly related experience in one or more of the targeted industries, with documented responsibilities for one or more of the targeted services. Proficiency in Microsoft Excel, Outlook, and Word is required. Good interpersonal skills, attention to detail, and ability to handle multiple projects are also required. All consultants will be responsible for data entry and reporting. Client engagement will initially be limited to on-line, telephone, and web meetings, but may be expanded as Stay Home Work Safe orders are relaxed, and thereafter may involve moderate levels of travel within the Texas Gulf Coast.

Pay range is from $35-50 per billable hour. Billable hours will consist solely of client preparation and contact hours. Independent Consultants will be responsible for providing computing equipment and work space. The SBDC will provide access to client assistance tools, and a reporting database for recording client contacts and outcomes.

Please email resume, including detailed work history and education to SBDC at sbdcinfo@shsu.edu

Selection criteria will be based on the best value which will be determined by the University, and cover such areas as procedural approach to scope of work, experience and work history with similar consulting work, overall qualifications of consultants, stated area of expertise, and references.

Sam Houston State University, in accordance with applicable federal and state law (including Title VII) and institutional values, prohibits discrimination or harassment on the basis of race, creed, ancestry, marital status, citizenship, color, national origin, sex, religion, age, disability, veteran's status, sexual orientation, or gender identity. All personnel actions, including recruitment, employment, training, upgrading, promotion, demotion, termination, and salary administration are reviewed to ensure Equal Employment Opportunity (EEO) compliance.

The closing date for receipt of offers is August 24, 2020. The date of award is anticipated to be on or before September 1, 2020.

SHSU contact for inquiries is:

Rhonda Ellisor

Director of SHSU's Small Business Development Center

P.O. Box 2058

Huntsville, Texas 77341-2058

Phone: (936) 294-3737

Email: sbdcinfo@shsu.edu

TRD-202002895

Sandra Horne
TSUS Associate General Counsel
Sam Houston State University
Filed: July 14, 2020

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Texas Department of Transportation

Public Hearing Notice - Texas Transportation Plan 2050

The Texas Department of Transportation (TxDOT) will hold a virtual public hearing on the Texas Transportation Plan 2050 (TTP 2050) on Tuesday, August 11, 2020, at 10:00 a.m. To log onto the virtual public hearing, visit www.txdot.gov and search key words "TTP 2050" for instructions. The log in process will record your name and email address for the official record. Members of the public who do not have internet access or wish to participate by phone, can call (415) 655-0003, access code: **1609479311.**

The TTP 2050 is the update to the State's long-range multimodal transportation plan. It is a policy document which guides TxDOT's policy and decision-making by setting a long-range vision and the direction for the future of the transportation system. The TTP 2050 presents updated goals, objectives, and performance measures. It provides a snapshot of the State's multimodal transportation network covering roadways, pedestrian and bicycle facilities, transit, freight and passenger rail, airports, waterways and ports, pipelines, and the interstate system. The TTP 2050 includes other important elements such as analysis of performance and forecasted revenues and a plan for incorporating emerging technologies. The draft TTP 2050 will be available to the public beginning Friday, July 24, 2020, at www.txdot.gov, keyword search "TTP 2050."

During the virtual public hearing, TxDOT staff members will present the draft plan. The presentation will include both audio and visual components. An opportunity for public comment will be provided following the presentation. Speakers will be limited to three minutes. Any interested person may offer comments or testimony; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony.

TxDOT makes every reasonable effort to accommodate the needs of the public. The virtual public hearing will be conducted in English. If you have a special communication accommodation or need for an interpreter, a request can be made. If you have a disability and need assistance, special arrangements can also be made to accommodate most needs. Please call (512) 507-0084 no later than Friday, August 7, 2020. Please be aware that advance notice is requested as some accommodations may require time for TxDOT to arrange.

Formal verbal or written comments from the public regarding the proposed plan may be presented during the virtual public hearing and the open comment period as described below. All verbal comments as well as timely written comments submitted by mail or email will be included as part of the official record. Responses to comments will included as part of the virtual public hearing summary and made available online within three months.

To provide verbal comments, call (855) TEXAS-50 ((855) 839-2750) from 8:00 a.m. on July 24, 2020, until 5:00 p.m. on Monday, August 24, 2020. Written comments may be submitted by mail to TxDOT TTP 2050 c/o Ximenes & Associates, 411 Sixth Street, San Antonio, Texas 78215 and by email to TTP_2050@txdot.gov. All written comments must be received on or before 5:00 p.m. on Monday, August 24, 2020.

If you have any general questions or concerns regarding the proposed plan or the virtual hearing, please contact Casey Dusza, Statewide Planning Branch Manager, (512) 507-0084 or casey.dusza@txdot.gov.

TRD-202002912
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: July 15, 2020

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Public Notice - Photographic Traffic Signal Enforcement Systems: Municipal Reporting of Traffic Crashes

The Texas Department of Transportation (department) is requesting that each municipality subject to the requirements of Transportation Code §707.004(d) provide the required data to the department **no later than October 30, 2020,** in order for the department to meet the deadline for an annual report mandated by the Texas Legislature.

Pursuant to Section 7 of House Bill 1631, 86th Legislature, Regular Session, municipalities meeting certain criteria may continue to operate photographic traffic signal enforcement systems. Pursuant to Transportation Code §707.004(d), each such municipality must continue to compile and submit to the department annual reports after installation showing the number and type of crashes that have occurred at the intersection.

Those municipalities that do not meet the criteria contained in Section 7 of House Bill 1631, 86th Legislature, Regular Session can no longer implement or operate photographic traffic enforcement systems with respect to highways or streets under their jurisdiction.

The department is required by Transportation Code §707.004 to produce an annual report of the information submitted to the department by December 1 of each year.

The department has created a web page detailing municipal reporting requirements and to allow the required data to be submitted electronically at:

http://www.txdot.gov/driver/laws/red-light.html

For additional information, contact the Texas Department of Transportation, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483 or call (512) 416-3204.

TRD-202002876
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: July 13, 2020

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Public Notice - The Texas Department of Transportation's (TxDOT) FY 2021 - 2023 Disadvantaged Business Enterprise (DBE) Goal for Federal Transit Administration (FTA) Projects

Pursuant to Title 49, Code of Federal Regulations, Part 26, recipients of federal funds are required to establish DBE programs and set an overall goal for participation. The proposed overall FTA DBE goal for fiscal years 2021 - 2023 is 3.1%. The proposed goal and related methodology are available for inspection online at https://www.txdot.gov/inside-txdot/division/civil-rights/dbe-goal-methodology.html.

TxDOT will accept written comments on the DBE goal until September 7, 2020. Comments should be submitted via email to *PTN_ProgramMgmt@txdot.gov* or mailed to TxDOT, Public Transportation Division, ATTN: Goal Methodology, 125 East 11th Street, Austin, Texas 78701.

Questions concerning inspection of the DBE goal and methodology should be directed to the Public Transportation Division at (512) 486-5977.

TRD-202002887
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: July 13, 2020

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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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