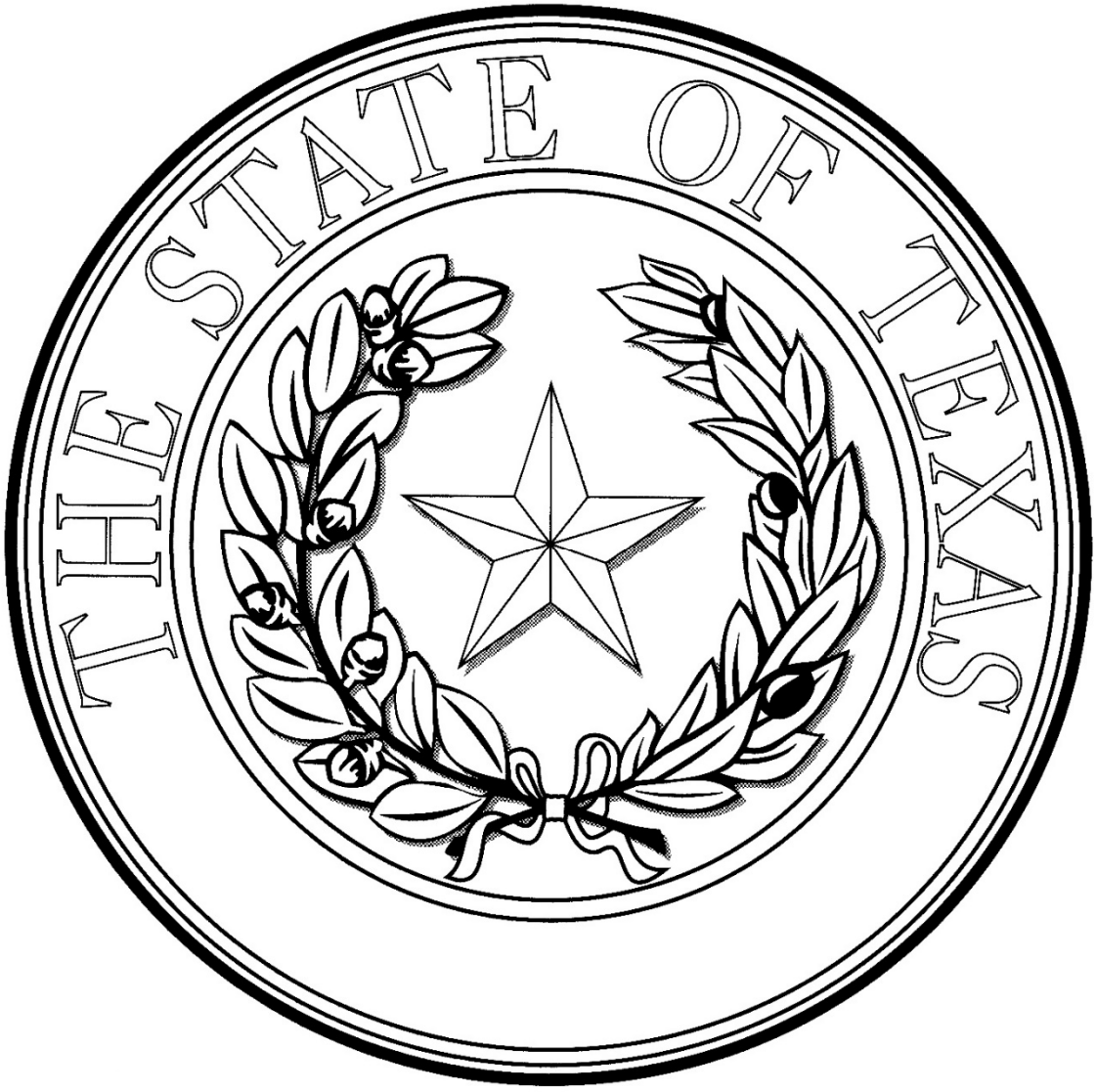
TEXAS REGISTER

Volume 46 Number 5 *January 29, 2021* *Pages 663 - 882*



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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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IN ADDITION

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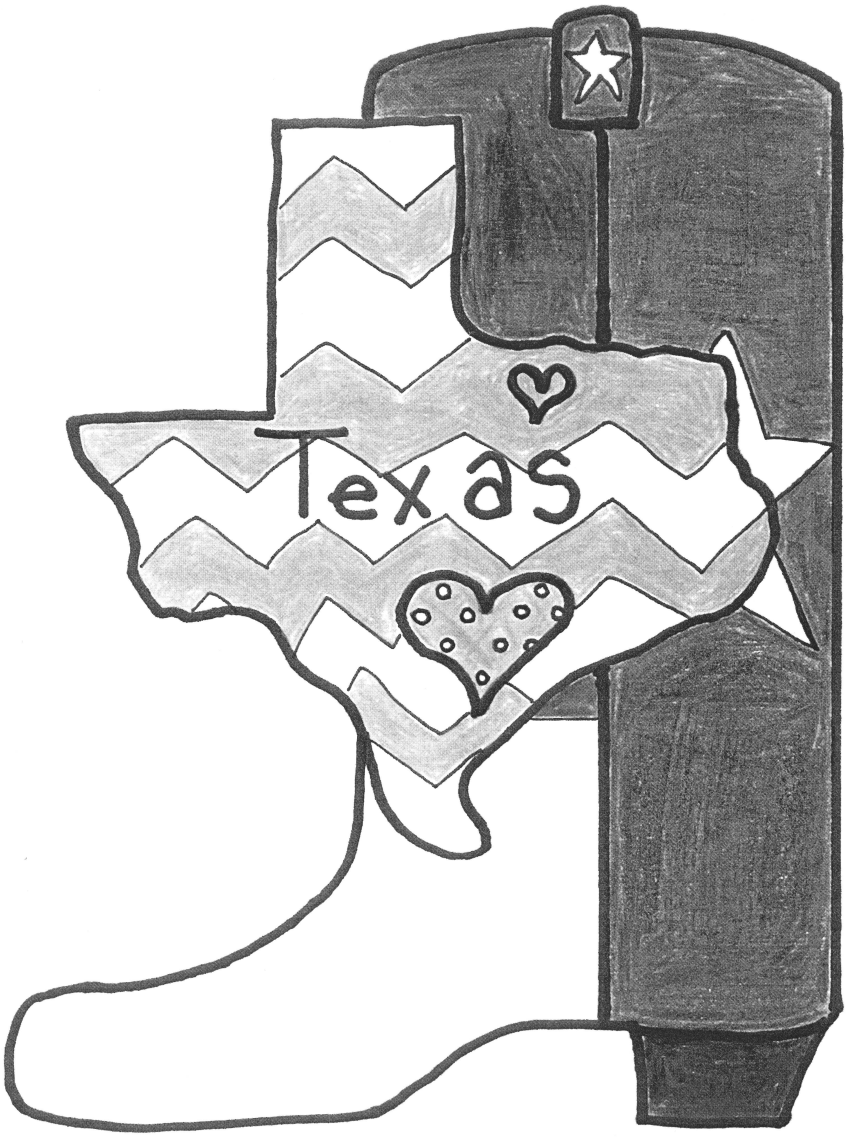

Texas

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 January 11, 2021

Appointed to the Real Estate Research Advisory Committee, for a term to expire January 31, 2025, Walter F. "Ted" Nelson of The Woodlands, Texas (Mr. Nelson is being reappointed).

Appointments for January 14, 2021

Appointed to the Texas Medical Board District Three Review Committee, for a term to expire January 15, 2022, Celeste Caballero, M.D. of Lubbock, Texas (replacing Jayaram B. "Jay" Naidu, M.D. of Odessa, whose term expired).

Appointed to the Texas Medical Board District Three Review Committee, for a term to expire January 15, 2022, Mindi L. McLain of Amarillo, Texas (replacing Nancy Seliger of Amarillo, whose term expired).

Appointed to the Texas Medical Board District Three Review Committee, for a term to expire January 15, 2024, Ogechika K. "Oge" Alozie, M.D. of El Paso, Texas (replacing Surendra Kumar Varma, MD. of Lubbock, whose term expired).

Appointed to the Texas Medical Board District Three Review Committee, for a term to expire January 15, 2024, Taylor A. Gillig of Arlington, Texas (replacing David W. Miller, Ph.D. of Abilene, whose term expired).

Appointed to the Texas Medical Board District Three Review Committee, for a term to expire January 15, 2024, Gabrielle H. Rich, D.O. of Big Spring, Texas (replacing John S. Scott, Jr., D.O. of Keller, whose term expired).

Appointed to the Texas Medical Board District Three Review Committee, for a term to expire January 15, 2026, Michael N. Burley of Southlake, Texas (replacing Betty Lou "Penny" Angelo of Midland, whose term expired).

Appointed to the Texas Medical Board District Three Review Committee, for a term to expire January 15, 2026, Sharmila Dissanaike, M.D. of Lubbock, Texas (replacing John P. McKinley, M.D. of Amarillo, whose term expired).

Appointed to the Texas Medical Board District Four Review Committee, for a term to expire January 15, 2022, Ada L. Booth, M.D. of Corpus Christi, Texas (replacing Leah Raye Mabry, M.D. of San Antonio, whose term expired).

Appointed to the Texas Medical Board District Four Review Committee, for a term to expire January 15, 2022, Walton "Boyd" Bush, Jr., Ed.D. of Bee Cave, Texas (replacing James Hinton Dickerson, Jr. of New Braunfels, whose term expired).

Appointed to the Texas Medical Board District Four Review Committee, for a term to expire January 15, 2024, Leanne Burnett, M.D. of Fresno, Texas (replacing Richard K. Newman, M.D. of San Antonio, whose term expired).

Appointed to the Texas Medical Board District Four Review Committee, for a term to expire January 15, 2024, Phillip W. "Phil" Worley of Hebbronville, Texas (replacing Annette P. Raggette of Austin, whose term expired).

Appointed to the Texas Medical Board District Four Review Committee, for a term to expire January 15, 2026, Ruth Villarreal of Mission, Texas (replacing Phillip W. "Phil" Worley of Hebbronville, whose term expired).

Appointed to the Texas Medical Board District Four Review Committee, for a term to expire January 15, 2026, Andrew J. "Jimmy" Widmer, M.D. of Belton, Texas (replacing Robert E. "Hoot" Hootkins, MD., Ph.D. of Austin, whose term expired).

Appointments for January 19, 2021

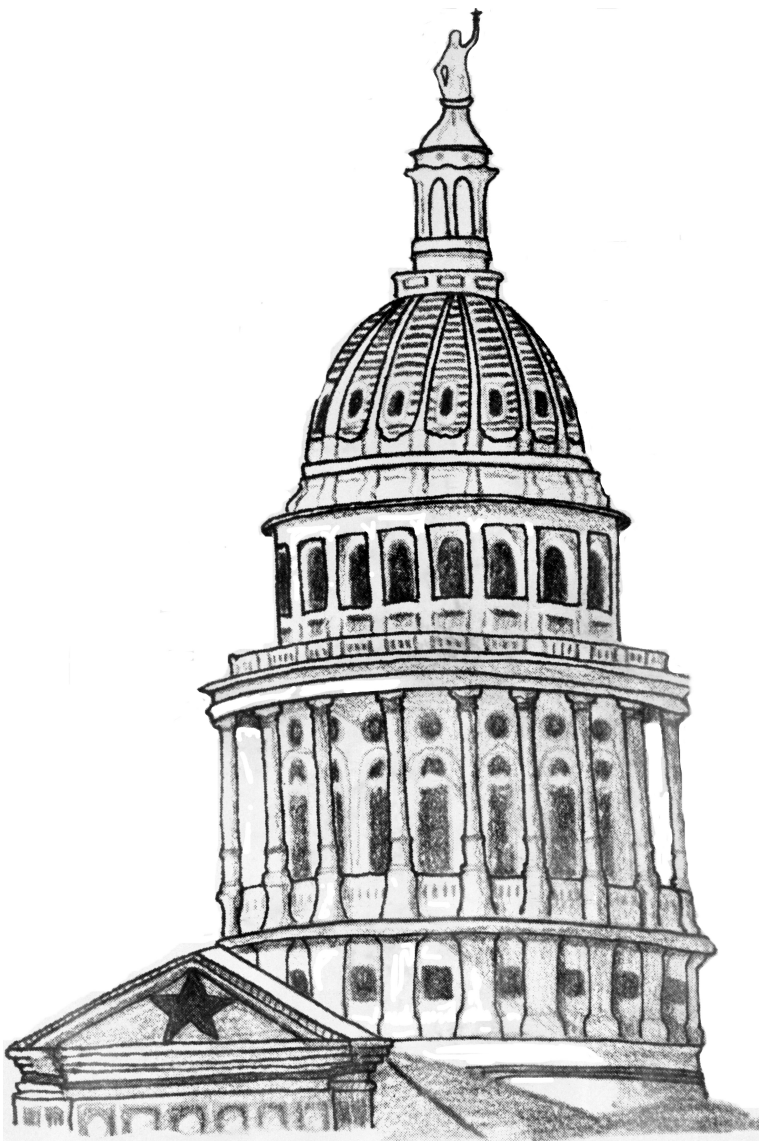
Appointed to the Advisory Council on Emergency Medical Services, for a term to expire January 1, 2026, James M. "Mike" DeLoach of Littlefield, Texas (Judge Deloach is being reappointed).

Appointed to the Advisory Council on Emergency Medical Services, for a term to expire January 1, 2026, Della M. Johnson of Mesquite, Texas (replacing Jorie D. Klein of Dallas, whose term expired).

Greg Abbott, Governor

TRD-202100275

♦ ♦ ♦



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

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board (Board) adopts, on an emergency basis, amendments to 22 TAC §§187.2(6), 187.6 and 187.16, relating to Definitions, Appearances Personally or by Representative, and Informal Show Compliance (ISC) Information and Notices, respectively, effective immediately upon filing.

The emergency amendment to §187.2(6) adds a definition of "appear/appearance." The amendments to §187.6 and §187.16 are conforming amendments to incorporate consistent usage of the term "appear" and "appearance."

There is currently a sharp increase in COVID-19 cases in certain areas of Texas. Further, the COVID-19 cases and hospitalizations continue to increase in Texas and there is possibly a more transmissible variant that has been identified. Thus, the emergency amendment is necessary to facilitate safe continuity of operations of the Texas Medical Board with respect to resolution of complaint investigations. These complaint investigations and disciplinary process comprise essential functions of the Board. The Board currently has approximately 175 cases postponed. The emergency amendment will provide the Board with the ability to implement maximum safety measures mitigating against the spread of COVID-19.

Pursuant to §2001.034 and §2001.036(a)(2) of the Texas Government Code, the emergency amendment is adopted on an emergency basis and with an expedited effective date because an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. The emergency amendment will eliminate potential unnecessary exposure to COVID-19 for agency staff, gubernatorial appointees (including physicians and other health professionals), complainants (including patients and/or family members), licensees, and their representatives when addressing complaints through Informal Show Compliance Proceedings and Settlement Conferences (ISC).

In order to comply with public health officials' recommendations about how to protect against the spread of COVID-19, the emergency rules provide a means of providing maximum safety measures (virtually eliminating potential exposure) when conducting statutorily required ISCs regarding alleged violations of the Medical Practice Act and other applicable laws. In addition, the rules eliminate unnecessary expenditure of state funds during a time of decreased state revenue. The rules also provide adequate means for licensees and their representatives to respond to and address alleged violations of laws regarding the practice of medicine through the statutory ISC process.

Under §2001.034 of the Texas Government Code, the emergency rule may not be in effect for more than 180 days.

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

22 TAC §187.2, §187.6

The emergency rule amendments are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

Other statutes affected by this rule are Chapters 151 and 164 of the Texas Occupations Code.

§187.2. Definitions.

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

(1) Act--Tex. Occ. Code Ann. Title 3 Subtitle B, for physicians; Tex. Occ. Code Ann. Chapter 204 for physician assistants; Tex. Occ. Code Ann. Chapter 205 for acupuncturists; and Tex. Occ. Code Ann. Chapter 206 for surgical assistants.

(2) Address of record--The last mailing address of each licensee or applicant, as provided to the agency pursuant to the Act.

(3) Administrative law judge (ALJ)--An individual appointed to preside over administrative hearings pursuant to the APA.

(4) Agency--The divisions, departments, and employees of the Texas Medical Board, the Texas Physician Assistant Board, and the Texas State Board of Acupuncture Examiners.

(5) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001 as amended.

(6) Appear/Appearance - An opportunity to be heard at an Informal Show Compliance proceeding and settlement conference (ISC) via videoconference. A respondent who cannot utilize videoconference may request to appear via teleconference at least 15 days prior to the date of the appearance. Licensees are entitled to all substantive and procedural rights delineated in the Medical Practice Act.

(7) [~~(6)~~] Applicant--A person seeking a license from the board.

(8) [~~(7)~~] Attorney of record--A person licensed to practice law in Texas who has provided staff with written notice of representation.

(9) [~~(8)~~] Authorized representative--A person who has been designated in writing by a party to represent the party at a board proceeding or an attorney of record.

(10) [~~(9)~~] Board--The Texas Medical Board for physicians and surgical assistants, the Texas State Board of Acupuncture Exam-

iners for acupuncturists, and the Texas Physician Assistant Board for physician assistants.

(11) [~~(10)~~] Board member--One of the members of the board appointed pursuant to the Act.

(12) [~~(11)~~] Board proceeding--Any proceeding before the board or at which the board is a party to an action, including a hearing before SOAH.

(13) [~~(12)~~] Board representative--A board member or district review committee member who sits on a panel at an informal proceeding.

(14) [~~(13)~~] Complaint--Pleading filed at SOAH by the board alleging a violation of the Act, board rules, or board order. The word "complaint" is also used in this rule in the context of complaints made to the board as provided in §153.012 of the Act.

(15) [~~(14)~~] Contested case--A proceeding, including but not restricted to licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an administrative hearing to be held at SOAH.

(16) [~~15)~~] Default Order--A board order in which the factual allegations against a party are deemed admitted as true upon the party's failure to file a timely answer to a Complaint or to appear at a properly noticed SOAH hearing.

(17) [~~(16)~~] Executive director--The executive director of the agency, the authorized designee of the executive director, or the secretary of the board if and whenever the executive director and authorized designee are unavailable.

(18) [~~(17)~~] Formal board proceeding--Any proceeding requiring action by the board, including a temporary suspension hearing.

(19) [~~(18)~~] Group practice--Any business entity, including a partnership, professional association, or corporation, organized under Texas law and established for the purpose of practicing medicine in which two or more physicians licensed in Texas are members of the practice.

(20) [~~(19)~~] Informal board proceeding--Any proceeding involving matters before the board prior to the filing of a pleading at SOAH, to include, but not limited to show compliance proceedings, eligibility determinations, and informal resolutions.

(21) [~~(20)~~] Informal show compliance proceeding and settlement conference (ISC)--A board proceeding that provides a licensee the opportunity to demonstrate compliance with all requirements of the Act and board rules and an opportunity to enter into an agreed settlement.

(22) [~~(21)~~] License--Includes the whole or part of any board permit, certificate, approval, registration or similar form of permission authorized by law.

(23) [~~(22)~~] Licensee--Any person to whom the agency has issued a license, permit, certificate, approval, registration or similar form of permission authorized by law.

(24) [~~(23)~~] Licensing--The agency process relating to the granting, denial, renewal, cancellation, limitation, or reissuance of a license.

(25) [~~(24)~~] Party--The board and each person named or admitted as a party in a SOAH hearing or contested case before the board.

(26) [~~(25)~~] Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization.

(27) [~~(26)~~] Petition--Pleading filed at SOAH by an applicant appealing the board's denial of licensure.

(28) [~~(27)~~] Pleading--A written document that requests procedural or substantive relief, makes claims, alleges facts, makes legal arguments, or otherwise addresses matters involved in a board proceeding.

(29) [~~(28)~~] Presiding officer--The president of the board or the duly qualified successor of the president or other person presiding over a board proceeding.

(30) [~~(29)~~] Probationer--A licensee who is under a board order.

(31) [~~(30)~~] Probationer show compliance proceeding--A board proceeding that provides a probationer the opportunity to demonstrate compliance with the Act, board rules, and board order prior to the board finding that a probationer is in noncompliance with the probationer's order.

(32) [~~(31)~~] Register--The Texas Register.

(33) [~~(32)~~] Rehabilitation Order--An agreed order entered pursuant to the authority of §164.201 of the Act.

(34) [~~(33)~~] Remedial plan--A nondisciplinary settlement agreement entered into pursuant to §164.0015 of the Act.

(35) [~~(34)~~] Respondent--A licensee or applicant who is the subject of disciplinary, non-disciplinary, or rehabilitative action by the board.

(36) [~~(35)~~] Rule--Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of this board. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of the agency and not affecting private rights or procedures. This definition includes substantive regulations.

(37) [~~(36)~~] Secretary--The secretary-treasurer of the board.

(38) [~~(37)~~] SOAH--The State Office of Administrative Hearings.

(39) [~~(38)~~] SOAH hearing--A public adjudication proceeding at SOAH.

(40) [~~(39)~~] SOAH rules--1 Texas Administrative Code §155.1 et seq.

(41) [~~(40)~~] Texas Public Information Act--Texas Government Code, Chapter 552.

(42) [~~(41)~~] Witness--Any person offering testimony or evidence at a board proceeding.

§187.6. Appearances [~~Personally or by Representative~~].

(a) An individual, authorized representative, or both, may appear via videoconference or teleconference, as described in emergency rule §187.2(6) [~~in person or by an authorized representative~~]. This right may be waived.

(b) Any authorized representative, other than an attorney of record, must produce a written statement executed by the individual they are representing which grants the representative the authority to appear on behalf of the individual. The original or a notarized copy of the authorization must be provided to the board at least three days prior to the appearance of the authorized representative in a proceeding unless waived by the board.

(c) A corporation, partnership, or association may appear and be represented by any authorized representative.

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 January 14, 2021.

TRD-202100205
Scott Freshour
General Counsel
Texas Medical Board
Effective date: January 14, 2021
Expiration date: May 13, 2021
For further information, please call: (512) 305-7016

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SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

22 TAC §187.16

The emergency rule amendments are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine; and enforce this subtitle.

Other statutes affected by this rule are Chapters 151 and 164 of the Texas Occupations Code.

§187.16. Informal Show Compliance (ISC) Information and Notices.

(a) Texas Medical Board finds that statutory minimum requirements related to the Informal Show Compliance Proceedings (ISCs) as set out in the Texas Occupations Code, §164 et seq. are comprehensive and complete. Pursuant to §153.001 and §164.003 of the Medical Practice Act, the Board is authorized to adopt rules relating to the ISCs and how they are to be conducted. These rules are promulgated to clarify the ISC process and procedures only as necessary to be consistent with the statutory requirements.

(b) Notice of the time, date and place of the ISC shall be extended to the licensee and the complainant(s) in writing, by hand delivery, regular mail, certified mail -- return receipt requested, overnight or express mail, courier service, or registered mail, to the address of record of the complainants and the address of record of the licensee or the licensee's authorized representative to be sent at least 45 days prior to the date of the ISC. The notice to the licensee or the licensee's authorized representative shall also include:

(1) a statement that the licensee has the opportunity to appear, via videoconference or teleconference, as described in emergency rule §187.2(6), [~~attend~~] and participate in the ISC;

(2) a written statement of the nature of the allegations; and

(3) a copy of the information the board intends to use at the ISC. If the complaint includes an allegation that the licensee has violated the standard of care, the notice shall also include a copy of the Expert Physician Reviewers' Report, prepared in accordance with §154.0561, Texas Occupations Code. The information required by this section may be given in separate communications at different times, provided all of the information has been provided at least 45 days prior to the date of the ISC.

(c) All information provided by the board staff and the licensee shall be provided to the board representatives for review prior to the board representatives making a determination of whether the licensee has violated the Act, board rules, remedial plan, or board order.

(d) All ISC proceedings shall be scheduled not later than the 180th day after the date the board's official investigation of the complaint is commenced, unless good cause is shown by the board for scheduling the ISC after that date. For purposes of this subsection:

(1) "Scheduled" means the act of the agency to reserve a date for the ISC.

(2) "Good cause" shall have the meaning set forth in §179.6 of this title (relating to Time Limits).

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 January 14, 2021.

TRD-202100206
Scott Freshour
General Counsel
Texas Medical Board
Effective date: January 14, 2021
Expiration date: May 13, 2021
For further information, please call: (512) 305-7016

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 306. BEHAVIORAL HEALTH DELIVERY SYSTEM

SUBCHAPTER Z. EMERGENCY RULEMAKING

26 TAC §306.1351

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 26 Texas Administrative Code, Chapter 306 Behavioral Health Delivery System, new §306.1351, concerning an emergency rule in response to COVID-19, in order to reduce the risk of transmission of COVID-19, and to ensure continuity of services for individuals receiving community-based mental health services. 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 renewal on December 6, 2020 of the March 13, 2020 proclamation certifying that the COVID-19 virus poses an imminent threat of disaster in the state and declaring a state of

disaster for all counties in Texas. In this proclamation, the Governor authorized the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster and directed that government entities and businesses would continue providing essential services. HHSC accordingly finds that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency rulemaking in response to COVID-19.

To protect individuals receiving mental health services and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency rule to establish flexibility of certain requirements to: allow alternative methods other than face-to-face contact or in-person interactions, such as the use of telehealth, telemedicine, video-conferencing, or telephonic methods; allow virtual platforms instead of a specific physical space or in-person interactions, such as the use of a telephone or videoconferencing; allow a child or adolescent participating in the YES Waiver Program to reside with another responsible adult as the child or adolescent may not be residing with his or her legally authorized representative due to COVID-19 if the Centers for Medicare & Medicaid Services approves HHSC's request for activation of Appendix; and rules under Title 25, Part 1 and Title 26, Part 1 of the TAC that require staff training through face-to-face or in person or a specific physical space or on site.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034 and §531.0055 and Texas Health and Safety Code §§533.014, 533.035, 533.0356, 534.052, 534.058, 572.0025, 571.006, and 577.010. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Health and Safety Code §533.014 authorizes the Executive Commissioner of HHSC to adopt rules governing certain responsibilities for LMHAs; §533.035 authorizes HHSC to contract with LMHAs for the delivery of mental health services; §533.0356 allows the Executive Commissioner of HHSC to adopt rules governing Local Behavioral Health Authorities (LBHAs); §534.052 authorizes the Executive Commissioner of HHSC to adopt rules to ensure the adequate provision of community-based mental health services; §534.058 authorizes the Executive Commissioner to develop standards of care for services provided by LMHAs and their subcontractor; §572.0025 authorizes the Executive Commissioner of HHSC to adopt rules governing the voluntary admission of a patient to an inpatient mental health facility; §571.006 authorizes the Executive Commissioner to adopt rules to ensure the proper and efficient treatment of persons with mental illness; and §577.010 authorizes the Executive Commissioner to adopt rules to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code §533.014, §533.0356, and §534.052.

§306.1351. COVID-19 Flexibilities.

(a) Rules in Title 25 and Title 26 of the Texas Administrative Code (TAC) require community mental health providers to deliver certain services through face-to-face contact. Beginning on March 13, 2020 through the withdrawal or expiration of this emergency rule, the provision of community mental health services through a face-to-face contact, otherwise required by the rules identified in subsection (b) of this section, is not required. Instead, providers may use telehealth, telemedicine, video-conferencing, or telephonic methods to engage with the individual to provide these services, to the extent this flexibility is permitted by and does not conflict with other law or obligation of the provider. Providers must ensure the selected method of contact complies with all applicable requirements related to security and privacy of information.

(b) Community mental health providers may use alternative interaction methods instead of a face-to-face contact to provide the services described in the following rules:

(1) Section 301.327 of this title (relating to Access to Mental Health Community Services);

(2) Section 301.351 of this title (relating to Crisis Services);

(3) Section 301.353 of this title (relating to Provider Responsibilities for Treatment Planning and Service Authorization);

(4) Section 301.357 of this title (relating to Additional Standards of Care Specific to Mental Health Community Services for Children and Adolescents);

(5) Section 301.359 of this title (relating to Telemedicine Services);

(6) Section 306.207 of this chapter (relating to Post Discharge or Absence for Trial Placement: Contact and Implementation of the Recovery or Treatment Plan);

(7) Section 306.263 of this chapter (relating to MH Case Management Services Standards);

(8) Section 306.275 of this chapter (relating to Documenting MH Case Management Services);

(9) Section 306.277 of this chapter (relating to Medicaid Reimbursement);

(10) Section 306.305 of this chapter (relating to Definitions);

(11) Section 306.323 of this chapter (relating to Documentation Requirements);

(12) Section 306.327 of this chapter (relating to Medicaid Reimbursement);

(13) Section 307.53 of this title (relating to Eligibility Criteria and HCBS-AMH Assessment);

(14) 25 TAC §415.10 (relating to Medication Monitoring); and

(15) 25 TAC §415.261 (relating to Time Limitation on an Order for Restraint or Seclusion Initiated in Response to a Behavioral Emergency).

(c) Section 414.554 of Title 25 of the TAC requires community mental health providers to provide a private physical space for certain in-person interactions. Beginning on March 13, 2020 through the withdrawal or expiration of this emergency rule, the provision of a private physical space, otherwise required by the rule identified in subsection (d) of this section, is not required. Instead, providers may provide virtual platforms, such as telephone or videoconferencing, rather than

providing a private physical space for these interactions to the extent this flexibility is permitted by and does not conflict with other law or obligation of the provider. Providers must ensure the selected method of contact complies with all applicable requirements related to security and privacy of information.

(d) Community mental health providers may provide virtual platforms instead of a private physical space for these interactions provided under 25 TAC §414.554 (relating to Responsibilities of Local Authorities, Community Centers, and Contractors).

(e) Section 307.5 of Title 26 of the TAC requires a child or adolescent participating in the Youth Empowerment Services (YES) Waiver Program to reside with their legally authorized representative. Children or adolescents participating in the YES Waiver Program are not required to reside with their legally authorized representative, notwithstanding the requirements of §307.5 of this title (relating to Eligibility Criteria).

(f) Community mental health providers may use the alternative interaction methods described under subsection (a) instead of a face-to-face contact to comply with the following training requirements:

(1) 25 TAC §411.641 (relating to Staff Member Training);

(2) 25 TAC §448.603 (relating to Training); and

(3) Section 301.331 of this title (relating to Competency and Credentialing).

(g) The Health and Human Services Commission (HHSC) may extend time frames for compliance with staff training requirements based on training availability and feasibility in:

(1) 25 TAC §411.641 (relating to Staff Member Training);

(2) 25 TAC §448.603 (relating to Training); and

(3) Section 301.331 of this title (relating to Competency and Credentialing).

(h) Community mental health providers that avail themselves of the flexibilities allowed under this section must comply with:

(1) all guidance on the application of the rules during the declaration of disaster that is published by HHSC on its website or in another communication format HHSC determines appropriate; and

(2) all policy guidance applicable to the rules identified in this section issued by HHSC's Medicaid and CHIP Services Division.

(i) Community mental health providers must ensure any method of contact complies with all applicable requirements related to security and privacy of information.

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 January 19, 2021.

TRD-202100258
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: January 19, 2021
Expiration date: May 18, 2021
For further information, please call: (512) 468-1729

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

26 TAC §500.1

The Health and Human Services Commission is renewing the effectiveness of emergency new §500.1 for a 60-day period. The text of the emergency rule was originally published in the October 2, 2020, issue of the *Texas Register* (45 TexReg 6833).

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

TRD-202100233
Nycia Deal
Attorney
Health and Human Services Commission
Original effective date: September 21, 2020
Expiration date: March 19, 2021
For further information, please call: (512) 834-4591

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 30. MEDICAID HOSPICE PROGRAM
SUBCHAPTER B. MEDICAID HOSPICE PROGRAM

40 TAC §30.14

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts on an emergency basis in Title 40 Texas Administrative Code, Chapter 30, Medicaid Hospice Program, an amendment to §30.14(e), concerning an emergency rule in response to COVID-19 in order to allow determination of an individual's continued eligibility for hospice care for a period of care after the initial period through a telemedicine medical service. As authorized by Texas Government Code §2001.034, the Commission may adopt an emergency rule without prior notice or hearing upon finding that an imminent peril to the public health, safety, or welfare requires adoption on fewer than 30 days' notice. Emergency rules adopted under Texas Government Code §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days.

BACKGROUND AND PURPOSE

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

that an imminent peril to the public health, safety, and welfare of the state requires immediate adoption of this emergency amendment to §30.14, concerning Certification of Terminal Illness and Record Maintenance.

To protect individuals receiving Medicaid hospice services and the public health, safety, and welfare of the state during the COVID-19 pandemic, HHSC is adopting an emergency amendment to §30.14(e) to allow a hospice physician or hospice advanced practice registered nurse to determine an individual's continued eligibility for hospice care for a period of care, after the initial period, through a telemedicine medical service, as defined in Texas Government Code §531.001(8). This amendment will reduce the risk of transmitting COVID-19.

STATUTORY AUTHORITY

The emergency rulemaking is adopted under Texas Government Code §2001.034, §531.0055, and §531.021 and Texas Human Resources Code §32.021. Texas Government Code §2001.034 authorizes the adoption of emergency rules without prior notice and hearing, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice. Texas Government Code §531.0055 authorizes the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by the health and human services system. Texas Government Code §531.021 gives HHSC the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program. Texas Human Resources Code §32.021 requires the Executive Commissioner of HHSC to adopt rules governing the proper and efficient operation of the Medicaid program.

The amendment implements Texas Government Code §531.0055 and §531.021 and Texas Human Resources Code §32.021.

§30.14. Certification of Terminal Illness and Record Maintenance.

(a) Timing of certification.

(1) If a hospice does not obtain the written certification statement required by paragraph (2) of this subsection within two days after a period of care begins, the hospice must obtain an oral certification statement that meets the requirements of this section no later than two days after the period begins. A period of care is described in §30.12 of this subchapter (relating to Duration of Hospice Care Coverage: Election Periods).

(2) For the initial period of care, a hospice must obtain a signed and dated Medicaid Hospice Program Physician Certification of Terminal Illness form that meets the requirements of this section before the hospice submits an initial request for payment, but no more than 15 days before the period begins. For a period of care after the initial period, a hospice must obtain a signed and dated Medicaid Hospice Program Physician Certification of Terminal Illness form that meets the requirements of this section before the period expires, but no more than 15 days before the period begins.

(b) Content of certification statement. An oral or written certification statement must:

(1) specify that an individual's prognosis is for a life expectancy of six months or less if the terminal illness runs its normal course;

(2) include a narrative that clearly identifies the reasons the individual is considered terminally ill; and

(3) include clinical information that supports the medical prognosis, which may be provided orally for an oral certification statement and must be provided with accompanying documentation for a written certification statement.

(c) Sources of certification. The hospice must obtain a written or oral certification statement required by subsection (a) of this section from:

(1) for the initial period of care:

(A) the medical director of the hospice or the physician who is a member of the hospice interdisciplinary group; and

(B) the individual's attending physician, if the individual has an attending physician; and

(2) for a period of care after the initial period, a physician described in paragraph (1)(A) of this subsection.

(d) Documentation.

(1) After the hospice receives a certification statement, hospice staff must:

(A) for an oral certification statement:

(i) make an entry that meets the requirements of paragraph (2) of this subsection in the individual's hospice record; and

(ii) if the individual resides in a nursing facility or an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID), notify the nursing facility or the ICF/IID of the oral certification; and

(B) for a written certification statement:

(i) file the statement and supporting documentation in the individual's hospice record; and

(ii) if the individual resides in a nursing facility or an ICF/IID, provide the nursing facility or the ICF/IID with a copy of the written certification.

(2) An entry made in an individual's hospice record in accordance with paragraph (1)(A)(i) of this subsection must include the name of the physician who made the oral certification, the clinical information that supports the prognosis, and the date the hospice received the certification. The hospice staff person who makes the entry into the individual's hospice record must sign and date the entry.

(e) Face-to-face assessment.

(1) To determine an individual's continued eligibility for hospice care for a period of care after the initial period, as described in §30.12 of this subchapter, a hospice physician or hospice advanced practice registered nurse must perform a face-to-face assessment of the individual.

(A) [~~(1)~~] The hospice must ensure a face-to-face assessment is performed before each subsequent period of care begins, but no more than 30 days before the period begins.

(B) [~~(2)~~] For an individual who is dually eligible for Medicare and Medicaid, a Medicare face-to-face encounter satisfies the requirement for a face-to-face assessment required by this subsection.

(2) During a state of disaster declared by the Governor under Texas Government Code §418.014, a hospice physician or hospice advanced practice registered nurse may determine an individual's continued eligibility for hospice care, for a period of care after the initial period, through a telemedicine medical service, as defined in Texas Government Code §531.001(8).

(f) Records.

(1) The hospice must retain in an individual's hospice record documentation to support the services provided by the hospice, including:

(A) the documentation required by subsection (d) of this section;

(B) a current Minimum Data Set assessment if the individual resides in a nursing facility, or a level-of-need assessment if the individual resides in an ICF/IID; and

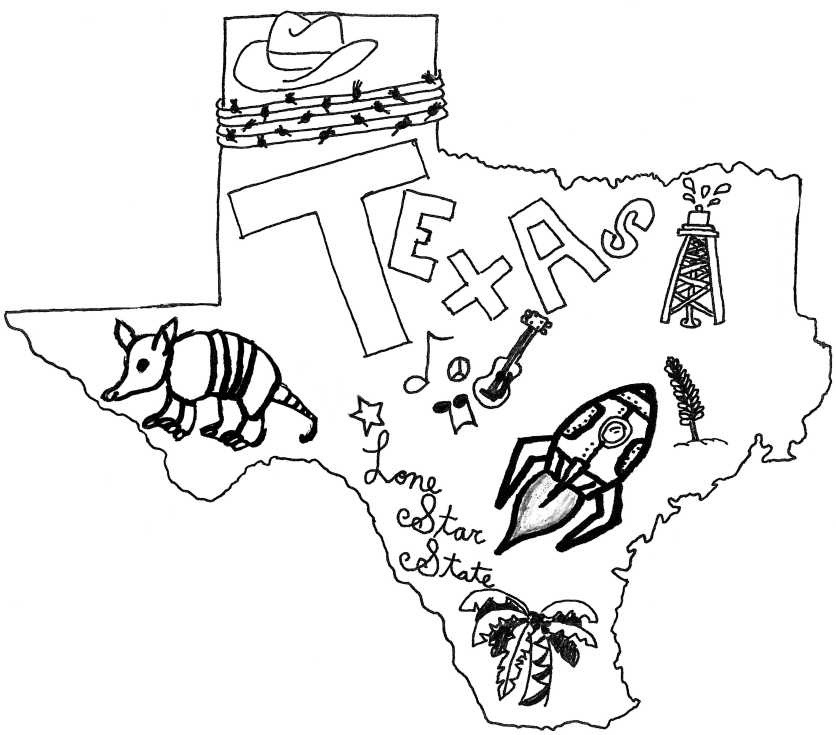
(C) documentation of a face-to-face assessment or a face-to-face encounter described in subsection (e) of this section.

(2) If an individual resides in a nursing facility or ICF/IID, the hospice must provide a copy of the documentation described in paragraph (1) of this subsection to the nursing facility or ICF/IID in which the individual resides.

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 January 13, 2021.

TRD-202100192
Karen Ray
Chief Counsel
Department of Aging and Disability Services
Effective date: January 14, 2021
Expiration date: May 13, 2021
For further information, please call: (210) 781-0523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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 353. MEDICAID MANAGED CARE SUBCHAPTER O. DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

1 TAC §353.1315, §353.1317

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §353.1315, concerning Rural Access to Primary and Preventive Services Program; and new §353.1317, concerning Quality Metrics for Rural Access to Primary and Preventive Services Program.

BACKGROUND AND PURPOSE

The purpose of the proposed new rules is to describe the circumstances under which HHSC will direct a Medicaid managed care organization (MCO) to provide a uniform dollar amount in the form of prospective monthly payments and rate increases for certain services tied to quality measurement to rural health clinics (RHCs) in the MCO's network in a participating service delivery area (SDA) for the provision of general medical services. The proposed rules also describe the methodology used by HHSC to determine the amounts of the payments and rate increases.

HHSC is proposing these new rules as part of the new programs developed to transition from the Delivery System Reform Incentive Payment (DSRIP) program. HHSC anticipates that the increased payments to RHCs will support access to services, promote better health outcomes, and increase focus on improving quality goals of the Texas Medicaid program.

RHCs provide access to primary and preventive care and chronic disease management to rural residents and help to avoid potentially preventable emergency departments visits and hospitalizations, which increase Medicaid costs. The program's quality objectives are supported by the results from the DSRIP Transition Best Practices Workgroup, particularly related to measures tracking improvement in primary care related services..

In May 2016, the Centers for Medicare and Medicaid Services (CMS) finalized a rule that allows a state to direct expenditures under its contract with an MCO under certain limited circumstances. Under the federal rule, a state may direct an MCO to raise rates for a class of providers of a particular service by a uniform dollar amount or percentage, or as a performance incentive, subject to approval of the contract arrangements by CMS. To obtain approval, the arrangements must be based on the utilization and delivery of services; direct expenditures equally, and using the same terms of performance, for a class of providers of a particular service; advance at least one of the goals and objectives of the state's managed care quality strategy and have an evaluation plan to measure the effectiveness of the arrangements at doing so; not condition provider participation on an intergovernmental transfer (IGT); and not be automatically renewed.

These proposed rules authorize HHSC to use IGTs from non-state governmental entities to support managed care capitation payment increases in one or more SDAs. Each MCO within the SDA would then be contractually required by the state to provide a uniform dollar amount in the form of a prospective monthly payment and a percentage rate increase for certain services for RHCs.

Conceptual Framework

Eligibility:

HHSC determines eligibility for payments by RHC class. The SDA must have at least one governmental entity willing to provide IGT to support increased payments. Also, to be eligible for the reimbursement increase, an RHC must be within a class designated by HHSC to receive the increase.

HHSC proposes classifying RHCs into two classes: hospital-based RHCs and freestanding RHCs. The classifications allow HHSC to direct reimbursement increases where they are most needed and to align with the quality goals of the program. The reimbursement increases will be uniform for all RHCs within each class; but if HHSC directs rate increases to both classes, the reimbursement increase may vary between classes.

Services subject to rate increase:

HHSC may direct rate increases for all or a subset of RHC services. The services subject to the rate increase will focus on those codes most frequently billed by RHCs for the provision of preventive and primary care services, in an effort to advance the goals and objectives of HHSC's managed care quality strategy and continue best practices of DSRIP.

Determination of rate increase:

HHSC will consider several factors in determining the percentage rate increase that will be directed for one or both classes of RHCs, including the amount of available funding; the class or classes of RHCs eligible to receive the increase; the type of service subject to the increase; budget neutrality; and the actuarial soundness of the capitation payment needed to support the increase.

Reconciliation and recoupment:

HHSC will follow the methodology described in Texas Administrative Code Title 1 §353.1301 to reconcile the amount of non-federal funds expended under this section and to authorize recoupments of overpayment or disallowance amounts.

SECTION-BY-SECTION SUMMARY

Proposed new §353.1315(a) establishes the Rural Access to Primary and Preventive Services (RAPPS) program and describes the goals of the program. Subsection (b) defines key terms used in the section. Subsection (c) describes the RHC classes. Subsection (d) describes the eligibility requirements for the program. Subsection (e) describes the data sources that will be used to determine an RHC's eligibility status and the estimated distribution of RAPPS funds. Subsection (f) describes the requirements for participating in the program, including the application process and timing. Subsection (g) describes the process for collecting the non-federal share of the program funding. No state general revenue funds are available for the program and the non-federal share will be comprised of IGTs. Subsection (h) describes the value and allocation of RAPPS capitation rate components. Subsection (i) describes the timing and basis for the distribution of RAPPS payments. Subsection (j) describes the notice requirements if there are changes in operation of the RHC. Subsection (k) refers to 1 TAC §353.1301(g) for the description of the reconciliation authority. Subsection (l) refers to 1 TAC §353.1301(j) and (k) for the description of the recoupment authority.

Proposed new §353.1317 describes the quality metrics associated with the RAPPS program. Subsection (a) establishes the purpose of the section. Subsection (b) defines key terms used in the section. Subsection (c) describes the quality metrics HHSC can designate for each RAPPS capitation rate component. Subsection (d) discusses the performance requirements that will be associated with the designated quality metrics. Subsection (e) provides for publication of the proposed metrics and their associated performance requirements. The notice will be published on HHSC's website. Subsection (f) provides that final quality metrics and performance requirements will be provided on HHSC's website on or before February 28 of the calendar year that also contains the first month of the program period.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years the proposed rules are in effect, there will be no fiscal impact to state government because the non-federal share of the increase in capitation rates will be funded with IGTs from non-state governmental entities. There may be a fiscal impact to local governments, but there is insufficient information to provide an estimate because participation is optional.

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will create a government program;

(2) implementation of the proposed rules will not affect the number of HHSC 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 HHSC;

(5) the proposed rules will create a new rule;

(6) the proposed rules will not expand, limit, or repeal existing rules;

(7) the proposed rules will increase the number of individuals subject to the rules; and

(8) the proposed rules will positively affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro businesses, or rural communities to comply with the proposed rules because RHCs eligible for the reimbursement increases will not be required to alter their current business practices.

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 do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit will be improved quality and stability in access to rural providers as a result of funding flowing through the MCOs.

Trey Wood 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 the rules do not impose any additional fees or costs on those who are required to comply.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

A public hearing is scheduled for February 5, 2021, at 9:30 a.m. (Central Standard Time) to receive public comments on the proposal. Persons requiring further information, special assistance, or accommodations should email TXHealthcare-Transformation@hhsc.state.tx.us.

Due to the declared state of disaster stemming from COVID-19, the hearing will be conducted online only. No physical entry to the hearing will be permitted.

Persons interested in attending may register for the public hearing at:

https://attendee.gotowebinar.com/register/1125419832365365264

After registering, a confirmation email will be sent with information about joining the webinar.

HHSC will broadcast the public hearing. The broadcast will be archived for access on demand and can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings.

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 Kimberly Tucker,

Senior Analyst, Medicaid and CHIP Services, Healthcare Transformation Waiver Unit, at TXHealthcareTransformation@hhsc.state.tx.us.

During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. Therefore, please submit comments by email if possible.

To be considered, comments must be submitted no later than 15 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 the 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 21R040" in the subject line.

STATUTORY AUTHORITY

The new rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; 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; 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 Medicaid payments under Texas Human Resources Code, Chapter 32; and Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.

The proposed new rules implement Texas Human Resources Code, Chapter 32; Texas Government Code, Chapter 531; and Texas Government Code, Chapter 533. No other statutes, articles, or codes are affected by this proposal.

§353.1315. Rural Access to Primary and Preventive Services Program.

(a) Introduction. This section establishes the Rural Access to Primary and Preventive Services (RAPPS) program. RAPPS is designed to incentivize rural health clinics (RHCs) to improve quality, access, and innovation in the provision of medical services to Medicaid recipients through the use of metrics that are expected to advance at least one of the goals and objectives of the state's managed care quality strategy.

(b) Definitions. The following definitions apply when the terms are used in this section. Other terms used in this section may be defined in §353.1301 of this subchapter (relating to General Provisions) or §353.1317 of this subchapter (relating to Quality Metrics for the Rural Access to Primary and Preventive Services Program).

(1) Freestanding rural health clinic (RHC)--A network RHC that is not affiliated with a hospital.

(2) Hospital-based RHC--A network RHC that is affiliated with a hospital.

(3) Network RHC--An RHC located in the state of Texas that has a contract with a managed care organization (MCO) for the delivery of Medicaid covered services to the MCO's enrollees.

(4) Program period--A period of time for which the Texas Health and Human Services Commission (HHSC) contracts with MCOs to pay increased capitation rates for the purpose of making RHC payments under this section. Each program period is equal to a state fiscal year beginning September 1 and ending August 31 of the following year. An RHC that is unable to participate in RAPPS beginning September 1 may apply to participate from March 1 until August 31 of the same program period. Participation during such a modified program period is subject to the application and intergovernmental transfer (IGT) deadlines described in subsection (g) of this section.

(5) Rural health clinic (RHC)--Has the meaning assigned by 42 U.S.C. Section 1396d(1)(2)(A).

(6) Total program value--The maximum amount available under the RAPPS program for a program period, as determined by HHSC.

(c) Classes of RHCs.

(1) HHSC may direct an MCO to provide an increased payment or percentage rate increase for certain services to all RAPPS-enrolled RHCs in one or more of the following classes of RHCs with which the MCO contracts for Medicaid services:

(A) hospital-based RHCs; and

(B) freestanding RHCs.

(2) If HHSC directs rate increases or payments to more than one RHC class in the service delivery area (SDA), the rate increases or payments may vary by RHC class. HHSC will consider the following factors in identifying the amount of the rate increase or payment for each class:

(A) the RHC class's contribution to the goals and objectives in the HHSC managed care quality strategy, as required in 42 C.F.R. §438.340, relative to other classes;

(B) the class or classes of RHC the sponsoring governmental entity wishes to support through IGTs of public funds, as indicated on the application described in subsection (f) of this section; and

(C) the actuarial soundness of the capitation payment needed to support the rate increase or payment.

(d) Eligibility. An RHC is eligible to participate in RAPPS if it meets the requirements described in this subsection.

(1) Location. The RHC must be located in an SDA with at least one sponsoring governmental entity.

(2) Minimum number of Medicaid managed care encounters. The RHC must have provided at least 30 Medicaid managed care encounters in the prior state fiscal year.

(e) Data sources for historical units of service and clients served. Historical units of service are used to determine an RHC's eligibility status and the estimated distribution of RAPPS funds across enrolled RHCs.

(1) HHSC will use encounter data and will identify encounters based upon the billing provider's national provider identification (NPI) number and provider type code.

(2) HHSC will use the most recently available Medicaid encounter data for a complete state fiscal year to determine the eligibility status of an RHC.

(3) HHSC will use the most recently available Medicaid encounter data for a complete state fiscal year to determine the distribution of RAPPS funds across enrolled RHCs.

(4) In the event that the historical data are not deemed appropriate for use by actuarial standards, HHSC may utilize data from a different state fiscal year at HHSC's discretion.

(5) The data used to estimate eligibility and distribution of funds will align with the data used for purposes of setting the capitation rates for MCOs for the same period.

(6) To determine total program value, HHSC will calculate the estimated rate that Medicare would have paid for the same services using either each RHC's state fiscal year 2019 federal cost report or last submitted cost report. For RHCs where a filed cost report was not found, the RHC's Medicare payments will be estimated using the SDA weighted average ratio of Medicare encounter-based reimbursements divided by MCO reimbursement data.

(f) Participation requirements. As a condition of participation, all RHCs participating in RAPPS, as well as any entities billing on their behalf, must meet the following requirements.

(1) The RHC must submit a properly completed enrollment application by the due date determined by HHSC. The enrollment period will be no less than 21 calendar days, and the final date of the enrollment period will be at least nine calendar days prior to the IGT notification.

(2) An entity that bills on behalf of the RHC must:

(A) certify, on a form prescribed by HHSC, that no part of any RAPPS payment will be used to pay a contingent fee, consulting fee, or legal fee associated with the RHC's receipt of RAPPS funds, and the certification must be received by HHSC with the enrollment application described in paragraph (1) of this subsection; and

(B) submit to HHSC, upon demand, copies of contracts it has with third parties that reference the administration of, or payments from, RAPPS.

(g) Non-federal share of RAPPS payments. The non-federal share of all RAPPS payments is funded with IGTs from sponsoring governmental entities. No state general revenue is available to support RAPPS.

(1) HHSC will communicate the following information for the program period to all RAPPS-enrolled hospital-based RHCs and sponsoring governmental entities at least 10 calendar days prior to the IGT declaration of intent deadline:

(A) suggested IGT responsibilities for the program period, which will be based on:

(i) the maximum funding amount available under RAPPS for the program period as determined by HHSC, plus ten percent;

(ii) forecasted member months for the program period as determined by HHSC; and

(iii) the distribution of historical Medicaid utilization across RHCs, plus the estimated utilization for enrolled RHCs within the same SDA, for the program period; and

(B) the estimated maximum revenues each enrolled RHC could earn under RAPPS for the program period, which will be based on HHSC's suggested IGT responsibilities and the assumption that all enrolled RHCs will meet 100 percent of their quality metrics.

(2) Sponsoring governmental entities will determine the amount of IGT they intend to transfer to HHSC for the entire program period and provide the declaration of intent to HHSC 15 business days before the first half of the IGT amount is transferred to HHSC. The declaration of intent is a form prescribed by HHSC that includes the total amount of IGT the sponsoring governmental entity intends to transfer to HHSC. It must be certified to the best knowledge and belief of a person legally authorized to sign for the sponsoring governmental entity but does not bind the sponsoring governmental entity to transfer IGT.

(3) HHSC will instruct sponsoring governmental entities as to the required IGT amounts. Required IGT amounts will include all costs associated with RHC payments and rate increases, including costs associated with MCO premium taxes, risk margin, and administration, plus ten percent.

(4) Sponsoring governmental entities will transfer the first half of the IGT amount by a date determined by HHSC, but no later than June 1. Sponsoring governmental entities will transfer the second half of the IGT amount by a date determined by HHSC, but no later than December 1. HHSC will publish the IGT deadlines and all associated dates on the HHSC website by March 15 of each year.

(h) RAPPS capitation rate components. RAPPS funds will be paid to MCOs through two components of the managed care per member per month (PMPM) capitation rates. The MCOs' distribution of RAPPS funds to the enrolled RHCs will be based on each RHC's performance related to the quality metrics as described in §353.1317 of this subchapter. The RHC must have had provided at least one Medicaid service to a Medicaid client for each reporting period to be eligible for payments.

(1) Component One.

(A) The total value of Component One will be equal to 75 percent of total program value.

(B) Allocation of funds across qualifying RHCs will be based upon historical Medicaid utilization and RHC class.

(C) Monthly payments to RHCs will be paid prospectively.

(D) HHSC will reconcile the interim allocation of funds across RAPPS-enrolled RHCs to the actual Medicaid utilization across these RHCs during the program period as captured by Medicaid MCOs contracted with HHSC for managed care 180 days after the last day of the program period. This reconciliation will be performed only if the weighted average (weighted by Medicaid utilization during the program period) of the absolute values of percentage changes between each RHC's proportion of historical Medicaid utilization and actual Medicaid utilization is greater than 10 percent.

(2) Component Two.

(A) The total value of Component Two will be equal to 25 percent of total program value.

(B) Allocation of funds across qualifying RHCs will be based upon actual Medicaid utilization of specific procedure codes as identified in the final quality metrics and performance requirements described in §353.1317 of this subchapter.

(C) A percent increase on all applicable services will begin when an RHC demonstrates achievement of performance requirements as described in §353.1317 of this subchapter during the reporting period.

(i) Distribution of RAPPS payments.

(1) Prior to the beginning of the program period, HHSC will calculate the portion of each monthly prospective payment associated with each RAPPS-enrolled RHC broken down by RAPPS capitation rate component, quality metric, and payment period. For example, for an RHC, HHSC will calculate the portion of each monthly prospective payment associated with that RHC that would be paid from the MCO to the RHC as follows.

(A) Monthly payments from Component One will be equal to the total value of Component One for the RHC divided by twelve.

(B) Payments from Component Two associated with each quality metric will be equal to the total value of Component Two attributed as a rate increase for specific services based upon historical utilization.

(C) For purposes of the calculation described in subparagraph (B) of this paragraph, an RHC must achieve quality metrics to be eligible for full payment as determined by performance requirements described in §353.1317(d) of this subchapter.

(2) An MCO will distribute payments to an enrolled RHC based on criteria established under subsection (i) of this section.

(3) Funds that are non-disbursed due to failure of one or more RHCs to meet performance requirements will be distributed across all qualifying RHCs in the SDA based on each RHC's proportion of total earned RAPPS funds from Components One and Two combined after each payment period.

(j) Changes in operation. If a RAPPS-enrolled RHC closes voluntarily or ceases to provide Medicaid services, the RHC must notify the HHSC Provider Finance Department by electronic mail to an address designated by HHSC, by hand delivery, United States (U.S.) mail, or by special mail delivery within 10 business days of closing or ceasing to provide Medicaid services. Notification is considered to have occurred when the HHSC Provider Finance Department receives the notice.

(k) Reconciliation. HHSC will reconcile the amount of the non-federal funds actually expended under this section during each program period with the amount of funds transferred to HHSC by the sponsoring governmental entities for that same period using the methodology described in §353.1301(g) of this subchapter and, as applicable, subsection (h)(1)(D) of this section.

(l) Recoupment. Payments under this section may be subject to recoupment as described in §353.1301(j) and §353.1301(k) of this subchapter.

§353.1317. Quality Metrics for Rural Access to Primary and Preventive Services Program.

(a) Introduction. This section establishes the quality metrics that may be used in the Rural Access to Primary and Preventive Services (RAPPS) program.

(b) Definitions. The following definitions apply when the terms are used in this section. Other terms used in this section may be defined in §353.1301 of this subchapter (relating to General Provisions) or §353.1315 of this subchapter (relating to Rural Access to Primary and Preventive Services Program).

(1) Baseline--An initial standard used as a comparison against performance in each metric throughout the program period to determine progress in a RAPPS quality metric.

(2) Benchmark--A metric-specific initial standard set prior to the start of the program period and used as a comparison against a rural health clinic's (RHC's) progress throughout the program period.

(3) Measurement period--The time period used to measure achievement of a quality metric.

(c) Quality metrics. For each program period, the Texas Health and Human Services Commission (HHSC) will designate quality metrics for each RAPPS capitation rate component as described in §353.1315(h) of this subchapter.

(1) Each quality metric will be identified as a structure measure, a pay-for-reporting (P4R) measure, or a pay-for-performance (P4P) measure.

(2) Each quality metric will be evidence-based.

(d) Performance requirements. For each program period, HHSC will specify the performance requirement that will be associated with the designated quality metric. Achievement of performance requirements will trigger payments for the RAPPS capitation rate components as described in §353.1315(h) of this subchapter. The following performance requirements are associated with the quality metrics described in subsection (c) of this section.

(1) Reporting of quality metrics. An RHC must report all quality metrics for which it is eligible, as defined in §353.1315 of this subchapter, to be eligible for payment.

(2) Achievement of quality metrics.

(A) The achievement of a structure measure is tested on whether an RHC meets the established requirement.

(B) The achievement of a P4R measure is based on the RHC reporting data for a specified measurement period.

(C) The achievement of a P4P measure is based on the RHC meeting or exceeding the P4P measure's goal for a measurement period. Goals will be established as either a target percentage improvement over self or performance above a benchmark as specified by the metric and determined by HHSC.

(3) Reporting frequency. Achievement will be reported semi-annually unless otherwise specified by the metric.

(e) Notice and hearing.

(1) HHSC will publish notice of the proposed quality metrics and their associated performance requirements no later than January 31 preceding the first month of the program period. The notice must be published either by publication on HHSC's website or in the *Texas Register.* The notice required under this section will include the following:

(A) instructions for interested parties to submit written comments to HHSC regarding the proposed metrics and performance requirements; and

(B) the date, time, and location of a public hearing.

(2) Written comments will be accepted for 15 business days following publication. There will also be a public hearing within that 15-day period to allow interested persons to present comments on the proposed metrics and performance requirements.

(f) Final quality metrics and performance requirements will be provided through HHSC's website on or before February 28 of the calendar year that also contains the first month of the program period. If Centers for Medicare and Medicaid Services requires changes to quality metrics or performance requirements after February 28 but before the first month of the program period, HHSC will provide notice of the changes through HHSC's website.

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 January 14, 2021.

TRD-202100196

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 923-0644

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1 TAC §353.1320, §353.1322

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new §353.1320, concerning Directed Payment Program for Behavioral Health Services; and new §353.1322, concerning Quality Metrics for the Directed Payment Program for Behavioral Health Services.

BACKGROUND AND PURPOSE

The purpose of the proposed new rules is to describe the circumstances under which HHSC will direct a Medicaid managed care organization (MCO) to provide a uniform percentage rate increase and a uniform dollar increase in the form of prospective monthly payments to community mental health centers (CMHCs) in the MCO's network in a participating service delivery area (SDA) for the provision of services by CMHCs. The proposed rules also describe the methodology used by HHSC to determine the amounts of the rate and dollar increases.

HHSC is encouraging CMHCs to earn certification as Certified Community Behavioral Health Clinics (CCBHC) to implement processes and delivery of care that are consistent with the CCBHC model. Currently, Medicaid payments to CMHCs that are either CCBHC entities or in the process of getting certified, made through either the fee-for-service (FFS) or managed care models, may not cover all costs of Medicaid allowable services provided by CMHCs. HHSC is proposing these rules to establish a new program developed under the Delivery System Reform Incentive Payment program (DSRIP) Transition Plan.

HHSC anticipates that the increased payments to participating CMHCs will sustain access to services, promote better health outcomes, and increase focus on improving quality goals that are established as part of the Texas Medicaid program.

In May 2016, the Centers for Medicare and Medicaid Services (CMS) finalized a rule that allows a state to direct expenditures under its contract with MCOs under certain limited circumstances. Under the federal rule, a state may direct an MCO to raise rates for a class of providers of a particular service by a uniform dollar amount or percentage, or as a performance incentive, subject to approval of the contract arrangements by CMS. To obtain approval, the arrangements must be based on the utilization and delivery of services; direct expenditures equally, and using the same terms of performance, for a class of providers of a particular service; advance at least one of the goals and objectives of the state's Medicaid quality strategy and have an evaluation plan to measure the effectiveness of the arrangements at doing so; not condition provider participation on an intergovernmental transfer (IGT); and not be automatically renewed.

These proposed rules authorize HHSC to use IGTs from sponsoring governmental entities to support MCO capitation payment increases in one or more SDAs. Each MCO within the SDA would then be contractually required by the state to increase payments by a uniform percentage and dollar amount for the applicable component, respectively, for one or more classes of CMHCs that provide services within the SDA.

Conceptual Framework

Eligibility:

HHSC determines eligibility for payments by CMHC class. The SDA must have at least one sponsoring governmental entity willing to provide IGT to support increased payments. Also, to be eligible for the reimbursement increase, a CMHC must be within a class designated by HHSC to receive the increase.

HHSC proposes two classes of CMHCs: CMHCs that have attained certification as a CCBHC and those that have not. The classifications allow HHSC to direct reimbursement increases where they align with the quality goals of the program. The reimbursement increase will be uniform for all CMHCs within each class.

Services subject to rate or dollar increase:

HHSC may direct rate increases for all or a subset of services provided by CMHCs. The services subject to the rate increase will focus on CCBHC procedure codes in an effort to advance the goals and objectives of HHSC's managed care quality strategy and continue best practices identified in DSRIP.

Determination of rate and dollar increase:

HHSC will consider several factors in determining the percentage rate increase that will be directed for one or both classes of CMHCs within an SDA, including the amount of available funding; the class or classes of CMHCs eligible to receive the increase; the type of service subject to the increase; budget neutrality; and the actuarial soundness of the capitation payment needed to support the increase.

Reconciliation and recoupment:

HHSC will follow the methodology described in Title 1 of the Texas Administrative Code (TAC), §353.1301 to reconcile the amount of non-federal funds expended under this section and to authorize recoupments of overpayment or disallowance amounts.

SECTION-BY-SECTION SUMMARY

Proposed new §353.1320(a) establishes the Directed Payment Program for Behavioral Health Services and describes the goals of the program. Subsection (b) defines key terms used in the section. Subsection (c) describes the CMHC classes that may participate in the program. Subsection (d) describes the data sources that will be used to determine the estimated distribution of program funds. Subsection (e) describes the participation requirements of the CMHCs that wish to participate in the program, including the application process and timing. Subsection (f) describes how percentage rate and dollar increases will be determined. Subsection (g) identifies the services subject to percentage rate and dollar increases. Subsection (h) describes the value and allocation of the program's capitation rate components. Subsection (i) describes the timing and basis for the distribution of program payments. Subsection (j) describes the process for collecting the non-federal share of the program funding. Subsection (k) describes the effective date of the percentage rate and dollar increases. Subsection (l) describes the notice requirements if there are changes in operation of the CMHC. Subsection (m) refers to 1 TAC §353.1301(g) for the description of the reconciliation authority. Subsection (n) refers to 1 TAC §353.1301(j) and (k) for the description of the recoupment authority.

Proposed new §353.1322 describes the quality metrics associated with the Directed Payment Program for Behavioral Health Services. Subsection (a) establishes the purpose of the section. Subsection (b) defines key terms used in the section. Subsection (c) describes the quality metrics HHSC can designate for each of the program's capitation rate components. Subsection (d) discusses the performance requirements that will be associated with the designated quality metrics. Achievement of performance requirements will trigger payments for the program's capitation rate components as described in §353.1320 of this subchapter. Subsection (e) provides that HHSC will publish notice of the proposed metrics and their associated performance requirements no later than January 31 that precedes the first month of the program period. The notice will be published on HHSC's website or in the *Texas Register.* Subsection (f) provides that final quality metrics and performance requirements will be provided on HHSC's website on or before February 28 of the calendar year that also contains the first month of the program period.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years the proposed rules are in effect, there will be no fiscal impact to state government because the non-federal share of the increase in capitation rates will be funded with IGTs from non-state governmental entities. There may be a fiscal impact to local governments, but there is insufficient information to provide an estimate because HHSC does not know which non-state governmental entities will choose to sponsor rate increases under this section or at what level of funding.

GOVERNMENT GROWTH IMPACT STATEMENT

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

(1) the proposed rules will create a government program;

(2) implementation of the proposed rules will not affect the number of HHSC 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 HHSC;

(5) the proposed rules will create a new rule;

(6) the proposed rules will not expand, limit, or repeal existing rules;

(7) the proposed rules will increase the number of individuals subject to the rules; and

(8) the proposed rules will positively affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro businesses, or rural communities. CMHCs eligible for the reimbursement increases will not be required to alter their current business practices.

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 do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Victoria Grady, Director of Provider Finance, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit will be improved quality and stability in access to CMHCs as a result of funding flowing through the MCOs.

Trey Wood 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 the rules do not impose any additional fees or costs on those who are required to comply. Participation in the program is optional.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC HEARING

HHSC will conduct a public hearing on February 5, 2021, at 11:00 a.m. (Central Standard Time) to receive public comments on the proposal. Persons requiring further information, special assistance, or accommodations should email: TXHealthcareTransformation@hhsc.state.tx.us.

Due to the declared state of disaster stemming from COVID-19, the hearing will be conducted online only. No physical entry to the hearing will be permitted.

Persons interested in attending may register for the public hearing at:

https://attendee.gotowebinar.com/register/4533537542099112975

After registering, a confirmation email will be sent with information about joining the webinar.

HHSC will broadcast the public hearing. The broadcast will be archived for access on demand and can be accessed at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings.

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 Kimberly Tucker, Senior Analyst, Medicaid and CHIP Services, Healthcare Transformation Waiver Unit, at TXHealthcareTransformation@hhsc.state.tx.us.

During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. Therefore, please submit comments by email if possible.

To be considered, comments must be submitted no later than 15 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 the 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 21R038" in the subject line.

STATUTORY AUTHORITY

The new rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; 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; 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 Medicaid payments under Texas Human Resources Code, Chapter 32; and Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care program.

The proposed new rules implement Texas Human Resources Code, Chapter 32; Texas Government Code, Chapter 531; and Texas Government Code, Chapter 533. No other statutes, articles, or codes are affected by this proposal.

§353.1320. Directed Payment Program for Behavioral Health Services.

(a) Introduction. This section establishes the Directed Payment Program for Behavioral Health Services. This program is designed to incentivize community mental health centers (CMHCs) to improve quality, access, and innovation in the provision of medical and behavioral health services to Medicaid recipients through the use of metrics that are expected to advance at least one of the goals and objectives of the state's managed care quality strategy.

(b) Definitions. The following definitions apply when the terms are used in this section. Terms that are used in this section may be defined in §353.1301 of this subchapter (relating to General Provisions) or §353.1322 of this subchapter (relating to Quality Metrics for the Directed Payment Program for Behavioral Health Services).

(1) Average Commercial Reimbursement (ACR) gap--The difference between what an average commercial payor is estimated to pay for the services and what Medicaid actually paid for the same services.

(2) Certified community behavioral health clinic (CCBHC)--A clinic certified by the state in accordance with federal criteria and with the requirements of the Protecting Access to Medicare Act of 2014 (PAMA).

(3) CCBHC cost-reporting gap--The difference between what Medicaid pays for services and what the reimbursement would be based on the CCBHC cost-reporting methodology.

(4) Community mental health center (CMHC)--An entity that is established under Texas Health and Safety Code §534.0015 and that:

(A) Provides outpatient services, including specialized outpatient services for children, the elderly, individuals who are chronically mentally ill, and residents of its mental health service area who have been discharged from inpatient treatment at a mental health facility.

(B) Provides 24-hour-a-day emergency care services.

(C) Provides day treatment or other partial hospitalization services, or psychosocial rehabilitation services.

(D) Provides screening for patients being considered for admission to state mental health facilities to determine the appropriateness of such admission.

(5) Program period--A period of time for which the Texas Health and Human Services (HHSC) contracts with participating managed care organizations (MCOs) to pay increased capitation rates for the purpose of provider payments under this section. Each program period is equal to a state fiscal year beginning September 1 and ending August 31 of the following year. A CMHC that is unable to participate in the program described in this section beginning September 1 may apply to participate beginning March 1 of the program period and ending August 31. Participation during such a modified program period is subject to the application and intergovernmental-transfer (IGT) deadlines described in subsection (j) of this section.

(6) Total program value--The maximum amount available under the Directed Payment Program for Behavioral Health Services for a program period, as determined by HHSC.

(c) Classes of participating CMHCs.

(1) HHSC may direct the MCOs to provide a uniform percentage rate increase or a uniform dollar increase to all CMHCs within one or more of the following classes of CMHCs with which the MCO contracts for services:

(A) CMHCs that are certified CCBHCs; and

(B) CMHCs that are not certified CCBHCs.

(2) If HHSC directs rate or dollar increases to more than one class of CMHCs within the service deliveray area (SDA), the rate or dollar increases directed by HHSC may vary between classes.

(d) Data sources for historical units of service. Historical units of service are used to determine the estimated distribution of program funds across eligible and enrolled CMHCs.

(1) HHSC will use encounter data and will identify encounters based upon the billing provider's national provider identification (NPI) number.

(2) The most recently available Medicaid encounter data for a complete state fiscal year will be used to determine the distribution of program funds across eligible and enrolled CMHCs.

(3) In the event that the historical data are not deemed appropriate for use by actuarial standards, HHSC may use data from a different state fiscal year at the discretion of the HHSC actuaries.

(4) The data used to estimate distribution of funds will align to the extent possible with the data used for purposes of setting the capitation rates for MCOs for the same period.

(5) HHSC will calculate the estimated rate that an average commercial payor or Medicare would have paid for similar services or based on the CMS approved CCBHC cost report rate methodology using either data from Medicare cost reports or collected from providers.

(e) Participation requirements. As a condition of participation, all CMHCs participating in the program must allow for the following.

(1) The CMHC must submit a properly completed enrollment application by the due date determined by HHSC. The enrollment period must be no less than 21 calendar days, and the final date of the enrollment period will be at least nine calendar days prior to the IGT notification.

(2) The entity that bills on behalf of the CMHC must certify, on a form prescribed by HHSC, that no part of any payment made under the program will be used to pay a contingent fee, consulting fee, or legal fee associated with the CMHC's receipt of program funds. The certification must be received by HHSC with the enrollment application described in paragraph (1) of this subsection.

(3) The entity that bills on behalf of the CMHC must submit to HHSC, upon demand, copies of contracts it has with third parties that reference the administration of, or payments from, the program.

(f) Determination of percentage of rate and dollar increase.

(1) HHSC will determine the percentage of rate or dollar increase applicable to CMHC by program component.

(2) HHSC will consider the following factors when determining the rate increase:

(A) the estimated Medicare gap for CMHCs, based upon the upper payment limit demonstration most recently submitted by HHSC to the Centers for Medicare and Medicaid Services (CMS);

(B) the estimated Average Commercial Reimbursement (ACR) gap for the class or individual CMHCs, as indicated in data collected from CMHCs;

(C) the estimated gap for CMHCs, based on the CCBHC cost-reporting methodology that is consistent with the CMS guidelines;

(D) the percentage of Medicaid costs incurred by CMHC in providing care to Medicaid managed care clients that are reimbursed by Medicaid MCOs prior to any rate increase administered under this section; and

(E) the actuarial soundness of the capitation payment needed to support the rate increase.

(g) Services subject to rate and dollar increase. HHSC may direct the MCOs to increase rates or dollar amounts for all or a subset of CMHC services.

(h) Program capitation rate components. Program funds will be paid to MCOs through two components of the managed care per member per month (PMPM) capitation rates. The MCOs' distribution of program funds to the enrolled CMHCs will be based on each CMHC's performance related to the quality metrics as described in §353.1322 of this subchapter. The CMHC must have provided at least one Medicaid service to a Medicaid client for each reporting period to be eligible for payments.

(1) Component One.

(A) The total value of Component One will be equal to 65 percent of total program value.

(B) Allocation of funds across all qualifying CMHCs will be proportional, based upon historical Medicaid utilization.

(C) Monthly payments to CMHCs will be triggered by achievement of requirements as described in §353.1322 of this subchapter.

(D) The interim allocation of funds across qualifying CMHCs will be reconciled to the actual Medicaid utilization across these CMHCs during the program period, as captured by Medicaid MCOs contracted with HHSC for managed care 180 days after the last day of the program period. This reconciliation will only be performed if the absolute values of percentage changes between each CMHC's proportion of historical Medicaid utilization and actual Medicaid utilization is greater than 10 percent.

(2) Component Two.

(A) The total value of Component Two will be equal to 35 percent of total program value.

(B) Allocation of funds across all qualifying CMHCs will be based upon historical Medicaid utilization.

(C) Payments to CMHCs will be triggered by achievement of performance requirements as described in §353.1322 of this subchapter.

(3) Non-disbursed funds. Funds that are non-disbursed due to failure of one or more CMHCs to meet performance requirements will be distributed across all qualifying CMHCs based on each CMHC's proportion of total earned program funds from Components One and Two combined at the end of the year.

(i) Distribution of the Directed Payment Program for Behavioral Health Services payments.

(1) Prior to the beginning of the program period, HHSC will calculate the portion of each payment associated with each enrolled CMHC broken down by program capitation rate component, quality metric, and payment period. For example, for a CMHC, HHSC will calculate the portion of each payment associated with that CMHC that would be paid from the MCO to the CMHC as follows.

(A) Monthly payments in the form of a uniform dollar increase for Component One will be equal to the total value of Component One attributed based upon historical utilization of the provider divided by twelve.

(B) Ongoing rate increases from Component Two will be paid as performance requirements are met and will be a uniform percentage rate increase on applicable services calculated based on the total value of Component Two for the CMHCs divided by historical utilization of the respective services.

(C) For purposes of the calculation described in subparagraph (B) of this paragraph, a CMHC must achieve a minimum number of measures as identified in §353.1322 of this subchapter to be eligible for full payment.

(2) MCOs will distribute payments to enrolled CMHCs based on criteria established under paragraph (1) of this subsection.

(j) Non-federal share of program payments. The non-federal share of all program payments is funded through IGTs from sponsoring governmental entities. No state general revenue is available to support the Directed Payment Program for Behavioral Health Services.

(1) HHSC will share suggested IGT responsibilities for the program period with all program eligible and enrolled CMHCs at least 10 calendar days prior to the IGT declaration of intent deadline. Suggested IGT responsibilities will be based on the maximum dollars available under the program for the program period as determined by HHSC, plus 10 percent; forecasted member months for the program period as determined by HHSC; and the distribution of historical Medicaid utilization across CMHCs, plus estimated utilization for eligible and enrolled within the same SDA, for the program period. HHSC will also share estimated maximum revenues each eligible and enrolled CMHC could earn under the program for the program period with those estimates based on HHSC's suggested IGT responsibilities and an assumption that all enrolled CMHCs will meet 100 percent of their quality metrics. The purpose of sharing this information is to provide CMHCs with information they can use to determine the amount of IGT they wish to transfer.

(2) CMHCs will determine the amount of IGT they wish to transfer to HHSC for the entire program period and provide a declara-

tion of intent to HHSC 15 business days before the first half of the IGT amount is transferred to HHSC.

(A) The declaration of intent is a form prescribed by HHSC that includes the total amount of IGT the sponsoring governmental entity wishes to transfer to HHSC.

(B) The declaration of intent is certified to the best knowledge and belief of a person legally authorized to sign for the sponsoring governmental entity but does not bind the sponsoring governmental entity to transfer IGT.

(3) HHSC will instruct sponsoring governmental entities as to the required IGT amounts. Required IGT amounts will include all costs associated with the CMHC rate increase, including costs associated with MCO (Capitation) premium taxes, risk margin, and administration, plus 10 percent.

(4) CMHCs will transfer the first half of the IGT amount by a date determined by HHSC, but no later than June 1. The second half of the IGT amount will be transferred by a date determined by HHSC, but no later than December 1. The IGT deadlines and all associated dates will be published on the HHSC Provider Finance webpage by March 15 of each year.

(k) Effective date of rate and dollar reimbursement increases. HHSC will direct MCOs to increase reimbursements under this section beginning the first day of the program period that includes the increased capitation rates paid by HHSC to each MCO pursuant to the contract between them.

(l) Changes in operation. If an enrolled CMHC closes voluntarily or ceases to provide Medicaid services, the CMHC must notify the HHSC Provider Finance Department by electronic mail to an address designated by HHSC, by hand delivery, United States (U.S.) mail, or special mail delivery within 10 business days of closing or ceasing to provide Medicaid services. Notification is considered to have occurred when HHSC receives the notice.

(m) Reconciliation. HHSC will reconcile the amount of the non-federal funds actually expended under this section during each program period with the amount of funds transferred to HHSC by the sponsoring governmental entities for that same period using the methodology described in §353.1301(g) of this subchapter and, as applicable, subsection (h)(1)(D) of this section.

(n) Recoupment. Payments under this section may be subject to recoupment as described in §353.1301(j) - (k) of this subchapter.

§353.1322. Quality Metrics for the Directed Payment Program for Behavioral Health Services.

(a) Introduction. This section establishes the quality metrics and required reporting that may be used in the Directed Payment Program for Behavioral Health Services.

(b) Definitions. The following definitions apply when the terms are used in this section. Terms that are used in this section may be defined in §353.1301 (relating to General Provisions) or §353.1320 (relating to Directed Payment Program for Behavioral Health Services) of this subchapter.

(1) Baseline--An initial standard used as a comparison against performance in each metric throughout the program period to determine progress in the program's quality metrics.

(2) Benchmark--A metric-specific initial standard set prior to the start of the program period and used as a comparison against a community mental health center's (CMHC's) progress throughout the program period.

(3) Measurement period--The time period used to measure achievement of a quality metric.

(c) Quality metrics. For each program period, the Texas Health and Human Services Commission (HHSC) will designate quality metrics for each of the program's capitation rate components as described in §353.1320(h) of this subchapter.

(1) Each quality metric will be identified as a structure measure, a pay-for-reporting (P4R) measure, or a pay-for-performance (P4P) measure.

(2) Each quality metric will be evidence-based and will be presented to the public for comment in accordance with subsection (e) of this section.

(d) Performance requirements. For each program period, HHSC will specify the performance requirement that will be associated with the designated quality metric that is expected to advance at least one of the goals and objectives in the Medicaid quality strategy. Achievement of performance requirements will trigger payments for the program's capitation rate components as described in §353.1320(h) and be used to evaluate the degree to which the arrangement advances at least one of the goals and objectives that are incentivized by the payments described under §353.1320(h) of this subchapter. For some quality metrics, achievement is tested merely on whether a CMHC meets or does not meet the established requirement. The following performance requirements are associated with the quality metrics described in subsection (c) of this section.

(1) Reporting of quality metrics. All quality metrics must be reported for the CMHC to be eligible for payment.

(2) Achievement of quality metrics.

(A) The achievement of a structure measure is tested on whether a CMHC meets the established requirement.

(B) The achievement of a P4R measure is based on reporting data for a specified measurement period.

(C) The achievement of a P4P measure is based on meeting or exceeding the goal for a measurement period. Goals will be determined by either improvement over self or performance above a benchmark as specified by the metric and determined by HHSC.

(3) Reporting frequency. Achievement will be reported semi-annually, unless otherwise specified by the metric.

(4) Other metrics related to improving the quality of care for Texas Medicaid beneficiaries. If HHSC develops additional metrics for inclusion in the Directed Payment Program for Behavioral Health Services, the associated performance requirements will be presented to the public for comment in accordance with subsection (e) of this section.

(e) Notice and hearing.

(1) HHSC will publish notice of the proposed metrics and their associated performance requirements no later than January 31 of the calendar year that precedes the first month of the program period. The notice must be published either by publication on HHSC's website or in the *Texas Register*. The notice required under this section will include the following:

(A) instructions for interested parties to submit written comments to the HHSC regarding the proposed metrics and performance requirements; and

(B) the date, time, and location of a public hearing.

(2) Written comments will be accepted for 15 business days following publication. There will also be a public hearing within that 15-day period to allow interested persons to present comments on the proposed metrics and performance requirements.

(f) Publication of final metrics and performance requirements. Final quality metrics and performance requirements will be provided through HHSC's website on or before February 28 of the calendar year that also contains the first month of the program period. If the Centers for Medicare and Medicaid Services requires changes to quality metrics or performance requirements after February 28 of the calendar year but before the first month of the program period, HHSC will provide notice of the changes through HHSC's website.

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 January 14, 2021.

TRD-202100197
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 923-0644

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 8. PROJECT RENTAL ASSISTANCE PROGRAM RULE

10 TAC §8.7

The Texas Department of Housing and Community Affairs (the Department) proposes an amendment to 10 TAC §8.7, Program Regulations and Requirements, as it relates to properties participating in the Section 811 Program. The purpose of the proposed amendment is to clarify for Owners that the Department must confirm that assistance is available for an eligible household prior to the property owner reinstating that household to the program. The amendment specifies that property owners or agents must request and receive written confirmation from the Department that the household can be reinstated to the Section 811 PRA Program.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because there is no cost to the rule change proposed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director has determined that for the first five years the amendment would be in effect:

1. The rule amendment does not create or eliminate a government program. This rule amendment merely ensures that program funding is available to support a household prior to reinstatement, and that no other households are skipped over. This rule also harmonizes the Department's policy regarding a property's actions with the federal regulation, HUD Handbook 4350.3.

2. The rule amendment does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce workload to a degree that eliminates any existing employee positions.

3. The rule amendment does not require additional future legislative appropriations.

4. The rule amendment will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The rule amendment is not creating a new regulation, except that it is amending a rule to ensure reinstated households have funding available to support them and that no other eligible households are skipped over.

6. The rule amendment will expand an existing regulation by adding an additional communication requirement that ensures the program is administered fairly and does not exceed the property's obligation or the program's budget.

7. The rule amendment will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The rule amendment will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department, in drafting this proposed amendment, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.041 and §2306.0504.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. This rule relates to the procedures in place for owners and managers of developments participating in Department programs. Other than in the case of a small or micro-business that participates in the Department's program covered by this rule, no small or microbusinesses are subject to the rule. If a small or micro-business does participate in the program, the rule provides a clear set of regulations for doing so and the amendment poses no fiscal impact on such businesses.

3. The Department has determined that because all potential penalties can be avoided by adhering to program rules, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.

The proposed amendment does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five

years the rule will be in effect the proposed rule has no economic effect on local employment. Therefore, no local employment impact statement is required to be prepared for this rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the rule amendment has no economic impact on local employment, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has determined that, for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of the new sections will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the amended section because the process described by the rule does not net an economic cost to the property owner or owner's agent subject to the rule.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the amended section does not have any foreseeable implications related to costs or revenues of the state or local governments, based on the Department's history and past experience with penalty collections.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 1, 2021, through March 3, 2021, to receive input on the proposed amendment. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Spencer Duran, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or email at spencer.duran@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, March 3, 2021.

STATUTORY AUTHORITY. The amended section is proposed pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed amendment affects no other code, article, or statute.

§8.7. Program Regulations and Requirements.

(a) Participation in the 811 PRA Program is encouraged and incentivized through the Department's Multifamily Rules. Once committed in the Multifamily Application, a Development must not accept a fund source that would prevent it from participating in the 811 PRA Program.

(b) An Existing Development that is already participating in the 811 PRA Program is eligible to have an additional commitment of 811 PRA Units as long as the integrated housing requirements as noted in §8.3(c) of this chapter (relating to Participation as a Proposed Development) are not violated.

(c) The types (e.g., accessible, one bedroom, first floor, etc.) and the specific number of Assisted Units (e.g., units 101, 201, etc.) will be "floating" (flexible) and dependent on the needs of the Department and the availability of the Assisted Units on the Eligible Multifamily Property.

(d) Occupancy Requirements. Owner is required to follow all applicable Program Requirements including but not limited to the following occupancy requirements found in HUD Handbook 4350.3 REV-1 and Housing Notices:

(1) H 2012-06, Enterprise Income Verification (EIV) System;

(2) H 2012-26, Extension of Housing Notice 2011-25, Enterprise Income Verification (EIV) & You Brochure-Requirements for Distribution and Use;

(3) H 2012-22, Further Encouragement for O/As to Adopt Optional Smoke-Free Housing Policies;

(4) H 2012-11, State Registered Lifetime Sex Offenders in Federally Assisted Housing;

(5) H 2012-09, Supplemental Information to Application for Assistance Regarding Identification of Family Member, Friend or Other Persons or Organization Supportive of a Tenant for Occupancy in HUD Assisted Housing; or

(6) H 2017-05, Violence Against Women Act (VAWA) Reauthorization Act of 2013, Additional Guidance for Multifamily Owners and Management Agents.

(e) Use Agreements. The Owner must execute the Use Agreement, as found in Exhibit 10 of the Cooperative Agreement, before the execution of the RAC and comply with the following:

(1) Use Agreement should be properly recorded according to local laws in the official public records on the Eligible Multifamily Property. The Owner shall provide to TDHCA within 30 days of its receipt of the recorded Use Agreement, a copy of the executed, recorded Use Agreement.

(2) From the date the Property Agreement is entered into, the Owner shall not enter into any future use agreements or other subsidy programs that would diminish the number of Assisted Units that can be placed on the Eligible Multifamily Property.

(3) TDHCA will enforce the provisions of the Use Agreement and RAC consistent with HUD's internal control and fraud monitoring requirements.

(f) Tenant Certifications, Reporting and Compliance.

(1) TRACS & EIV Systems. The Owner shall have appropriate software to access the Tenant Rental Assistance Certification System (TRACS) and the EIV System. The Owner shall be responsible for ensuring Program information is entered into these systems. TRACS is the only system by which an Eligible Multifamily Property can request Project Rental Assistance payments.

(2) Outside Vendors. The Owner has the right to refuse assistance from outside vendors hired by TDHCA, but is still required to satisfy the Program Requirements.

(3) Tenant Certification. The Owner shall transmit Eligible Tenant's certification and recertification data, transmit voucher data, and communicate errors electronically in a form consistent with HUD reporting requirements for HUD Secure Systems.

(g) Tenant Selection and Screening.

(1) Target Population. TDHCA will screen Eligible Applicants for compliance with TDHCA's Program Target Population criteria and do an initial screening for Program Requirements. The Inter-Agency Partnership Agreement describes the specific Target Population eligible for TDHCA's Program. The Target Population may be revised, with HUD approval.

(2) Tenant Selection Plan. Upon the execution of the Participation Agreement, the Owner will submit the Eligible Multifamily

Property's Tenant Selection Criteria, as defined by and in accordance with [~~10 TAC~~] §10.802 of this title (relating to Written Policies and Procedures), to TDHCA for approval. TDHCA will review the Tenant Selection Plan for compliance with existing Tenant Selection Criteria requirements, and consistent with TDHCA's Section 811 PRA Participant Selection Plan.

(3) Tenant Eligibility and Selection. The Owner is responsible for ultimate eligibility and selection of an Eligible Tenant and will comply with the following:

(A) The Owner must accept referrals of an Eligible Tenant from TDHCA and retain copies of all applications received. The Owner is responsible for notifying the prospective Eligible Tenant and TDHCA in writing regarding any denial of a prospective Eligible Tenant's application to an Eligible Multifamily Property and the reason for said denial. In the notice of denial, the Owner is responsible for notifying the Eligible Tenant of the right to dispute a denial, as outlined in HUD Handbook 4350.3. The results of the dispute must be sent to the Eligible Tenant and TDHCA in writing.

(B) The Owner is responsible for determining age of the qualifying member of the Eligible Families. Eligible Family member must be at least 18 years of age and under the age of 62.

(C) The Owner is responsible for criminal background screening as required by HUD Handbook 4350.3.

(D) Verification of Income. The Owner is responsible for determining income of Eligible Families. The Owner shall verify income through the Enterprise Income Verification (EIV) System. The Owner must certify an Eligible Tenant and Eligible Families at least annually and verify their income. If the household is also designated under the Housing Tax Credit or other Department administered program, the Owner must obtain third party, or first hand, verification of income in addition to using the EIV system.

(h) Rental Assistance Contracts.

(1) Applicability. If requested by TDHCA, the Owner shall enter into a RAC. Not all properties with an Owner Participation Agreement will have a RAC, but when notified by TDHCA, the Eligible Multifamily Property must enter into a RAC(s) and begin serving Eligible Applicants.

(2) Notice. TDHCA will provide written notice to the Owner if and when it intends to enter into a RAC with the Owner.

(3) Assisted Units. TDHCA will determine the number of Units (up to the maximum listed in the Property Agreement) to place in the RAC(s) which may be fewer than the number of Units identified in the Property Agreement.

(4) TDHCA will designate the bedroom composition of the Assisted Units, as required by the RAC. However, based on an actual Eligible Tenant, this may fluctuate. It is possible that an Eligible Multifamily Property will have a RAC for fewer units than the number committed in the Participation Agreement.

(5) If no additional applicants are referred to the property, the RAC may be amended to reduce the number of Assisted Units. Owners who have an executed RAC must continue to notify TDHCA of any vacancies for units not under a RAC if additional units were committed under the Agreement. For instance, if the Owner has committed 10 units under the Agreement and only has a RAC for five Assisted Units, the Owner must continue to notify TDHCA of all vacancies until there is a RAC for 10 Assisted Units.

(6) Amendments. The Owner agrees to amend the RAC(s) upon request of TDHCA. Some examples are amendments that may either increase or decrease the total number of Assisted Units or increase or decrease the associated bedroom sizes; multiple amendments to the RAC may occur over time. The total number of Assisted Units in the RAC will not exceed the number of Assisted Units committed in the Participation Agreement, unless by request of the Owner.

(7) Contract Term. TDHCA will specify the effective date of the RAC. During the first year of the RAC and with approval from HUD, the Owner may request to align the anniversary date of the RAC with existing federal or state housing programs layered on the Eligible Multifamily Property.

(8) Rent Increase. Owners must submit a written request to TDHCA 30 days prior to the anniversary date of the RAC to request an annual increase.

(9) Utility Allowance. The RAC will identify the TDHCA approved Utility Allowance being used for the Assisted Units for the Eligible Multifamily Property. The Owner must notify TDHCA if there are changes to the Utility Allowance calculation methodology being used.

(10) Termination. Although TDHCA has discretion to terminate a RAC due to good cause, an Owner cannot opt-out of a RAC. The RAC survives a foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law.

(11) Foreclosure of Eligible Multifamily Property. Upon foreclosure, assignment, sale in lieu of foreclosure, or sale of the Eligible Multifamily Property to the extent allowed by law:

(A) The RAC shall be transferred to new owner by contractual agreement or by the new owner's consent to comply with the RAC, as applicable;

(B) Rental Assistance Payments will continue uninterrupted in accordance with the terms of the RAC; and

(C) Voluntary and involuntary transfers or conveyances of property must adhere to the ownership transfer process in [10 TAC] §10.406 of this title (relating to Ownership Transfers (§2306.6713)) [~~, (as amended), regarding Ownership Transfer requests~~].

(i) Advertising and Affirmative Marketing.

(1) Advertising Materials. Upon the execution of the Property Agreement, the Owner must provide materials for the purpose of advertising the Eligible Multifamily Property, including, but not limited to:

(A) Depictions of the units including floor plans;

(B) Brochures;

(C) Tenant selection criteria;

(D) House rules;

(E) Number and size of available units;

(F) Number of units with accessible features (including, but not limited to, units designed to meet Uniform Federal Accessibility Standards, the Fair Housing Act, or the Americans with Disabilities Act);

(G) Documentation on access to transportation and commercial facilities; and

(H) A description of onsite amenities.

(2) Affirmative Marketing. TDHCA and its service partners will be responsible for affirmatively marketing the Program to Eligible Applicants.

(3) At any time, TDHCA may choose to advertise the Eligible Multifamily Property, even if the Eligible Multifamily Property has not yet entered into a RAC.

(j) Leasing Activities.

(1) Segregation of Assisted Units. The Owner must take actions or adopt procedures to ensure that the Assisted Units are not segregated to one area of a building (such as on a particular floor or part of a floor in a building) or in certain sections within the Eligible Multifamily Property.

(2) Form of Lease. The Owner will use the HUD Section 811 PRA Model Lease (HUD-92236-PRA), Exhibit 11 of the Cooperative Agreement and any Department approved Addendums, for all Eligible Families once a RAC is signed. The initial lease will be for not less than one year.

(3) Communication. Owners are required to:

(A) Document [~~document~~] in writing all communication between the Eligible Tenant and the Owner, or Owner-designated agent regarding applications, notifications, evictions, complaints, non-renewals and move outs.

(B) Submit a written request to TDHCA before reinstating a household previously terminated from the Section 811 Program. Within three TDHCA business days of receipt of request, TDHCA will notify the Owner whether or not the household can be reinstated. The household may be reinstated if the following conditions are satisfied:

(i) Funding is available as determined by the Department and in the budget established under the property's Rental Assistance Contract;

(ii) Reinstating the household would not cause the property to exceed the number of assisted Units indicated in Exhibit 1 of the Rental Assistance Contract;

(iii) No eligible households on the property's Section 811 PRA waiting list will be skipped over; and

(iv) The reinstated household will occupy a Unit located in the original Eligible Multifamily Property.

(4) Lease Renewals and Changes. The Owner must notify TDHCA of renewals of leases with Eligible Families and any changes to the terms of the lease.

(k) Rent.

(1) Tenant Rent Payment. The Owner is responsible for remitting any Tenant Rent payment due to the Eligible Tenant if the Utility Allowance exceeds the Total Tenant Payment. The Owner will determine the Tenant Rent payment of the Eligible Tenant, based on HUD Handbook 4350.3, and is responsible for collecting the Tenant Rent payment.

(2) Rent Increase. Owner must provide the Eligible Tenant with at least 30 days notice before increasing rent.

(3) Rent Restrictions. Owner will comply with the following rent restrictions:

(A) If the Development has a TDHCA enforced rent restriction that is equal to or lower than Fair Market Rent (FMR), the initial rent is the maximum TDHCA enforced rent restriction at the Development.

(B) If there is no existing TDHCA enforced rent restriction on the Unit, or the existing TDHCA enforced rent restriction is higher than FMR, TDHCA will work with the Owner to conduct a market analysis of the Eligible Multifamily Property to support that a rent higher than FMR is attainable.

(C) After the signing of the original RAC with TDHCA, the Owner may request a new anniversary date to be consistent with other rent restrictions on the Eligible Multifamily Property allowed by TDHCA.

(D) After the signing of the original RAC, upon request from the Owner to TDHCA, Rents may be adjusted on the anniversary date of the RAC.

(E) Adjustments may not result in higher rents charged for an Assisted Unit as compared to a non-assisted unit. The calculation or methodology used for the annual increase amount will be identified in the Eligible Multifamily Property's RAC.

(F) Owner can submit a request for a rent increase or to change the contract anniversary date using HUD Form 92458.

(l) Vacancy; Transfers; Eviction; Household Changes.

(1) Holding Assisted Units. Once an Owner signs a RAC, the Eligible Multifamily Property must hold an available Assisted Unit for 60 days while a qualified Eligible Applicant applies for and moves into the Assisted Unit.

(2) Notification. Owner will notify TDHCA of determination of ineligibility or the termination of any participating Eligible Families or any member of a participating Eligible Family.

(3) Initial Lease-up. Owners of newly constructed, acquired or rehabilitated Eligible Multifamily Property must notify TDHCA no later than 180 days before the Eligible Multifamily Property will be available for initial move-in.

(4) Vacancy. Once a RAC is executed, the Owner must notify TDHCA of the vacancy of any Unit, including those that have not previously been occupied by an Eligible Tenant, as soon as possible, not to exceed seven calendar days from when the Owner learns that an Assisted Unit will become available. TDHCA will acknowledge receipt of the notice by responding to the Owner in writing within three business days from when the notice is received by the Department stating whether or not TDHCA will be accepting the available Unit, and making a subsequent referral for the Unit. If the qualifying Eligible Tenant vacates the Assisted Unit, TDHCA will determine if the remaining family members are eligible for continued assistance from the Program.

(5) Vacancy Payment. An Owner of an Eligible Multifamily Property that is not under a RAC may not receive a vacancy payment. TDHCA may make vacancy payments not to exceed 80% of the Contract Rent, during this time to the Eligible Multifamily Property, potentially for up to 60 days. After 60 days, the Owner may lease that Assisted Unit to a non-Eligible Tenant.

(6) Household Changes; Transfers. Owners must notify TDHCA if the Eligible Tenant requests an Assisted Unit transfer. Owner will notify TDHCA of any household changes in an Assisted Unit within three business days. If the Owner determines that, because of a change in household size, an Assisted Unit is smaller than appropriate for the Eligible Tenant to which it is leased or that the Assisted Unit is larger than appropriate, the Owner shall refer to TDHCA's written policies regarding family size, unit transfers, and waitlist management. If the household is determined by TDHCA to no longer be eligible, TDHCA will notify the Owner. Rental Assistance Payments with respect to the Assisted Unit will not be reduced or terminated until the eligible household has been transferred to an appropriately sized Assisted Unit.

(7) Eviction and Nonrenewal. Owners are required to notify the Department by sending a copy of the applicable notice via email to the 811 TDHCA Point of Contact, as identified in the Owner Participation Agreement, at least three calendar days before providing a Notice to Vacate or a Notice of Nonrenewal to the Tenant.

(m) Construction Standards, Accessibility, Inspections and Monitoring.

(1) Construction Standards. Upon execution of a RAC, the Eligible Multifamily Property shall be required to conform to Uniform Physical Conditions Standards (UPCS) which are uniform national standards established by HUD for housing that is decent, safe, sanitary, and in good repair. The site, building exterior, building systems, dwelling units and common areas of the Eligible Multifamily Property, as more specifically described in 24 CFR §5.703, must be inspected in any physical inspection of the property.

(2) Inspection. Prior to occupancy, the Eligible Tenant must be given the opportunity to be present for the move-in unit inspection.

(3) Repair and Maintenance. Owner will perform all repair and maintenance functions, including ordinary and extraordinary maintenance; will replace capital items; and will maintain the premises and equipment, appurtenant thereto, in good repair, safe and sanitary condition consistent with HUD and TDHCA requirements.

(4) Accessibility. Owner must ensure that the Eligible Multifamily Property will meet or exceed the accessibility requirements under 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973; the Fair Housing Act Design Manual; Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189), as implemented by the U.S. Department of Justice regulations at 28 CFR Parts 35 and 36; and the Federal Fair Housing Act as implemented by HUD at 24 CFR Part 100. However, Assisted Units can consist of a mix of accessible units for those persons with physical disabilities and non-accessible units for those persons without physical disabilities.

(n) Owner Training. The Owner is obligated to train all property management staff on the requirements of the Program. The Owner will ensure that any new property management staff who is involved in serving Eligible Families review training materials found on the Program's webpage including webinars, manuals and checklists.

(o) Reporting Requirements. Owner shall submit to TDHCA such reports on the operation and performance of the Program as required by the Participation Agreement and as may be required by TDHCA. Owner shall provide TDHCA with all reports necessary for TDHCA's compliance with 24 CFR Part 5, or any other federal or state law or regulation.

(p) Environmental Laws and Regulations.

(1) Compliance with Laws and Regulations. Owner must comply with, as applicable, any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Land or the Improvements, including without limitation, the following, as now or hereafter amended:

(A) Hazardous Materials Transportation Act (49 U.S.C.A. §1801 *et seq.*);

(B) Insecticide Fungicide and Rodenticide Act (7 U.S.C.A. §136 *et seq.*);

(C) National Environmental Policy Act (42 U.S.C. §4321 *et seq.*) (NEPA);

(D) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C.A. §9601 *et seq.*) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. No. 99-499, 100 Stat. 1613, as amended Pub. L. No. 107-377) (Superfund or SARA);

(E) Resource, Conservation and Recovery Act (24 U.S.C.A. §6901 *et seq.*) (RCRA);

(F) Toxic Substances Control Act, (15 U.S.C.A. §2601 *et seq.*);

(G) Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C.A. §1101 *et seq.*);

(H) Clean Air Act (42 U.S.C.A. §7401 *et seq.*) (CAA);

(I) Federal Water Pollution Control Act and amendments (33 U.S.C.A. §1251 *et seq.*) (Clean Water Act or CWA);

(J) Any corresponding state laws or ordinances including but not limited to Chapter 26 of the Texas Water Code regarding Water Quality Control;

(K) Texas Solid Waste Disposal Act (Chapter 361 of the Texas Health & Safety Code, formerly Tex. Rev. Civ. Stat. Ann. Art. 4477-7);

(L) Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363 of the Texas Health & Safety Code);

(M) County Solid Waste Control Act (Chapter 364 of the Texas Health & Safety Code);

(N) Texas Clean Air Act (Chapter 382 of the Texas Health & Safety Code);

(O) Hazardous Communication Act (Chapter 502 of the Texas Health & Safety Code); and

(P) Regulations, rules, guidelines, or standards promulgated pursuant to such laws, statute and regulations, as such statutes, regulations, rules, guidelines, and standards, as amended from time to time.

(2) Environmental Review. The environmental effects of each activity carried out with funds provided under this Agreement must be assessed in accordance with the provisions of the Program Requirements, National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. §432 *et seq.* Each such activity must have an environmental review completed and support documentation prepared in accordance with 10 TAC §10.305 complying with the NEPA, including screening for vapor encroachment following American Society for Testing and Materials. (ASTM) 2600-10.

(q) Labor Standards.

(1) Owner understands and acknowledges that every contract for the construction (rehabilitation, adaptive reuse, or new construction) of housing that includes 12 or more units assisted with Program funds must contain provisions in accordance with Davis-Bacon Regulations.

(2) Owner understands and acknowledges that every contract involving the employment of mechanics and laborers of said construction shall be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§3701 to 3708), Copeland (Anti-Kickback) Act (40 U.S.C. §3145), the Fair Labor Standards Act of 1938, as amended (29 U.S.C. §201, *et seq.*) and Davis-Bacon and Related Acts (40 U.S.C. §§3141 - 3148).

(3) Owner further acknowledges that if more housing units are constructed than the anticipated 11 or fewer housing units, it is the Owner's responsibility to ensure that all the housing units will comply with these federal labor standards and requirements under the Davis-Bacon Act as supplemented by the U.S. Department of Labor regulations ("Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5).

(4) Owner also understands that structuring the proposed assistance for the rehabilitation or construction of housing under this Agreement to avoid the applicability of the Davis-Bacon Act is prohibited.

(5) Construction contractors and subcontractors must comply with regulations issued under these federal acts described herein, with other federal laws, regulations pertaining to labor standards, including but not limited to "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction" at 29 CFR Part 5, HUD Federal Labor Provisions (HUD form 4010).

(r) Lead-Based Paint. Housing assisted with Program funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4821 - 4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851 - 4856), and implementing regulations Title X of the 1992 Housing and Community Development Act at 24 CFR Part 35, (including subparts A, B, J, K, M and R). Owner shall also comply with the Lead: Renovation, Repair, and Painting Program Final Rule, 40 CFR Part 745 and Response to Children with Environmental Intervention Blood Lead Levels. Failure to comply with the lead-based paint requirements may be subject to sanctions and penalties pursuant to 24 CFR §35.170.

(s) Limited English Proficiency. Owner shall comply with the requirements in Executive Order 13166 of August 11, 2000, reprinted at 65 FR 50121, August 16, 2000, Improving Access to Services for Persons with Limited English Proficiency and 67 FR 41455. To ensure compliance the Owner must take reasonable steps to insure that LEP persons have meaningful access to the program and activities. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary.

(t) Procurement of Recovered Materials. Owner, its subrecipients, and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(u) Drug-Free Workplace. Owner will follow the Drug-Free Workplace Act of 1988 (41 U.S.C §701, *et seq.*) and HUD's implementing regulations at 2 CFR Part 2429. Owner affirms by executing the Certification Regarding Drug-Free Workplace Requirements attached hereto as Addendum B, that it is implementing the Drug-Free Workplace Act of 1988.

(v) Nondiscrimination, Fair Housing, Equal Access and Equal Opportunity.

(1) Equal Opportunity. The Owner agrees to carry out an Equal Employment Opportunity Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965, as amended, and its implementing regulations at 41 CFR Part 60.

(2) Fair Housing Poster. The Owner is required to place a fair housing poster (HUD-928.1 and HUD-9281.A) provided by TDHCA in the leasing office, online, or anywhere else rental activities occur pursuant to 24 CFR §200.620(e). A copy of the poster in Spanish and in English can be found at http://www.tdhca.state.tx.us/section-811-pra/participating-agents.htm.

(3) Nondiscrimination Laws. Owner shall ensure that no person shall, on the grounds of race, color, religion, sex, disability, familial status, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any Program or activity funded in whole or in part with funds provided under this Agreement. Owner shall follow Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d *et seq.*), the Age Discrimination Act of 1975 (42 U.S.C. §6101 *et seq.*) and its implementing regulations at 24 CFR Part 146, Titles II and III of the Americans with Disabilities Act (42 U.S.C. §§12131 - 12189; 47 U.S.C. §§155, 201, 218 and 255) as implemented by U.S. Department of Justice at 28 CFR Parts 35 and 36, Section 527 of the National Housing Act (12 U.S.C. §1701z-22), the Equal Credit Opportunity Act (15 U.S.C. §1691 *et seq.*), the Equal Opportunity in Housing (Executive Order 11063 as amended by Executive Order 12259) and its implementing regulations at 24 CFR Part 107 and The Fair Housing Act (42 U.S.C. §3601 *et seq.*), as implemented by HUD at 24 CFR Part 100-115.

(4) Affirmatively Furthering Fair Housing. By Owner's execution of the Agreement and pursuant to Section 808(e)(5) of the Fair Housing Act, Owner agrees to use funds in a manner that follows the State of Texas' "Analysis of Impediments" or "Assessment of Fair Housing", as applicable and as amended, and will maintain records in this regard.

(5) Protections for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. Subpart L of 24 CFR part 5 shall apply to the Assisted Units in Eligible Multifamily Properties.

(w) Security of Confidential Information.

(1) Systems Confidentiality Protocols. Owner must undertake customary and industry standard efforts to ensure that the systems developed and utilized under this Agreement protect the confidentiality of every Eligible Applicant's and Eligible Tenant's personal and financial information, both electronic and paper, including credit reports, whether the information is received from the Eligible Applicants, Tenants or from another source. Owner must undertake customary and industry standard efforts so that neither they nor their systems vendors disclose any Eligible Applicant's or Tenant's personal or financial information to any third party, except for authorized personnel in accordance with this Agreement.

(2) Protected Health Information. If Owner collects or receives documentation for disability, medical records or any other medical information in the course of administering the Program, Owner shall comply with the Protected Health Information state and federal laws and regulations, as applicable, under [~~10~~ ~~TAC~~] §1.24 of this title (relating to Information Security and Privacy Requirements [~~Protected~~ ~~Health~~ ~~Information~~]), Chapter 181 of the Texas Health and Safety Code, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191, 110 Stat. 1936, enacted August 21, 1996), and the HIPAA Privacy Rules (45 CFR Part 160 and Subparts A and E of 45 CFR Part 164). When accessing confidential information under this Program, Owner hereby acknowledges and further agrees to comply with the requirements under the Interagency Data Use Agreement between TDHCA and the Texas Health and Human Services Agencies dated October 1, 2015, as amended.

(x) Real Property Acquisition and Relocation. Except as otherwise provided by federal statute, HUD-assisted programs or projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (42 U.S.C. §4601), and the government wide implementing regulations issued by the U.S. Department of Transportation at 49 CFR Part 24. The Uniform Act's protections and assistance apply to acquisitions of real property and displacements resulting from the acquisition, rehabilitation, or demolition of real property for federal or federally assisted programs or projects. With certain limited exceptions, real property acquisitions for a HUD-assisted program or project must comply with 49 CFR Part 24, Subpart B. To be exempt from the URA's acquisition policies, real property acquisitions conducted without the threat or use of eminent domain, commonly referred to as voluntary acquisitions, the Owner must satisfy the applicable requirements of 49 CFR §24.101(b)(1) - (5). Evidence of compliance with these requirements must be maintained by the recipient. The URA's relocation requirements remain applicable to any tenant who is displaced by an acquisition that meets the requirements of 49 CFR §24.101(b)(1) - (5). The relocation requirements of the Uniform Act, and its implementing regulations at 49 CFR Part 24, cover any person who moves permanently from real property or moves personal property from real property as a direct result of acquisition, rehabilitation, or demolition for a program or project receiving HUD assistance. While there are no statutory provisions for temporary relocation under the URA, the URA regulations recognize that there are circumstances where a person will not be permanently displaced but may need to be moved from a project for a short period of time. Appendix A of the URA regulation (49 CFR §24.2(a)(9)(ii)(D)) explains that any tenant who has been temporarily relocated for a period beyond one year must be contacted by the displacing agency and offered URA relocation assistance.

(y) Dispute Resolution; Conflict Management.

(1) Eligible Tenant Disputes. The Owner or Owner's representative is required to participate in a Dispute Resolution process, as required by HUD, to resolve an appeal of an Eligible Tenant dispute with the Owner.

(2) Agreement Disputes. In accordance with Tex. Gov't Code 2306.082, it is TDHCA's policy to encourage the use of appropriate alternative dispute resolution procedures (ADR) under the Governmental Dispute Resolution Act and the Negotiated Rulemaking Act (Chapters 2009 and 2006 respectively, Tex. Gov't Code), to assist in the fair and expeditious resolution of internal and external disputes involving the TDHCA and the use of negotiated rulemaking procedures for the adoption of TDHCA rules. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by TDHCA's ex parte communications policy, TDHCA encourages informal communications between TDHCA staff and the Owner, to exchange information and informally resolve disputes. TDHCA also has administrative appeals processes to fairly and expeditiously resolve disputes. If at any time the Owner would like to engage TDHCA in an ADR procedure, the Owner may send a proposal to TDHCA's Dispute Resolution Coordinator. For additional information on TDHCA's ADR policy, see TDHCA's Alternative Dispute Resolution and Negotiated Rulemaking at 10 TAC §1.17.

(3) Conflict Management. The purpose of the Conflict Management process is to address any concerns that Owner or Owner's agent or representative may have with an Eligible Family. At any time, an Eligible Family may choose to give consent to their Section 811 service coordinator to work directly with the property manager of the Eligible Multifamily Property. However, such consent cannot be made a condition of tenancy.

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 January 15, 2021.

TRD-202100231
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: February 28, 2021
For further information, please call:

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 512. CERTIFICATION BY RECIPROCITY

22 TAC §512.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §512.4, concerning Application for Certification by Reciprocity.

Background, Justification and Summary

Board Rule §512.4 is being revised to replace CPE hours with CPE credits. This is done to be consistent with the use of hours in other board rules.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will provide consistency and clarity for the public.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on March 1, 2021.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§512.4. Application for Certification by Reciprocity.

(a) An applicant seeking certification by reciprocity must apply for certification on a form prescribed by the board. The application must be accompanied by the requisite fee and shall include written authorization from the applicant empowering the board to obtain all information concerning the applicant's qualifications and present standing.

(b) An applicant for certification by reciprocity from a domestic jurisdiction that has not been approved as being substantially equivalent by both NASBA and the board must submit the following along with the completed application form and requisite fee to be processed:

(1) an interstate exchange of information form documenting the credits under the domestic jurisdiction of origin;

(2) an executed oath of office stating support of the Constitutions of the United States and of the State of Texas and their laws and the rules of the board;

(3) evidence of completion of an examination on the board's Rules of Professional Conduct;

(4) evidence of completion of 120 credits [~~hours~~] of CPE during the last three years, including a board-approved four-credit [~~four-hour~~] ethics course; in compliance with Chapter 523 of this title (relating to Continuing Professional Education);

(5) evidence of completion of the board's procedure to investigate the background of applicants in accordance with the established fingerprint process that accesses the Federal Bureau of Investigation (FBI) database and the Texas Department of Public Safety - Crime Records division files in order to ensure the applicant lacks a history of dishonest or felonious acts and for the board to be aware of any criminal activity that might be relevant to the applicant's qualifications; and

(6) any other information requested by the board.

(c) An applicant for certification by reciprocity from a domestic jurisdiction that has been approved as being substantially equivalent by both NASBA and the board must submit the following along with the completed application form and requisite fee to be processed:

(1) a certificate of good standing as a CPA from a domestic jurisdiction approved by both NASBA and the board as being substantially equivalent;

(2) if requested, a certificate of verification of substantial equivalency of the domestic jurisdiction of origin from NASBA;

(3) an executed oath of office stating support of the Constitutions of the United States and of the State of Texas and their laws and the rules of the board;

(4) evidence of completion of an examination on the board's Rules of Professional Conduct;

(5) evidence of completion of 120 credits [~~hours~~] of CPE during the last three years, including a board-approved four-credit [~~four-hour~~] ethics course; in compliance with Chapter 523 of this title (relating to Continuing Professional Education);

(6) evidence of completion of the board's procedure to investigate the background of applicants in accordance with the established fingerprint process that accesses the Federal Bureau of Investigation (FBI) database and the Texas Department of Public Safety - Crime Records division files in order to ensure the applicant lacks a history of dishonest or felonious acts and for the board to be aware of any criminal activity that might be relevant to the applicant's qualifications; and

(7) any other information requested by the board.

(d) An applicant for certification by reciprocity from a foreign jurisdiction that has been approved as being substantially equivalent by both U.S. IQAB and the board must submit the following along with the completed application form and requisite fee to be processed:

(1) a certificate of good standing of credentials to practice public accountancy from the foreign jurisdiction of origin;

(2) an executed oath of office stating support of the Constitutions of the United States and of the State of Texas and their laws and the rules of the board;

(3) evidence of a passing grade on the IQEX;

(4) evidence of a passing grade on a board approved examination on the board's Rules of Professional Conduct;

(5) evidence of the completion of a board-approved four-credit [~~four-hour~~] ethics course;

(6) evidence of completion of the board's procedure to investigate the background of applicants in accordance with the established fingerprint process that accesses the Federal Bureau of Investigation (FBI) database and the Texas Department of Public Safety - Crime Records division files in order to ensure the applicant lacks a history of dishonest or felonious acts and for the board to be aware of any criminal activity that might be relevant to the applicant's qualifications; and

(7) any other information requested by the board.

(e) All correspondence and supporting documentation submitted to the board shall be in English or accompanied by a certified translation into English of such documents.

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 January 14, 2021.

TRD-202100216
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 305-7842

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CHAPTER 513. REGISTRATION

SUBCHAPTER A. REGISTRATION OF CPAS AND PERSONS HOLDING SIMILAR TITLES IN FOREIGN COUNTRIES

22 TAC §513.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §513.1, concerning Registration of Foreign Practitioners with Substantially Equivalent Qualifications.

Background, Justification and Summary

The amendment clarifies that all foreign licensees having been registered to practice in Texas pursuant to §901.355 of the Act may continue to practice in Texas as a registrant. Going forward however, all foreign licensees must apply for certification by reciprocity pursuant to §§ 901.259 and 901.260 of the Act.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will provide clarity for the public.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on March 1, 2021.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which

authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§515.1. Registration of Foreign Practitioners with Substantially Equivalent Qualifications.

(a) An individual who holds a valid certificate or other credential issued by a foreign jurisdiction that allows the individual to practice public accountancy in the issuing jurisdiction may, if that certificate or credential remains in good standing in the issuing jurisdiction, be registered with the board.

(b) A foreign practitioner registered with the board shall be allowed to use the title "Certified Public Accountant of _____" (indicating the foreign jurisdiction that issued his credential), or may use the title held in the foreign jurisdiction that issued his credential, provided that the foreign jurisdiction is indicated. This title may not be used unless followed by the name of the foreign jurisdiction.

(c) A foreign practitioner registered with the board must comply with the board's Code of Professional Conduct.

(d) A foreign practitioner registered with the board must renew his registration and license annually in the manner provided for renewal of a license in the Act. The registered foreign practitioner must submit a certificate verifying the continued existence of his foreign certificate or other credential in good standing from the foreign jurisdiction of origin with each renewal. A registration and license issued under §901.355 of the Act (relating to Registration for Certain Foreign Applicants) is automatically revoked if the foreign practitioner does not continue to hold a current certificate or other credential from the foreign jurisdiction of origin.

(e) Interpretive comment: The provisions of this chapter are no longer available [~~applicable~~] to new foreign applicants for the purposes of providing [~~wishing to provide~~] accounting services in Texas. Foreign applicants shall apply for certification by reciprocity pursuant to §901.259(b) [~~Chapter 512 of this title (relating to Certification by Reciprocity) and §901.259~~] of the Act (relating to Certification Based on Reciprocity) and §901.260 of the Act (relating to Certificate Based on Foreign Credentials).

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 January 14, 2021.

TRD-202100217
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 305-7842

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CHAPTER 515. LICENSES

22 TAC §515.3

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.3, concerning License Renewals for Individuals and Firm Offices.

Background, Justification and Summary

Board Rule §515.3 is being revised to replace CPE hours with CPE credits.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will provide consistency and clarity for the public.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on March 1, 2021.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small busi-

nesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§515.3. License Renewals for Individuals and Firm Offices.

(a) License renewals for individuals shall be as follows:

(1) Licenses for individuals have staggered expiration dates based on the last day of the individual's birth month. The license will be issued for a 12-month period following the initial licensing period.

(2) An individual's license will not be renewed if the individual has not earned the required CPE credits [~~credit hours~~], has not completed all required parts of the renewal, has not completed the affidavit affirming the renewal submitted is correct or has not provided the required fingerprinting unless it has been previously submitted to the board.

(3) At least 30 days before the expiration of an individual's license, the board shall send notice of the impending license expiration to the individual at the last known address according to board records. Failure to receive notice does not relieve the licensee from the responsibility to timely renew nor excuse, or otherwise affect the renewal deadlines imposed on the licensee.

(b) A licensee is exempt from any penalty or increased fee imposed by the board for failing to renew the license in a timely manner if the individual establishes to the satisfaction of board staff that the individual failed to renew the license because the individual was serving as a military service member. In addition, the military service member has an additional two years to complete any other requirement related to the renewal of the military service member's license.

(c) License renewal requirements for firm offices shall be as follows:

(1) Licenses for offices of firms have staggered expiration dates for payment of fees, which are due the last day of a board assigned renewal month. All offices of a firm will have the same renewal month. All offices of a firm will be issued a license for a 12-month period following the initial licensing period.

(2) At least 30 days before the expiration of a firm's office license, the board shall send notice of the impending license expiration to the main office of the firm at the last known address according to the records of the board. Failure to receive notice does not relieve the firm from the responsibility to timely renew nor excuse, or otherwise affect the renewal deadlines imposed on the firm.

(3) A firm's office license shall not be renewed unless the sole proprietor, each partner, officer, director, or shareholder of the firm who is listed as a member of the firm and who is certified or registered under the Act has a current individual license. This does not apply to firms providing work pursuant to the practice privilege provisions of this title.

(4) If a firm is subject to peer review, then a firm's office license shall not be renewed unless the office has met the peer review requirements as defined in Chapter 527 of this title (relating to Peer 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 January 14, 2021.

TRD-202100218
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 305-7842

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22 TAC §515.8

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.8, concerning Retired or Disability Status.

Background, Justification and Summary

Board Rule 515.8 currently provides for applying for retirement status with a form. The proposed revision provides for an electronic application.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will clarify the process for applying for retirement status.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on March 1, 2021.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

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 January 14, 2021.

TRD-202100219
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 305-7842

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CHAPTER 517. PRACTICE BY CERTAIN OUT OF STATE FIRMS AND INDIVIDUALS

22 TAC §517.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §517.1, concerning Practice by Certain Out of State Firms.

Background, Justification and Summary

The Texas Public Accountancy Act was revised to permit properly licensed CPAs in other states to provide attestations services in Texas without a license so long as they do not establish an office in Texas.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will make it clear that out of state licensees may temporarily provide attestations services in Texas without a Texas license.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on March 1, 2021.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§517.1. Practice by Certain Out of State Firms.

(a) A firm is required to hold a firm license if the firm establishes or maintains an office in this state. [:]

[(1) establishes or maintains an office in this state; or]

[(2) performs for an entity that has its principal office in this state:]

[(A) a financial statement audit or other engagement that is to be performed in accordance with SAS;]

[(B) an examination of prospective financial information that is to be performed in accordance with SSAE; or]

[(C) an engagement that is to be performed in accordance with auditing standards of the PCAOB or its successor.]

(b) A CPA firm that is licensed and has its primary place of business in another state and is not required to hold a firm license pursuant to subsection (a) of this section may practice in this state without a firm license or notice to the board if the firm's practice in this state is performed by an individual who holds a license under Chapter 515 of this title (relating to Licenses) or who practices under a privilege pursuant to §517.2 of this chapter (relating to Practice by Certain Out of State Individuals).

(c) A firm described by subsection (b) of this section may exercise all the practice privileges of a firm license holder only if[, except that the firm]:

[(1) may not perform the services described by subsection (a)(2) of this section; and]

[(2) may perform an engagement required by the board to be performed in accordance with SSARS adopted by the AICPA or another national or international accountancy organization recognized by the board, or any other assurance service required by the board to be performed in accordance with professional standards adopted by the AICPA or another national or international organization adopted by the board, for an entity that has its principal office in this state only if:]

[(A) the firm meets the requirements of §901.354(a) and (b) of the Act (relating to Firm License Information and Eligibility);]

(1) [(B)] the firm complies with the board's peer review program found in Chapter 527 of this title (relating to Peer Review); and

(2) [(C)] the services are performed by an individual who holds a license under this chapter or practices under a privilege provided in §517.2 of this chapter and §901.462 of the Act (relating to Practice by Out-of-State Practitioner with Substantially Equivalent Qualifications).

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 January 14, 2021.

TRD-202100220
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 305-7842

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22 TAC §517.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §517.2, concerning Practice by Certain Out of State Individuals.

Background, Justification and Summary

The Texas Public Accountancy Act was revised to permit properly licensed CPAs in other states to provide attestations services in Texas without a license so long as they do not establish an office in Texas.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will make it clear that out of state licensees may temporarily provide attestations services in Texas without a Texas license.

The adoption of the proposed amendment will provide national mobility for CPAs providing accounting and attest services in Texas while licensed in another state.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on March 1, 2021.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§517.2. Practice by Certain Out of State Individuals.

(a) An individual who holds a certificate or license as a CPA issued by another state and whose principal place of business is not in this state may exercise all the privileges of certificate and license holders of this state without obtaining a certificate or license under this chapter if:

(1) NASBA's National Qualification Appraisal Service has verified that the other state has education, examination, and experience requirements for certification or licensure that are comparable to or exceed the requirements for licensure as a CPA of the AICPA/NASBA UAA and the board determines that the licensure requirements of that Act are comparable to or exceed the licensure requirements of this chapter; or

(2) the individual obtains from NASBA's National Qualification Appraisal Service verification that the individual's education, examination, and experience qualifications are comparable to or exceed the requirements for licensure as a CPA of the AICPA/NASBA UAA and the board determines that the licensure requirements of that Act are comparable to or exceed the licensure requirements of this chapter.

(b) An individual who meets the requirements of subsection (a)(1) or (2) of this section and who offers or renders professional services in person or by mail, telephone, or electronic means may practice public accountancy in this state without notice to the board.

~~[(c) An individual practicing under this section must practice through a firm that holds a license under this title if, for an entity that has its principal office in this state, the individual performs:]~~

~~[(1) a financial statement audit or other engagement that is to be performed in accordance with SAS;]~~

~~[(2) an examination of prospective financial information that is to be performed in accordance with SSAE; or]~~

~~[(3) an engagement that is to be performed in accordance with auditing standards of the PCAOB or its successor.]~~

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 January 14, 2021.

TRD-202100221
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 305-7842

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CHAPTER 527. PEER REVIEW

22 TAC §527.7

The Texas State Board of Public Accountancy (Board) proposes an amendment to §527.7, concerning Peer Review Oversight Board.

Background, Justification and Summary

The proposed revision will allow the Board to determine the number of PROB members based upon need, eliminate the require-

ment that PROB members be members of the Texas Society and the AICPA, eliminate members from serving on PROB while serving on the AICPA Peer Review Board which lends the appearance of a conflict of interest and precludes service on PROB by a licensee associated with a firm subject Peer Review services that did not receive a rating of pass on Peer Review.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment will assure a thorough and quality oversight of the Peer Review Program.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on March 1, 2021.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§527.7. Peer Review Oversight Board.

(a) The board shall retain the Peer Review Oversight Board (PROB) for the purpose of:

(1) monitoring sponsoring organizations to provide reasonable assurance that peer reviews are being conducted and reported in accordance with the Standards promulgated by the AICPA Peer Review Board;

(2) reviewing the policies and procedures of sponsoring organization applicants as to their conformity with the peer review standards; and

(3) reporting to the board on the conclusions and recommendations reached as a result of performing the functions in paragraphs (1) and (2) of this subsection.

(b) Information concerning a specific firm or reviewer obtained by the PROB during oversight activities shall be confidential, and the firm's or reviewer's identity shall not be reported to the board. Reports submitted to the board will not contain information concerning specific firms or reviewers. Members of the PROB will be required to execute a confidentiality statement for the sponsoring organization which they oversee.

(c) The PROB shall consist of [~~three members who are~~] active licensed Texas CPAs in a number sufficient to meet the objectives of this section as determined by the board. No member of the PROB shall be a current member of the board or one of its committees, the TSCPA's Peer Review or Professional Conduct Committee, or the AICPA Professional Ethics Executive Committees or Peer Review Board (including subcommittees). The members should have extensive experience in accounting and auditing and [~~currently be~~] in the practice of public accountancy at the partner (or equivalent) level within the past five years. If a member is associated with a firm subject to peer review, the[~~, and shall be members of the TSCPA or the AICPA. The~~] member's firm must have received a report with a rating of pass [~~or an unmodified opinion~~] from its last peer review. Compensation of PROB members shall be set by the board.

(d) The PROB shall make an annual recommendation to the board as to the qualifications of an approved sponsoring organization to continue as an approved sponsoring organization on the basis of the results of the following procedures:

(1) Where the sponsoring organization is the AICPA/NPRC, state CPA societies other than Texas that are fully involved in the administering AICPA Peer Review Program, or the PCAOB, PROB shall review the published oversight reports of those entities or successors, to determine that there is an acceptable level of oversight;

(2) Where the sponsoring organization is other than those listed in paragraph (1) of this subsection, PROB shall perform the following functions:

(A) At least one member of the PROB shall attend all meetings of each sponsoring organization's PRRC. Certain PRRC meetings may be conducted via telephone or video conference. In those instances, the PROB may join the conference call.

(B) During such visits, the PROB shall:

(i) meet with the organization's peer review committee during the committee's consideration of peer review documents;

(ii) evaluate the organization's procedures for administering the peer review program;

(iii) examine, on the basis of a random selection or other criteria adopted by PROB, a number of reviews performed by the organization to include, at a minimum, a review of the report on the peer review, the firm's response to the matters discussed, the sponsoring organization's FLOA outlining any additional corrective or monitoring procedures, and the required technical documentation maintained by the sponsoring organization on the selected reviews; and

(iv) expand the examination of peer review documents if significant deficiencies, problems, or inconsistencies are encountered during the analysis of the materials.

(e) In the evaluation of policies and procedures of sponsoring organization applicants, the PROB shall:

(1) examine the policies as drafted by the applicant to determine that they will provide reasonable assurance of conforming with the standards for peer reviews;

(2) evaluate the procedures proposed by the applicant to determine that:

(A) assigned reviewers are appropriately qualified to perform the review for the specific firm;

(B) reviewers are provided with appropriate materials;

(C) the applicant has provided for consulting with the reviewers on problems arising during the review and that specified occurrences requiring consultation are outlined;

(D) the applicant has provided for the assessment of the results of the review; and

(E) the applicant has provided for an independent report acceptance body that considers and accepts the reports of the review and requires corrective actions by firms with significant deficiencies;

(3) make recommendations to the board as to approval of the applicant as a sponsoring organization.

(f) Annually the PROB shall provide the board's Peer Review Committee with a report on the continued reliance of sponsoring organizations' peer reviews. The PROB report shall provide reasonable assurance that peer reviews are being conducted and reported on consistently and in accordance with the Standards promulgated by the AICPA Peer Review Board. A summary of oversight visits shall be included with the annual report.

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 January 14, 2021.

TRD-202100222
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 305-7842

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 553. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §§553.1 - 553.6, 553.11 - 553.22, 553.41 - 553.44, 553.51, 553.53, 553.54, 553.81 - 553.83, 553.102, 553.103, 553.105, 553.106, 553.123 - 553.129, 553.151, 553.152, 553.201 - 553.220, 553.251 - 553.267, 553.301, 553.302, 553.351 - 553.374, 553.401, 553.402, 553.451 - 553.456, 553.501 - 553.506, 553.551, 553.601, and 553.801, and new §§553.1, 553.3, 553.5, 553.7, 553.9, 553.17, 553.19, 553.21, 553.23, 553.25, 553.27, 553.29, 553.31, 553.33, 553.35, 553.37, 553.39, 553.41, 553.43, 553.44, 553.47, 553.253, 553.255, 553.257, 553.259, 553.261, 553.263, 553.265, 553.267, 553.269, 553.271 - 553.273, 553.275, 553.301, 553.303, 553.305, 553.307, 553.309, 553.311, 553.327, 553.329, 553.331, 553.333, 553.335, 553.337, 553.351, 553.353, 553.401, 553.403, 553.405, 553.407, 553.409, 553.411, 553.413, 553.415, 553.417, 553.419, 553.421, 553.423, 554.425, 553.427, 553.429, 553.431, 553.433, 553.435, 553.437, 553.439, 553.451, 553.453, 553.455, 553.457, 553.459, 553.461, 553.463, 553.465, 553.467, 553.469, 553.471, 553.473, 553.475, 553.477, 553.479, 553.481, 553.483, 553.501, 553.503, 553.551, 553.553, 553.555, 553.557, 553.559, 553.561, 553.563, 553.565, 553.567, 553.569, 553.571, 553.573, 553.575, 553.577, 553.579, 553.581, 553.583, 553.585, 553.587, 553.589, 553.591, 553.593, 553.595, 553.597, 553.601, 553.603, 553.651, 553.653, 553.655, 553.657, 553.659, 553.661, 553.701, 553.703, 553.705, 553.707, 553.709, 553.711, 553.751, and 553.801, in Title 26, Texas Administrative Code (TAC), Chapter 553, Licensing Standards for Assisted Living Facilities.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement changes made to the Texas Health and Safety Code, Chapters 81 and 247 by House Bill (H.B.) 823, 1848, and 3329, 86th Legislature, Regular Session, 2019. H.B. 823 implements an expedited inspection process that allows an applicant for an assisted living facility license, or renewal of a license, to obtain an on-site health inspection not later than the 21st day after the date the request is made. H.B. 1848 amends the requirements of a long-term

care facility's infection prevention and control program to include monitoring of key infectious agents, including multidrug-resistant organisms and procedures for making rapid influenza diagnostic tests available to facility residents. H.B. 3329 amends the meaning of a long-term care facility to state that a facility may provide health maintenance activities, as defined by the Texas Board of Nursing.

This proposal amends the licensure process to reflect the transition from paper applications to the use of the online licensure portal, called Texas Unified Licensure Information Portal (TULIP), and clarifies other processes relating to licensure. The proposal reorganizes the chapter in order that topics in the rules are easier to locate and provisions on related subjects are grouped together to facilitate navigation within the rules. The proposal also updates rule references throughout the chapter in response to the administrative transfer of the chapter from 40 TAC, Chapter 92, to 26 TAC, Chapter 553. The proposal also updates the agency name throughout the chapter from the Department of Aging and Disability Services (DADS) to HHSC.

SECTION-BY-SECTION SUMMARY

The proposed repeals of Subchapters A - C and E - I, §553.1, Purpose and Application; §553.2, Definitions; §553.3, Types of Assisted Living Facilities; §553.4, License Fees; §553.5, Health Care Professional; §553.6, General Characteristics of a Resident; §553.11, Criteria For Licensing; §553.12, General Application Requirements; §553.13, Time Periods for Processing All Types of License Applications; §553.14, Initial License Application Procedures; §553.15, Renewal Procedures and Qualifications; §553.16, Change of Ownership and Notice of Changes; §553.17, Relocation; §553.18, Increase in Capacity; §553.19, Decrease in Capacity; §553.20, Provisional License; §553.21, Initial License for a Type A or Type B Facility for an Applicant in Good Standing, §553.22, Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing; §553.41, Standards for Type A and Type B Assisted Living Facilities; §553.42, Guardianship Record Requirements; §553.43, Policy for Residents with Alzheimer's Disease or a Related Disorder; §553.44, Emergency Preparedness and Response; §553.51, Certification of a Facility or Unit for Persons with Alzheimer's Disease and Related Disorders; §553.53, Standards for Certified Alzheimer's Assisted Living Facilities; §553.54, Advertisements, Solicitations, and Promotional Material; §553.81, Inspections and Surveys; §553.82, Determinations and Actions; §553.83, Informal Dispute Resolutions; §553.102, Abuse, Neglect, or Exploitation Reportable to DADS; §553.103, Complaint Investigation; §553.105, Investigations of Complaints; §553.106, General Provisions; §553.123, Investigation of Facility; §553.124, Procedures for Inspection of Public Records; §553.125, Resident's Bill of Rights and Provider Bill of Rights; §553.126, Publication of Rules; §553.127, Required Postings; §553.128, Wheelchair Self-Release Seat Belts; §553.129, Authorized Electronic Monitoring (AEM); §§553.151 - 553.601, concerning all sections in Subchapter H, Enforcement; and §553.801, Access to Residents and Records by the State Long-Term Care Ombudsman Program, in 26 TAC Chapter 553, allow new rules to be proposed in 26 TAC, Chapter 553, which update and restructure the rules in accordance with legislative changes.

Proposed new Subchapter A, Introduction, recognizes that the agency responsible for regulating assisted living facilities is HHSC and updates references in the new sections. Subchapter A contains §553.1, Purpose and Application; §553.3, Definitions; §553.5, Types of Assisted Living Facilities; §553.7, Assisted Living Facility Services; and §553.9, General Characteristics of a Resident. Changes from the repealed Chapter 553 are detailed below.

Proposed new §553.3, Definitions, defines terms used in the rule and adds definitions for "delegation," "functional disability," "health maintenance activity," "key infectious agents," "multi-drug resistant organisms," "online portal," "personal care staff," "rapid influenza diagnostic test," "RN," and "stable and predictable."

Proposed new §553.5, Types of Assisted Living Facilities, clarifies that HHSC is no longer licensing new Type C facilities.

Proposed new §553.7, Assisted Living Facility Services, lists services offered in assisted living facilities, including health maintenance activities as a service now offered in facilities, as required by H.B. 3329.

Proposed new Subchapter B, Licensing, recognizes that the agency responsible for regulating assisted living facilities is HHSC and updates references in the new sections. Subchapter B contains §553.17, Criteria for Licensing; §553.19, General Application Requirements; §553.21, Time Periods for Processing All Types of License Applications; §553.23, Initial License Application Procedures and Requirements; §553.25, Initial License for a Type A or Type B Facility for an Applicant in Good Standing; §553.27, Certification of a Type B Facility or Unit for Persons with Alzheimer's Disease and Related Disorders; §553.29, Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing; §553.31, Provisional License; §553.33, Renewal Procedures and Qualifications; §553.35, Change of Ownership and Notice of Changes; §553.37, Relocation; §553.39, Increase in Capacity; §553.41, Decrease in Capacity; §553.43, Disclosure of Facility Identification Number; and §553.47, License Fees. Changes from the repealed Chapter 553 are detailed below.

Proposed new §553.27, Certification of a Type B Facility or Unit for Persons with Alzheimer's Disease and Related Disorders, moves the standards for Alzheimer's Certification of a Type B Facility or Unit for Persons with Alzheimer's Disease and Related Disorders into this Subchapter B with all other sections concerning licensing application procedures in Chapter 553

Proposed new §553.47, License Fees, adds a new option and fee schedule for license applicants who want to request an expedited health inspection, as required by H.B. 823.

Proposed new Subchapter E, Standards for Licensure, recognizes that the agency responsible for regulating assisted living facilities is HHSC and updates references in the new sections. Subchapter E contains §553.253, Employee Qualifications and Training; §553.255, All Staff Policy for Residents with Alzheimer's Disease or a Related Disorder; §553.257, Human Resources; §553.259, Admission Policies and Procedures; §553.261, Coordination of Care; §553.263, Health Maintenance Activities; §553.265, Resident Records and Retention; §553.267, Rights; §553.269, Access to Residents and Records by the State Long-Term Care Ombudsman Program; §553.271, Postings; §553.272, Advertisements, Solicitations, and Promotional Material; §553.273, Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities; and §553.275, Emergency Preparedness and Response. Changes from the repealed Chapter 553 are detailed below.

Proposed new §553.253, Employee Qualifications and Training, contains the requirements for Staff, Staffing and Staff Training that are currently in §553.41(a).

Proposed new §553.257, Human Resources, contains the requirements for Personnel Records, currently in §553.41(i) and Investigation of Facility Employees, currently in §553.123.

Proposed new §553.259, Admission Policies and Procedures, contains the requirements for Admission Policies and Disclosure Statements, Resident Assessment and Service Plan, Resident Policies, Advance Directives and Inappropriate Placement in Type A or Type B Facilities, currently in §553.41(c) - (g).

Proposed new §553.261, Coordination of Care, contains the requirements for Medications, currently in §553.41(j); Accident, Injury or Acute Illness, currently in §553.41(k); Health Care Professional, currently in §553.5; Activities Program, currently in §553.41(b); Dietary Services, currently in §553.41(m) as Food and Nutrition Services; Infection Prevention and Control, currently in §553.41(n) as Infection Control and §553.41(r) as Vaccine Preventable Diseases; Restraints and Seclusion, currently in §553.41(p) and Wheelchair Self-Release Seat Belts, currently in §553.128.

Proposed new §553.263, Health Maintenance Activities, implements H.B. 3329 by providing rules and guidance regarding the performance of health maintenance activities in assisted living facilities.

Proposed new §553.265, Resident Records, contains the requirement for Resident Records, currently in §553.41(h); Resident Finances, currently in §553.41(l); and Guardianship Record Requirements, currently in §553.42.

Proposed new §553.267, Rights, details the Residents' Bill of Rights and Providers' Bill of Rights, access to residents, and authorized electronic monitoring (AEM) and replaces the term "mentally retarded" with the term "intellectually disabled."

Proposed new Subchapter F, Additional Licensing Standards for Certified Alzheimer's Assisted Living Facilities, recognizes that the agency responsible for regulating assisted living facilities is HHSC, updates references and statues in the new sections, and gives the additional standards for certified Alzheimer's facilities their own subchapter in Chapter 553, instead of just a section as in current Chapter 553. Subchapter F contains §553.301, Manager Qualifications and Training; §553.303, Staff Training; §553.305, Staffing; §553.307, Admission Procedures, Assessment, and Service Plan; §553.309, Activities Program; and §553.311, Physical Plant Requirements for Alzheimer's Units.

Proposed new Subchapter G, Inspections, Investigations, and Informal Dispute Resolution, recognizes that the agency responsible for regulating assisted living facilities is HHSC and updates references in the new sections. Subchapter G contains §553.327, Inspections, Investigations and Other Visits; §553.329, HHSC Investigation of Allegations of Abuse, Neglect or Exploitation; §553.331, Determinations and Actions (Investigation Findings); §553.333, Informal Dispute Resolution; §553.335, Confidentiality and Release of Information; and §553.337, Retaliation.

Proposed new Subchapter H, Enforcement, recognizes that the agency responsible for enforcement is HHSC, replacing references to DADS and DHS (Texas Department of Human Services), and updates references in the new sections.

Proposed new Subchapter H, Division 1, General Information, contains §553.351, When may HHSC take an enforcement action; and §553.353, What enforcement actions may HHSC take;

Proposed new Subchapter H, Division 2, Actions Against a License: Suspension, contains §553.401, When may HHSC suspend a facility's license; §553.403, Does HHSC provide notice of a license suspension and the opportunity for a hearing to the applicant, license holder, or a controlling person; §553.405, May HHSC suspend a license at the same time another enforcement action is occurring; §553.407, How does HHSC notify a license holder of a proposed suspension; §553.409, What information does HHSC provide the license holder concerning a proposed suspension; §553.411. Does the license holder have an opportunity to show compliance with all requirements for keeping the license before HHSC begins proceedings to suspend a license; §553.413, How does a license holder request an opportunity to show compliance; §553.415, How much time does a license holder have to request an opportunity to show compliance; §553.417, What must the request for an opportunity to show compliance contain; §553.419, How does HHSC conduct the opportunity to show compliance; §553.421, Does HHSC give the license holder a written affirmation or reversal of the proposed action; §553.423, How does HHSC notify a license holder of its final decision to suspend a license; §553.425, May the facility request a formal hearing; §553.427, How long does a license holder have to request a formal hearing; §553.429, If a license holder does not appeal, when does the suspension take effect; §553.431, If a license holder appeals, when does the suspension take effect; §553.433, May a facility operate during a suspension; §553.435, How long is the suspension; §553.437, How does HHSC decide to remove the suspension; and 553.439, Must the license be returned to HHSC during a license suspension.

Proposed new Subchapter H, Division 3, Actions Against a License: Revocation, contains §553.451, When may HHSC revoke a license; §553.453, Does HHSC provide notice of a license revocation and opportunity for a hearing to the applicant, license holder, or controlling person; §553.455, May HHSC take more than one enforcement action at a time against a license; §553.457, How does HHSC notify a license holder of a proposed revocation; §553.459, What information does HHSC provide the license holder concerning a proposed revocation; §553.461, Does the license holder have an opportunity to show compliance with all requirements for keeping the license before HHSC begins proceedings to revoke a license; §553.463, How does a license holder request an opportunity to show compliance; §553.465, How much time does a license holder have to request an opportunity to show compliance; §553.467, What must the request for the opportunity to show compliance contain; §553.469, How does HHSC conduct the opportunity to show compliance; §553.471, Does HHSC give the license holder a written affirmation or reversal of the proposed action; §553.473, Does the license holder have an opportunity for a formal hearing; §553.475, How long does a license holder have to request a formal hearing; §553.477, When does the revocation take effect if the license holder does not appeal; §553.479, When does the revocation take effect if the license holder appeals the revocation; §553.481, May a facility operate during a revocation; and §553.483, What happens to a license if it is revoked.

Proposed new Subchapter H, Division 4, Actions Against a License: Temporary Restraining Orders and Injunctions, contains §553.501, Why does HHSC refer a facility to the Office of the Attorney General or local prosecuting authority for a temporary

restraining order or an injunction; and §553.503, To whom does HHSC refer a facility that is operating without a license.

Proposed new Subchapter H, Division 5, Actions Against a License: Emergency License Suspension and Closing Order, contains §553.551, When may HHSC suspend a license or order an immediate closing of all or part of a facility; §553.553, How does HHSC notify a facility of a license suspension or immediate closing of all or part of a facility; §553.555, When does an order suspending a license or closing all or part of a facility go into effect; §553.557, How long is an order suspending a license or closing all or part of a facility valid; §553.559, May a license holder request a hearing; §553.561, Where can a license holder find information about administrative hearings; §553.563, Does a request for an administrative hearing suspend the effectiveness of the order; §553.565, Does anything happen to a resident's rights or freedom of choice during an emergency relocation; §553.567, Who does HHSC notify if all or part of a facility is closed; §553.569, Who must a facility notify if all or part of the facility is closed; §553.571, Who decides where to relocate a resident; §553.573, Who arranges the relocation; §553.575, Is a resident's preference considered; §553.577, What requirements must the facility a resident chooses for relocation meet; §553.579, Is a receiving facility allowed to temporarily exceed its licensed capacity; §553.581, Under what conditions is a receiving facility allowed to temporarily exceed its licensed capacity; §553.583, What requirements must a facility meet to obtain a temporary waiver; §553.585, How long can a facility have a temporary waiver; §553.587, Does HHSC monitor a facility with a temporary waiver; §553.589, What records, reports, and supplies are sent to the receiving facility for transferred residents; §553.591, May a resident return to the closed facility if it reopens within 90 calendar days; §553.593, Do the relocated residents have any special admission rights at the closed facility; §553.595, What options does a relocated resident have; and §553.597, Are relocated residents who return to the facility considered new admissions.

Proposed new Subchapter H, Division 6, Actions Against a License: Civil Penalties, contains §553.601, When may HHSC refer a facility to the Office of the Attorney General for assessment of civil penalties; and §553.603, What is the amount of the civil penalty that can be assessed for operating without a license.

Proposed new Subchapter H, Division 7, Trustees: Involuntary Appointment of a Trustee, contains §553.651, When may HHSC petition a court for the involuntary appointment of a trustee to operate a facility; §553.653, When may HHSC disburse emergency assistance funds; §553.655, Must a facility reimburse HHSC for emergency assistance funds; §553.657, When is reimbursement for emergency assistance funds due to HHSC; §553.659, Who is responsible for reimbursement; and §553.661, What happens if a facility does not reimburse HHSC in one year.

Proposed new Subchapter H, Division 8, Trustees: Appointment of a Trustee by Agreement, contains §553.701, May a facility request the appointment of a trustee to assume operation of a facility; §553.703, Who may make the request; §553.705, What are the requirements for a trustee agreement; §553.707, When does an agreement for a trustee terminate; §553.709, What happens if the controlling person wants to terminate the agreement, but HHSC determines termination of the agreement is not in the best interest of the residents; and §553.711, When HHSC appoints a trustee, is the facility always required to pay assessed civil money penalties.

Proposed new Subchapter H, Division 9, Administrative Penalties, contains §553.751, Administrative Penalties.

Proposed new Subchapter H, Division 10, Arbitration, contains §553.801, Arbitration.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the new 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

For each year of the first five years that the new rule will be in effect, enforcing or administering the rule may have implications relating to costs and revenues of state government. New §553.45(g) adds the option for an ALF license applicant to request an expedited on-site health inspection, for which the applicant would be charged an associated expedited health inspection fee. Because the expedited inspection is optional, HHSC has no basis for estimating how many applicants would opt for the expedited inspection and, therefore, no basis for estimating the increased fee revenues or associated costs.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule 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 HHSC 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 HHSC;

(5) the proposed rules will create new rules;

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

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

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

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

Trey Wood has also determined that there could be an adverse economic effect on small businesses, micro-businesses, or rural communities due to the rules as proposed. New rule §§553.261(f)(4)(D) and 553.261(f)(5), relating to infection prevention and control as well as procedures for making rapid influenza diagnostic tests available to facility residents, and §553.263, relating to health maintenance activities, may, depending on the type of facility and the scope of services it provides, result in additional costs for supplies, amending policies and procedures, hiring or contracting with additional staff, and/or providing staff training to comply with the rules.

There are 1,990 assisted living facilities in Texas. HHSC lacks sufficient data to determine which qualify as small businesses, micro-businesses, or rural communities, however, it is assumed that some may fall into these categories

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with en-

suring the health and safety of residents of assisted living facilities.

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, including residents of assisted living facilities, and the rules are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

David Kostroun, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public benefit from the new rules will be more comprehensive infection control planning and precautionary measures, and a wider variety of health maintenance services available for residents of assisted living facilities, which will strengthen the protection of resident health, safety, and welfare. The public will also benefit from the re-organization of Chapter 553, which will improve the layout of information and readability.

Trey Wood has also determined that for the first five years the rule is in effect, there could be an adverse economic effect on persons required to comply:

- Section 553.45(g) adds the option for an assisted living facility license applicant to request an expedited health inspection, but this will result in a fee only if the facility chooses to request the expedited inspection.

- Sections 553.261(f)(4)(D) and 553.261(f)(5) require an assisted living facility to amend its infection control program and may, depending on the type of facility and the scope of services the facility opts to provide, result in additional costs for supplies, amending policies and procedures, or providing staff training to comply with the rules.

- Section 553.263 allows, but does not require, an assisted living facility to allow its staff to perform health maintenance activities and could require a facility to incur additional costs to amend policies and procedures, hire additional staff, or provide additional training to current staff to comply with the requirements of the rule.

Persons who are required to comply with the new rules may incur economic costs for fees, additional supplies, amending policies and procedures, and additional staff or additional staff training, should the provider request the optional additional service or to perform the related allowable activities.

HHSC assumes that some providers may already have sufficient resources to comply with the new rules but lacks sufficient information on providers that may incur additional costs. For this reason, costs to persons required to comply cannot be determined at this time.

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 the HHSC 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.* 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. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 19R066" in the subject line.

SUBCHAPTER A. INTRODUCTION

26 TAC §§553.1 - 553.6

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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.1. Purpose and Application.

§553.2. Definitions.

§553.3. Types of Assisted Living Facilities.

§553.4. License Fees.

§553.5. Health Care Professional.

§553.6. General Characteristics of a Resident.

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 January 12, 2021.

TRD-202100136
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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SUBCHAPTER B. APPLICATION PROCEDURES

26 TAC §§553.11 - 553.22

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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.11. Criteria for Licensing.
§553.12. General Application Requirements.
§553.13. Time Periods for Processing All Types of License Applications.
§553.14. Initial License Application Procedures and Requirements.
§553.15. Renewal Procedures and Qualifications.
§553.16. Change of Ownership and Notice of Changes.
§553.17. Relocation.
§553.18. Increase in Capacity.
§553.19. Decrease in Capacity.
§553.20. Provisional License.
§553.21. Initial License for a Type A or Type B Facility for an Applicant in Good Standing.
§553.22. Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing.

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 January 12, 2021.

TRD-202100137
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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SUBCHAPTER C. STANDARDS FOR LICENSURE

26 TAC §§553.41 - 553.44, 553.51, 553.53, 553.54

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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.41. Standards for Type A and Type B Assisted Living Facilities.
§553.42. Guardianship Record Requirements.
§553.43. Policy for Residents with Alzheimer's Disease or a Related Disorder.
§553.44. Emergency Preparedness and Response.
§553.51. Certification of a Facility or Unit for Persons with Alzheimer's Disease and Related Disorders.
§553.53. Standards for Certified Alzheimer's Assisted Living Facilities.
§553.54. Advertisements, Solicitations, and Promotional Material.

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 January 12, 2021.

TRD-202100138
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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SUBCHAPTER E. INSPECTIONS, SURVEYS, AND VISITS

26 TAC §§553.81 - 553.83

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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.81. Inspections and Surveys.
§553.82. Determinations and Actions.
§553.83. Informal Dispute Resolution.

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 January 12, 2021.

TRD-202100139

Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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SUBCHAPTER F. ABUSE, NEGLECT AND EXPLOITATION; COMPLAINT AND INCIDENT REPORTS AND INVESTIGATIONS

26 TAC §§553.102, 553.103, 553.105, 553.106

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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.102. Abuse, Neglect, or Exploitation Reportable to DADS.

§553.103. Complaint Investigation.

§553.105. Investigations of Complaints.

§553.106. General Provisions.

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 January 12, 2021.

TRD-202100140
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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SUBCHAPTER G. MISCELLANEOUS PROVISIONS

26 TAC §§553.123 - 553.129

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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.123. Investigation of Facility Employees.

§553.124. Procedures for Inspection of Public Records.

§553.125. Resident's Bill of Rights and Provider Bill of Rights.

§553.126. Publication of Rules.

§553.127. Required Postings.

§553.128. Wheelchair Self-Release Seat Belts.

§553.129. Authorized Electronic Monitoring (AEM).

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 January 12, 2021.

TRD-202100141
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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SUBCHAPTER H. ENFORCEMENT
DIVISION 1. GENERAL INFORMATION

26 TAC §553.151, §553.152

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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.151. When may DHS take an enforcement action?

§553.152. What enforcement actions may DHS take?

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 January 12, 2021.

TRD-202100142
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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DIVISION 2. ACTIONS AGAINST A LICENSE: SUSPENSION

26 TAC §§553.201 - 553.220

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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.201. When may DHS suspend a facility's license?

§553.202. Does DHS provide notice of a license suspension and the opportunity for a hearing to the applicant, license holder, or a controlling person?

§553.203. May DHS suspend a license at the same time another enforcement action is occurring?

§553.204. How does DHS notify a license holder of a proposed suspension?

§553.205. What information does DHS provide the license holder concerning a proposed suspension?

§553.206. Does the license holder have an opportunity to show compliance with all requirements for keeping the license before DHS begins proceedings to suspend a license?

§553.207. How does a license holder request an opportunity to show compliance?

§553.208. How much time does a license holder have to request an opportunity to show compliance?

§553.209. What must the request for an opportunity to show compliance contain?

§553.210. How does DHS conduct the opportunity to show compliance?

§553.211. Does DHS give the license holder a written affirmation or reversal of the proposed action?

§553.212. How does DHS notify a license holder of its final decision to suspend a license?

§553.213. May the facility request a formal hearing?

§553.214. How long does a license holder have to request a formal hearing?

§553.215. If a license holder does not appeal, when does the suspension take effect?

§553.216. If a license holder appeals, when does the suspension take effect?

§553.217. May a facility operate during a suspension?

§553.218. How long is the suspension?

§553.219. How does DHS decide to remove the suspension?

§553.220. Must the license be returned to DHS during a license suspension?

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 January 12, 2021.

TRD-202100143
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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DIVISION 3. ACTIONS AGAINST A LICENSE: REVOCATION

26 TAC §§553.251 - 553.267

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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.251. When may DHS revoke a license?

§553.252. Does DHS provide notice of a license revocation and opportunity for a hearing to the applicant, license holder, or controlling person?

§553.253. May DHS take more than one enforcement action at a time against a license?

§553.254. How will DHS notify a license holder of a proposed revocation?

§553.255. What information does DHS provide the license holder concerning a proposed revocation?

§553.256. Does the license holder have an opportunity to show compliance with all requirements for keeping the license before DHS begins proceedings to revoke a license?

§553.257. How does a license holder request an opportunity to show compliance?

§553.258. How much time does a license holder have to request an opportunity to show compliance?

§553.259. What must the request for the opportunity to show compliance contain?

§553.260. How does DHS conduct the opportunity to show compliance?

§553.261. Does DHS give the license holder a written affirmation or reversal of the proposed action?

§553.262. Does the license holder have an opportunity for a formal hearing?

§553.263. How long does a license holder have to request a formal hearing?

§553.264. When does the revocation take effect if the license holder does not appeal?

§553.265. When does the revocation take effect if the license holder appeals the revocation?

§553.266. May a facility operate during a revocation?

§553.267. What happens to a license if it is revoked?

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 January 12, 2021.

TRD-202100144
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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DIVISION 4. ACTIONS AGAINST A LICENSE: TEMPORARY RESTRAINING ORDERS AND INJUNCTIONS

26 TAC §553.301, §553.302

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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.301. Why would DHS refer a facility to the Office of the Attorney General or local prosecuting authority for a temporary restraining order or an injunction?

§553.302. To whom does DHS refer a facility that is operating without a license?

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

Filed with the Office of the Secretary of State on January 12, 2021.

TRD-202100145
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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DIVISION 5. ACTIONS AGAINST A LICENSE: EMERGENCY LICENSE SUSPENSION AND CLOSING ORDER

26 TAC §§553.351 - 553.374

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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.351. When may DHS suspend a license or order an immediate closing of all or part of a facility?

§553.352. How does DHS notify a facility of a license suspension or immediate closing of all or part of a facility?

§553.353. When does an order suspending a license or closing all or part of a facility go into effect?

§553.354. How long is an order suspending a license or closing all or part of a facility valid?

§553.355. May a license holder request a hearing?

§553.356. Where can a license holder find information about administrative hearings?

§553.357. Does a request for an administrative hearing suspend the effectiveness of the order?

§553.358. Does anything happen to a resident's rights or freedom of choice during an emergency relocation?

§553.359. Who does DHS notify if all or part of a facility is closed?

§553.360. Who must a facility notify if all or part of the facility is closed?

§553.361. Who decides where to relocate a resident?

§553.362. Who arranges the relocation?

§553.363. Is a resident's preference considered?

§553.364. What requirements must the facility a resident chooses for relocation meet?

§553.365. Is a receiving facility allowed to temporarily exceed its licensed capacity?

§553.366. Under what conditions is a receiving facility allowed to temporarily exceed its licensed capacity?

§553.367. What requirements must a facility meet to obtain a temporary waiver?

§553.368. How long can a facility have a temporary waiver?

§553.369. Does DHS monitor a facility with a temporary waiver?

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§553.371. May a resident return to the closed facility if it reopens within 90 calendar days?

§553.372. Do the relocated residents have any special admission rights at the closed facility?

§553.373. What options does a relocated resident have?

§553.374. Are relocated residents who return to the facility considered new admissions?

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 January 12, 2021.

TRD-202100146
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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DIVISION 6. ACTIONS AGAINST A LICENSE: CIVIL PENALTIES

26 TAC §553.401, §553.402

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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.401. When may DHS refer a facility to the Office of the Attorney General for assessment of civil penalties?

§553.402. What is the amount of the civil penalty that can be assessed for operating without a license?

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

Filed with the Office of the Secretary of State on January 12, 2021.

TRD-202100147
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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DIVISION 7. TRUSTEES: INVOLUNTARY APPOINTMENT OF A TRUSTEE

26 TAC §§553.451 - 553.456

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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.451. When may DHS petition a court for the involuntary appointment of a trustee to operate a facility?

§553.452. When may DHS disburse emergency assistance funds?

§553.453. Must a facility reimburse DHS for emergency assistance funds?

§553.454. When is reimbursement for emergency assistance funds due to DHS?

§553.455. Who is responsible for reimbursement?

§553.456. What happens if a facility does not reimburse DHS in one year?

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 January 12, 2021.

TRD-202100148
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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DIVISION 8. TRUSTEES: APPOINTMENT OF A TRUSTEE BY AGREEMENT

26 TAC §§553.501 - 553.506

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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.501. May a facility request the appointment of a trustee to assume operation of a facility?

§553.502. Who may make the request?

§553.503. What are the requirements for a trustee agreement?

§553.504. When does an agreement for a trustee terminate?

§553.505. What happens if the controlling person wants to terminate the agreement, but DHS determines termination of the agreement is not in the best interest of the residents?

§553.506. When DHS appoints a trustee, is the facility always required to pay assessed civil money penalties?

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 January 12, 2021.

TRD-202100149
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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DIVISION 9. ADMINISTRATIVE PENALTIES

26 TAC §553.551

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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The repeal implements Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.551. Administrative Penalties.

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 January 12, 2021.

TRD-202100150
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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DIVISION 10. ARBITRATION

26 TAC §553.601

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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The repeal implements Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.601. Arbitration.

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 January 12, 2021.

TRD-202100151
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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SUBCHAPTER I. ACCESS TO RESIDENTS AND RECORDS BY THE LONG-TERM CARE OMBUDSMAN PROGRAM

26 TAC §553.801

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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The repeal implements Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.801. Access to Residents and Records by the State Long-Term Care Ombudsman Program.

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 January 12, 2021.

TRD-202100152
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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SUBCHAPTER A. INTRODUCTION

26 TAC §§553.1, 553.3, 553.5, 553.7, 553.9

STATUTORY AUTHORITY

The new sections 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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.1. Purpose and Application.

(a) The purpose of this chapter is to establish:

(1) the criteria and application procedure for licensing an assisted living facility;

(2) the licensing standards with which an assisted living facility must comply and that serve as a basis for licensure inspections, including:

(A) operation and resident care standards; and

(B) facility construction standards;

(3) the inspections and investigations HHSC may conduct as a regulatory authority; and

(4) enforcement actions HHSC may take against a facility.

(b) This chapter applies to a facility licensed or subject to being licensed in accordance with Texas Health and Safety Code, Chapter 247. Assisted living services are driven by a philosophy that emphasizes personal dignity and autonomy to age in place in a residential setting while receiving increasing or decreasing levels of services as the person's needs change.

§553.3. Definitions.

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

(1) Abuse--

(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(1), which is an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility or program, as further described by rule or policy; and

(B) For a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(1), which is:

(i) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident; or

(ii) sexual abuse of a resident, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code §21.08 (relating to Indecent Exposure), or Texas Penal Code, Chapter 22 (relating to Assaultive Offenses), committed by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident.

(2) Accreditation commission--Has the meaning given in Texas Health and Safety Code §247.032.

(3) Actual harm--A negative outcome that compromises a resident's physical, mental, or emotional well-being.

(4) Advance directive--Has the meaning given in Texas Health and Safety Code §166.002.

(5) Affiliate--With respect to:

(A) a partnership, each partner thereof;

(B) a corporation, each officer, director, principal stockholder, subsidiary, or person with a disclosable interest, as the term is defined in this section; and

(C) a natural person:

(i) said person's spouse;

(ii) each partnership and each partner thereof, of which said person or any affiliate of said person is a partner; and

(iii) each corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(6) Alzheimer's Assisted Living Disclosure Statement form--The HHSC-prescribed form a facility uses to describe the nature of care or treatment of residents with Alzheimer's disease and related disorders.

(7) Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention (CDC), or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(8) Alzheimer's facility--A Type B facility that is certified to provide specialized services to residents with Alzheimer's disease or a related condition.

(9) Applicant--A person applying for a license to operate an assisted living facility under Texas Health and Safety Code, Chapter 247.

(10) Attendant--A facility employee who provides direct care to residents. This employee may serve other functions, including cook, janitor, porter, maid, laundry worker, security personnel, bookkeeper, activity director, and manager.

(11) Authorized electronic monitoring (AEM)--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(12) Behavioral emergency--Has the meaning given in §553.261(g)(2) of this chapter (relating to Coordination of Care).

(13) Certified ombudsman--Has the meaning given in §88.2 of this title (relating to Definitions).

(14) CFR--Code of Federal Regulations.

(15) Change of ownership--An event that results in a change to the federal taxpayer identification number of the license holder of a facility. The substitution of a personal representative for a deceased license holder is not a change of ownership.

(16) Commingles--The laundering of apparel or linens of two or more individuals together.

(17) Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of a facility or other person. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a facility;

(B) any person who is a controlling person of a management company or other business entity that operates a facility or that contracts with another person for the operation of an assisted living facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, except an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of a facility.

(18) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and about which the facility and HHSC have not been informed by the resident, by the person who placed the device in the room, or by a person who uses the device.

(19) Delegation--In the assisted living facility context, written authorization by a registered nurse (RN) acting on behalf of the facility for personal care staff to perform tasks of nursing care in selected situations, where delegation criteria are met for the task. The delegation process includes nursing assessment of a resident in a specific situation, evaluation of the ability of the personal care staff, teaching the task to the personal care staff, ensuring supervision of the personal care staff in performing a delegated task, and re-evaluating the task at regular intervals.

(20) Dietitian--A person who currently holds a license or provisional license issued by the Texas Department of Licensing and Regulation.

(21) Direct ownership interest--Ownership of equity in the capital, stock, or profits of, or a membership interest in, an applicant or license holder.

(22) Disclosable interest--Five percent or more direct or indirect ownership interest in an applicant or license holder.

(23) Disclosure statement--An HHSC form for prospective residents or their legally authorized representatives that a facility must complete. The form contains information regarding the preadmission, admission, and discharge process; resident assessment and service plans; staffing patterns; the physical environment of the facility; resident activities; and facility services.

(24) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(25) Exploitation--

(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(3), which is the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy; and

(B) For a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(4), which is the illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(26) Facility--An entity required to be licensed under the Assisted Living Facility Licensing Act, Texas Health and Safety Code, Chapter 247.

(27) Fire suppression authority--The paid or volunteer firefighting organization or tactical unit that is responsible for fire suppression operations and related duties once a fire incident occurs within its jurisdiction.

(28) Flame spread--The rate of fire travel along the surface of a material. This is different than other requirements for time-rated "burn through" resistance ratings, such as one-hour rated. Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200).

(29) Functional disability--A mental, cognitive, or physical disability that precludes the physical performance of self-care tasks, including health maintenance activities and personal care.

(30) Governmental unit--The state or any county, municipality, or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(31) Health care professional--An individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.

(32) Health maintenance activity (HMA)--Consistent with 22 TAC §225.4 (relating to Definitions), a task that:

(A) may be exempt from delegation based on an RN's assessment in accordance with §553.263(c) of this chapter (relating to Health Maintenance Activities); and

(B) requires a higher level of skill to perform than personal care services and, in the context of an ALF, excludes the following tasks:

(i) intermittent catheterization; and

(ii) subcutaneous, nasal, or insulin pump administration of insulin or other injectable medications prescribed in the treatment of diabetes mellitus.

(33) HHSC--The Texas Health and Human Services Commission.

(34) Immediate threat to the health or safety of a resident--A situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of a resident.

(35) Immediately available--The capacity of facility staff to immediately respond to an emergency after being notified through a communication or alarm system. The staff are to be no more than 600 feet from the farthest resident and in the facility while on duty.

(36) Indirect ownership interest--Any ownership or membership interest in a person that has a direct ownership interest in an applicant or license holder.

(37) Isolated--A very limited number of residents are affected, and a very limited number of staff are involved, or the situation has occurred only occasionally.

(38) Key infectious agents--Bacteria, viruses, and other microorganisms which cause the most common infections and infectious diseases in long-term care facilities, and can be mitigated by establishing, implementing, maintaining, and enforcing proper infection, prevention, and control policies and procedures.

(39) Large facility--A facility licensed for 17 or more residents.

(40) Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(41) License holder--A person that holds a license to operate a facility.

(42) Listed--Equipment, materials, or services included in a list published by an organization concerned with evaluation of products or services, that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose. The listing organization must be acceptable to the authority having jurisdiction, including HHSC or any other state, federal, or local authority.

(43) Local code--A model building code adopted by the local building authority where the facility is constructed or located.

(44) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, transportation, or food services.

(45) Manager--The individual in charge of the day-to-day operation of the facility.

(46) Managing local ombudsman--Has the meaning given in §88.2 of this title.

(47) Medication--

(A) Medication is any substance:

(i) recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Texas Drug Code Index or official National Formulary, or any supplement to any of these official documents;

(ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;

(iii) other than food intended to affect the structure or any function of the body; and

(iv) intended for use as a component of any substance specified in this definition.

(B) Medication includes both prescription and over-the-counter medication, unless otherwise specified.

(C) Medication does not include devices or their components, parts, or accessories.

(48) Medication administration--The direct application of a medication or drug to the body of a resident by an individual legally allowed to administer medication in the state of Texas.

(49) Medication assistance or supervision--The assistance or supervision of the medication regimen by facility staff. Refer to §553.261(a) of this chapter.

(50) Medication (self- or self-administration of)--The capability of a resident to administer the resident's own medication or treatments without assistance from the facility staff.

(51) Multidrug-resistant organisms--Bacteria and other microorganisms that have developed resistance to multiple types of medicine used to act against the microorganism.

(52) Neglect--

(A) For a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes, the term has the meaning in Texas Family Code §261.001(4), which is a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) For a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(6), which is the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caregiver to provide such goods or services.

(53) NFPA 101--The 2012 publication titled "NFPA 101 Life Safety Code" published by the National Fire Protection Association, Inc., 1 Batterymarch Park, Quincy, Massachusetts 02169.

(54) Ombudsman intern--Has the meaning given in §88.2 of this title.

(55) Ombudsman program--Has the meaning given in §88.2 of this title.

(56) Online portal--A secure portal provided on the HHSC website for licensure activities, including for an assisted living facility applicant to submit licensure applications and information.

(58) Pattern of violation--Repeated, but not widespread in scope, failures of a facility to comply with this chapter or a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247 that:

(A) result in a violation; and

(B) are found throughout the services provided by the facility or that affect or involve the same residents or facility employees.

(57) Person--Any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(58) Personal care services--Assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the facility or who needs assistance to manage his or her personal life, regardless of whether a guardian has been appointed for the person.

(59) Personal care staff--An attendant whose primary employment function is to provide personal care services.

(60) Physician--A practitioner licensed by the Texas Medical Board.

(61) Potential for minimal harm--A violation that has the potential for causing no more than a minor negative impact on a resident.

(62) Practitioner--An individual who is currently licensed in a state in which the individual practices as a physician, dentist, podiatrist, or a physician assistant; or a registered nurse approved by the Texas Board of Nursing to practice as an advanced practice registered nurse.

(63) Private and unimpeded access--Access to enter a facility or communicate with a resident outside of the hearing and view of others, without interference or obstruction from facility employees, volunteers, or contractors.

(64) Qualified medical personnel--An individual who is licensed, certified, or otherwise authorized to administer health care. The term includes a physician, registered nurse, and licensed vocational nurse.

(65) Rapid influenza diagnostic test--A test administered to a person with flu-like symptoms that can detect the influenza viral nucleoprotein antigen.

(66) Resident--An individual accepted for care in a facility.

(67) Respite--The provision by a facility of room, board, and care at the level ordinarily provided for permanent residents of the facility to a person for not more than 60 days for each stay in the facility.

(68) Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(69) Restraints--Chemical restraints are psychoactive drugs administered for the purposes of discipline or convenience and are not required to treat the resident's medical symptoms. Physical restraints are any manual method, or physical or mechanical device, material, or equipment attached or adjacent to the resident that restricts freedom of movement. Physical restraints include restraint holds.

(70) RN (registered nurse)--A person who holds a current and active license from the Texas Board of Nursing to practice professional nursing, as defined in Texas Occupations Code §301.002(2).

(71) Safety--Protection from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the hazardous presence of toxic fumes and materials.

(72) Seclusion--The involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

(73) Service plan--A written description of the medical care, supervision, or nonmedical care needed by a resident.

(74) Short-term acute episode--An illness of less than 30 days' duration.

(75) Small facility--A facility licensed for 16 or fewer residents.

(76) Stable and predictable--A phrase describing the clinical and behavioral status of a resident that is non-fluctuating and consistent and does not require the regular presence of a registered or licensed vocational nurse.

(A) The phrase does not include within its meaning a description of the clinical and behavioral status of a resident that is expected to change rapidly or needs continuous or continual nursing assessment and evaluation.

(B) The phrase does include within its meaning a description of the condition of a resident receiving hospice care within a facility where deterioration is predictable.

(77) Staff--Employees of an assisted living facility.

(78) Standards--The minimum conditions, requirements, and criteria established in this chapter with which a facility must comply to be licensed under this chapter.

(79) State Ombudsman--Has the meaning given in §88.2 of this title.

(80) Terminal condition--A medical diagnosis, certified by a physician, of an illness that will result in death in six months or less.

(81) Universal precautions--An approach to infection control in which blood, any body fluids visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids are treated as if known to be infectious for HIV, hepatitis B, and other blood-borne pathogens.

(82) Vaccine Preventable Diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the CDC.

(83) Widespread in scope--A violation of Texas Health and Safety Code, Chapter 247 or a rule, standard, or order adopted under Chapter 247 that:

(A) is pervasive throughout the services provided by the facility; or

(B) represents a systemic failure by the facility that affects or has the potential to affect a large portion of or all of the residents of the facility.

(84) Willfully interfere--To act or not act to intentionally prevent, interfere with, impeded, or to attempt to intentionally prevent, interfere with, or impede.

(85) Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

§553.5. Types of Assisted Living Facilities.

(a) Basis for licensure type. A facility must be licensed as a Type A or Type B facility. A facility's licensure type is based on the capability of the residents to evacuate the facility, as described in this section.

(b) Type A. In a Type A facility, a resident:

(1) must be physically and mentally capable of evacuating the facility without physical assistance from staff, which may include an individual who is mobile, although non-ambulatory, such as an individual who uses a wheelchair or an electric cart, and has the capacity to transfer and evacuate himself or herself in an emergency;

(2) does not require routine attendance during nighttime sleeping hours;

(3) must be capable of following directions under emergency conditions; and

(4) must be able to demonstrate to HHSC that they can meet the evacuation requirements described in Subchapter D of this chapter (relating to Facility Construction).

(c) Type B. In a Type B facility, a resident may:

(1) require staff assistance to evacuate;

(2) require attendance during nighttime sleeping hours;

(3) be incapable of following directions under emergency conditions; and

(4) require assistance in transferring to and from a wheelchair; but

(5) must not be permanently bedfast.

(d) Type C.

(1) A Type C facility is a four-bed facility that was originally licensed by HHSC to provide adult foster care services as described in 40 TAC Chapter 48, Subchapter K (relating to Minimum Standards for Adult Foster Care).

(2) HHSC no longer issues Type C licenses and Type C licensure is no longer a requirement to contract with HHSC to provide adult foster care services. In accordance with 40 TAC Chapter 48, Subchapter K, in order to contract with HHSC as a provider of adult foster care services, an applicant must have a current license for a Type A or Type B assisted living facility.

§553.7. Assisted Living Facility Services.

(a) An assisted living facility must:

(1) furnish, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment; and

(2) provide:

(A) personal care services; and

(B) medication administration by a person licensed or otherwise authorized in this state to administer the medication; or

(C) services described in subparagraphs (A) and (B) of this paragraph.

(b) An assisted living facility establishment may provide:

(1) assistance with or supervision of medication administration;

(2) health maintenance activities in accordance with §553.263 of this chapter (relating to Health Maintenance Activities); and

(3) skilled nursing services for the following limited purposes:

(A) coordinate resident care with an outside home and community support services agency or other health care professional;

(B) provision or delegation of personal care services and medication administration, as described in this chapter;

(C) assessment of residents to determine the care required; and

(D) delivery, for a period not to exceed 30 days, of temporary skilled nursing services for a minor illness, injury, or emergency.

§553.9. General Characteristics of a Resident.

This section describes some general characteristics of a resident in a facility. A resident may:

(1) exhibit symptoms of mental or emotional disturbance, but is not considered at risk of imminent harm to self or others;

(2) need assistance with movement;

(3) require assistance with bathing, dressing, and grooming;

(4) require assistance with routine skin care, such as application of lotions or treatment of minor cuts and burns;

(5) need reminders to encourage toilet routine and prevent incontinence;

(6) require temporary services by professional personnel;

(7) need assistance with medication, supervision of self-medication, or medication administration;

(8) require encouragement to eat, or monitoring due to social or psychological reasons of temporary illness;

(9) be hearing impaired or speech impaired;

(10) be incontinent without pressure sores;

(11) require an established therapeutic diet;

(12) require self-help devices; and

(13) need assistance with meals, which may include feeding.

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 January 12, 2021.

TRD-202100153
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
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SUBCHAPTER B. LICENSING

26 TAC §§553.17, 553.19, 553.21, 553.23, 553.25, 553.27, 553.29, 553.31, 553.33, 533.35, 553.37, 553.39, 553.41, 553.43, 553.47

STATUTORY AUTHORITY

The new sections 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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.17. Criteria for Licensing.

(a) A person must be licensed to establish or operate an assisted living facility in Texas.

(1) HHSC considers one or more facilities to be part of the same establishment and, therefore, subject to licensure as an assisted living facility, based on the following factors:

(A) common ownership;

(B) physical proximity;

(C) shared services, personnel, or equipment in any part of the facilities' operations; and

(D) any public appearance of joint operations or of a relationship between the facilities.

(2) The presence or absence of any one factor in paragraph (1) of this subsection is not conclusive.

(b) To obtain a license, a person must follow the application requirements in this subchapter and meet the criteria for a license.

(c) An applicant must affirmatively show that the applicant, license holder, controlling person, and any person required to submit background and qualification information meet the criteria and eligibility for licensing, in accordance with this section, and:

(1) the building in which the facility is housed:

(A) meets local fire ordinances;

(B) is approved by the local fire authority;

(C) meets HHSC licensing standards in accordance with Subchapter D of this chapter (relating to Facility Construction) based on an on-site inspection by HHSC; and

(D) operation of the facility meets HHSC licensing standards based on an on-site health inspection by HHSC, which must include observation of the care of a resident; or

(2) the facility meets the standards for accreditation based on an on-site accreditation survey by the accreditation commission.

(d) An applicant who chooses the option authorized in subsection (c)(2) of this section must contact HHSC to determine which accreditation commissions are available to meet the requirements of that subsection. If a license holder uses an on-site accreditation survey by an accreditation commission, as provided in this paragraph and §553.33(j) of this subchapter (relating to Renewal Procedures and Qualifications), the license holder must:

(1) provide written notification to HHSC within five working days after the license holder receives a notice of change in accreditation status from the accreditation commission; and

(2) include a copy of the notice of change with its written notification to HHSC.

(e) HHSC issues a license to a facility meeting all requirements of this chapter. The facility must not exceed the maximum allowable number of residents specified on the license.

(f) HHSC denies an application for an initial license or a renewal of a license if:

(1) the applicant, license holder, controlling person, or any person required to submit background and qualification information has been debarred or excluded from the Medicare or Medicaid programs by the federal government or a state;

(2) a court has issued an injunction prohibiting the applicant, license holder, controlling person, or any person required to submit background and qualification information from operating a facility; or

(3) during the five years preceding the date of the application, a license to operate a health care facility, long-term care facility, assisted living facility, or similar facility in any state held by the applicant, license holder, controlling person, or any person required to submit background and qualification information has been revoked.

(g) A license holder or controlling person who operates a nursing facility or an assisted living facility for which a trustee was appointed and for which emergency assistance funds, other than funds to pay the expenses of the trustee, were used is subject to exclusion from eligibility for:

(1) the issuance of an initial license for a facility for which the person has not previously held a license; and

(2) the renewal of the license of the facility for which the trustee was appointed.

(h) HHSC may deny an application for an initial license or refuse to renew a license if an applicant, license holder, controlling person, or any person required to submit background and qualification information:

(1) violates Texas Health and Safety Code, Chapter 247; a section, standard or order adopted under Chapter 247; or a license issued under Chapter 247 in either a repeated or substantial manner;

(2) commits an act described in §553.751(a)(2) - (9) of this chapter (relating to Administrative Penalties);

(3) aids, abets, or permits a substantial violation described in paragraphs (1) or (2) of this subsection about which the person had or should have had knowledge;

(4) fails to provide the required information, facts, or references;

(5) engages in the following:

(A) knowingly submits false or intentionally misleading statements to HHSC;

(B) uses subterfuge or other evasive means of filing an application for licensure;

(C) engages in subterfuge or other evasive means of filing on behalf of another who is unqualified for licensure;

(D) knowingly conceals a material fact related to licensure; or

(E) is responsible for fraud;

(6) fails to pay the following fees, taxes, and assessments when due:

(A) license fees, as described in §553.47 of this subchapter (relating to License Fees); or

(B) franchise taxes, if applicable;

(7) during the five years preceding the date of the application, has a history in any state or other jurisdiction of any of the following:

(A) operation of a facility that has been decertified or has had its contract canceled under the Medicare or Medicaid program;

(B) federal or state long-term care facility, assisted living facility, or similar facility sanctions or penalties, including monetary penalties, involuntary downgrading of the status of a facility license, proposals to decertify, directed plans of correction, or the denial of payment for new Medicaid admissions;

(C) unsatisfied final judgments, excluding judgments wholly unrelated to the provision of care rendered in long-term care facilities;

(D) eviction involving any property or space used as a facility; or

(E) suspension of a license to operate a health care facility, long-term care facility, assisted living facility, or a similar facility;

(8) violates Texas Health and Safety Code §247.021 by operating a facility without a license; or

(9) is subject to denial or refusal as described in Chapter 560 of this title (relating to Denial or Refusal of License) during the time frames described in that chapter.

(i) Without limitation, HHSC reviews all information provided by an applicant, a license holder, a person with a disclosable interest, or a manager when considering grounds for denial of an initial license application or a renewal application in accordance with subsection (h) of this section. HHSC may grant a license if HHSC finds the applicant, license holder, person with a disclosable interest, affiliate, or manager is able to comply with the rules in this chapter.

(j) HHSC reviews final actions when considering the grounds for denial of an initial license application or renewal application in accordance with subsections (f) and (h) of this section. An action is final when routine administrative and judicial remedies are exhausted. An applicant must disclose all actions, whether pending or final.

(k) If an applicant owns multiple facilities, HHSC examines the overall record of compliance in all of the applicant's facilities. An overall record poor enough to deny issuance of a new license does not preclude the renewal of a license of a facility with a satisfactory record.

§553.19. General Application Requirements.

(a) An applicant must use the online portal and the forms prescribed by HHSC to submit a license application and for all licensure requirements and activities that can be met or conducted using the online portal.

(b) An applicant must complete the application and furnish all documents and information that HHSC requests in accordance with the instructions provided with the application. An application must be complete, accurate, and submitted with full payment of applicable license fees described in §553.47 of this subchapter (relating to License Fees). If an applicant provides incorrect or false information, or withholds information, HHSC may deny the application as described in §553.17(h) of this subchapter (relating to Criteria for Licensing).

(c) An application must include documentation from the local fire authority that the facility and its operations meet local fire ordinances.

(d) If an applicant decides not to continue the application process for a license after submitting an application and license fee, the applicant must submit to HHSC a request to withdraw the application. HHSC does not refund the license fee for an application that is withdrawn, except as provided in §553.21(d) of this subchapter (relating to Time Periods for Processing All Types of License Applications).

§553.21. Time Periods for Processing All Types of License Applications.

(a) HHSC reviews an application for a license within 30 days after the date HHSC Licensing and Credentialing Section, Long-term Care Regulation, receives the application and notifies the applicant if additional information is needed to complete the application.

(b) HHSC denies an application that remains incomplete 120 days after the date that HHSC Licensing and Credentialing Section, Long-term Care Regulation receives the application.

(c) HHSC issues a license within 30 days after HHSC determines that the applicant and the facility have met all licensure requirements referenced in §553.23 of this subchapter (relating to Initial License Application Procedures and Requirements) or §553.33 of this subchapter (relating to Renewal Procedures and Qualifications), as applicable.

(d) If HHSC does not process an application in the time period stated, the applicant has a right to make a request to the program director for reimbursement of the license fees paid with the application.

(1) If the program director does not agree that the established time period has been violated or finds that good cause existed for exceeding the established time period, the program director denies the request.

(2) Good cause for exceeding the established time period exists if:

(A) the number of applications to be processed exceeds by 15 percent or more the number processed in the same calendar quarter of the preceding year;

(B) HHSC must rely on another public or private entity to process all or a part of the application received by HHSC, and the delay is caused by that entity; or

(C) other conditions existed giving good cause for exceeding the established time period.

(3) If the request for reimbursement is denied, the applicant may appeal to the HHSC Executive Commissioner for resolution of the dispute. The applicant must send a written statement to the HHSC Executive Commissioner describing the request for reimbursement and the reason for the request. The HHSC Executive Commissioner will make a timely decision concerning the appeal and notify the applicant in writing of the decision.

§553.23. Initial License Application Procedures and Requirements.

(a) An applicant must complete the HHSC pre-licensure training course before submitting an application for an initial license. An applicant that is currently licensed under Texas Health and Safety Code, Chapter 247 is exempt from this requirement.

(b) An applicant for an initial license must submit an application in accordance with §553.19 of this subchapter (relating to General Application Requirements) and include full payment of the fees required in §553.47 of this subchapter (relating to License Fees).

(c) HHSC reviews an application for an initial license within 30 days after the date HHSC Licensing and Credentialing Section, Long-term Care Regulation receives the application and notifies the applicant if additional information is needed to complete the application.

(d) The applicant must notify HHSC via the online portal indicating that the facility is ready for a Life Safety Code (LSC) inspection. The notice must be submitted with the application or within 120 days after the HHSC Licensing and Credentialing Section, Long-term Care Regulation receives the application. After the applicant has satisfied the application submission requirements in §553.17 of this subchapter (relating to Criteria for Licensing) and §553.19 of this subchapter, HHSC staff conduct an on-site LSC inspection of the facility to determine if the facility meets the applicable NFPA 101 and other physical plant requirements in Subchapter D of this chapter (relating to Facility Construction).

(e) If the facility fails to meet the licensure requirements within 120 days after the initial LSC inspection, HHSC denies the application for a license.

(f) After a facility has met the licensure requirements in Subchapter D of this chapter and has admitted at least one but no more than three residents, the applicant must notify HHSC via the online portal that the facility is ready for a health inspection.

(1) HHSC staff conduct an on-site health inspection to determine if the facility meets the licensure requirements for standards of operation and resident care in Subchapter E of this chapter (relating to Standards for Licensure).

(2) If the facility fails to meet the licensure requirements for standards of operation and resident care within 120 days after the initial health inspection, HHSC denies the application for a license.

(g) HHSC issues a license within 30 days after HHSC determines that the applicant and the facility have met the licensure requirements of this section. The issuance of a license constitutes HHSC's official written notice to the facility of the approval of the application.

(h) HHSC may deny an application for an initial license if the applicant, controlling person, or any person required to submit background and qualification information fails to meet the criteria for a license established in §553.17 of this subchapter.

(i) If HHSC denies an application for an initial license, HHSC sends the applicant a written notice of the denial and informs the applicant of the applicant's right to request an administrative hearing to appeal the denial. The administrative hearing is held in accordance with Texas Health and Human Services Commission rules at Texas Administrative Code, Title 1, Part 15, Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

§553.25. Initial License for a Type A or Type B Facility for an Applicant in Good Standing.

(a) An applicant may request that HHSC issue, before conducting an on-site health inspection, an initial license for a Type A or Type B facility. The applicant must request the license by submitting a form prescribed by HHSC via the online portal.

(b) If an applicant makes a request in accordance with subsection (a) of this section, HHSC determines the applicant is in good standing, and the applicant complies with subsection (d) of this section, the applicant is not required to admit a resident to the facility or have the on-site health inspection described in §553.23(f) of this subchapter (relating to Initial License Application Procedures and Requirements) before HHSC issues an initial license.

(c) For purposes of this section, an applicant is in good standing if:

(1) one of the following conditions is met:

(A) the applicant has operated or been a controlling person of a licensed Type A or Type B facility in Texas for at least six consecutive years; or

(B) the applicant has not held a license for a Type A or Type B facility, but a controlling person of the applicant has operated or been a controlling person of a licensed Type A or Type B facility in Texas for at least six consecutive years; and

(2) each licensed facility operated by the applicant or the controlling person described in paragraph (1)(A) or (B) of this subsection:

(A) has not had a violation of a licensing rule:

(i) that:

(I) resulted in actual harm to a resident, which is defined as a negative outcome that compromises the resident's physical, mental or emotional well-being; or

(II) posed an immediate threat of harm causing or likely to cause serious injury, impairment, or death to a resident; and

(ii) that:

(I) the facility did not challenge;

(II) was affirmed; or

(III) is pending a final determination; and

(B) has not had a sanction imposed by HHSC against the facility during the six years before the date an application is submitted that resulted in:

(i) a civil penalty;

(ii) an administrative penalty;

(iii) an injunction;

(iv) the denial, suspension, or revocation of a license; or

(v) an emergency closure.

(d) An applicant that makes a request in accordance with subsection (a) of this section must:

(1) submit to HHSC via the online portal:

(A) the applicant's policies and procedures;

(B) evidence that the applicant has complied with §553.257(b) of this chapter (relating to Human Resources); and

(C) documentation that the applicant's employees have the credentials described in §553.253 of this chapter (relating to Employee Qualifications and Training); and

(2) comply with §553.23(d) of this subchapter and §553.17 of this subchapter (relating to Criteria for Licensing).

(e) HHSC issues an initial license to an applicant that makes a request in accordance with subsection (a) of this section if HHSC determines that an applicant:

(1) is in good standing;

(2) has submitted information in accordance with subsection (d)(1) of this section that complies with this chapter; and

(3) is in compliance with applicable NFPA 101 and other physical plant requirements of Subchapter D of this chapter (relating to Facility Construction), including meeting the requirements of a Life Safety Code (LSC) inspection within 120 days after the date HHSC staff conduct the initial LSC inspection.

(f) HHSC staff conduct an on-site health inspection within 90 days after the date HHSC issues a license in accordance with subsection (e) of this section. The on-site health inspection includes HHSC observation of the facility's provision of care to at least one resident.

(g) Until a facility that is issued an initial license under this section meets the requirements of the on-site health inspection described in subsection (f) of this section, the facility must attach a written addendum to the disclosure statement required by §553.259(c)(1) of this chapter (relating to Admission Policies and Procedures) as notice to a resident or a prospective resident that the facility has not met the requirements of the on-site health inspection. At a minimum, the addendum must state that:

(1) the facility has not met the requirements of an initial on-site health inspection for a license; and

(2) HHSC staff conduct an on-site health inspection for licensure within 90 days after the date the license is issued.

§553.27. Certification of a Type B Facility or Unit for Persons with Alzheimer's Disease and Related Disorders.

(a) A facility that advertises, markets, or otherwise promotes that the facility or a distinct unit of the facility provides specialized care for persons with Alzheimer's disease or related disorders must be certified or have the unit certified under subsection (d) of this section or §553.29 of this subchapter (relating to Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing). Certification under this section is not required for a facility to use advertising terms such as "medication reminders or assistance," "meal and activity reminders," "escort service," or "short-term memory loss, confusion, or forgetfulness."

(b) To be certified under subsection (d) of this section, a facility must be licensed as a Type B facility.

(c) A license holder must request certification of a facility or unit under subsection (d) of this section by submitting the forms prescribed by HHSC via the online portal and include full payment of applicable fees described in §553.47(c) of this subchapter (relating to License Fees).

(d) After HHSC receives a request for certification in accordance with subsection (c) of this section, HHSC certifies a licensed Type B facility as a certified Alzheimer's facility or a unit of a licensed Type B facility as a certified Alzheimer's unit, if HHSC determines:

(1) that the facility or unit is in compliance with §553.311 of this chapter (relating to Physical Plant Requirements for Alzheimer's Units) and Subchapter D of this chapter (relating to Facility Construction), including meeting the requirements of a Life Safety Code (LSC) inspection within 120 days after the date HHSC staff conduct an initial LSC inspection; and

(2) that the facility or unit meets the requirements of Subchapter F of this chapter (relating to Additional Licensing Standards for Certified Alzheimer's Assisted Living Facilities) based on an on-site health inspection, during which HHSC observes the facility's or unit's provision of care to at least one resident who has been admitted to the Alzheimer's facility or unit.

(e) A facility or unit may not exceed the maximum number of residents specified on the Alzheimer's certificate issued to the facility by HHSC.

(f) A facility must post the facility's or unit's Alzheimer's certificate in a prominent location for public view.

(g) An Alzheimer's certificate is valid for three years from the effective date of approval by HHSC.

(h) HHSC cancels an Alzheimer's certificate if:

(1) a certified facility, or the facility in which a certified unit is located, undergoes a change of ownership; or

(2) HHSC determines that a certified facility or unit is not in compliance with applicable laws and rules.

(i) A facility must remove a cancelled certificate from display and advertising and surrender the certificate to HHSC.

§553.29. Alzheimer's Certification of a Type B Facility for an Initial License Applicant in Good Standing.

(a) An applicant may request that HHSC, before conducting an on-site health inspection, issue an initial license for a Type B facility and an Alzheimer's certification for the facility or a distinct unit of the facility. The applicant must meet the requirements of §553.25 of this subchapter (relating to Initial License for a Type A or Type B Facility for an Applicant in Good Standing) for the initial license and the requirements of this section for certification of the facility or unit.

(b) An applicant must request certification by submitting forms prescribed by HHSC via the online portal and include full payment of applicable fees described in §553.47 of this subchapter (relating to License Fees).

(c) An applicant that makes a request in accordance with subsection (a) of this section is not required to admit a resident to the facility or unit or have the on-site health inspection described in §553.23(f) of this subchapter (relating to Initial License Application Procedures and Requirements) before HHSC certifies the facility or unit if HHSC determines that the applicant is in good standing:

(1) for the issuance of an initial license of the facility in accordance with §553.25(c) of this subchapter; and

(2) for certification of the facility or unit in accordance with subsection (d) of this section.

(d) An applicant is in good standing to obtain certification of a facility or unit if:

(1) for at least six consecutive years before applying for certification:

(A) the applicant has been:

(i) the license holder for an Alzheimer's certified facility in Texas or a facility in Texas that has an Alzheimer's certified unit; or

(ii) a controlling person of the license holder for an Alzheimer's certified facility in Texas or a facility in Texas that has an Alzheimer's certified unit; or

(B) a controlling person of the applicant has been:

(i) the license holder for an Alzheimer's certified facility in Texas or a facility in Texas that has an Alzheimer's certified unit; or

(ii) a controlling person of the license holder for an Alzheimer's certified facility in Texas or a facility in Texas that has an Alzheimer's certified unit;

(2) each licensed facility operated by the applicant or the controlling person has not had a violation or sanction described in §553.25(c)(2) of this subchapter; and

(3) each licensed facility operated by the applicant or the controlling person has had no more than two violations listed in §553.267(a) of this chapter (relating to Rights) during the six-year period immediately before the applicant applied for certification.

(e) For purposes of subsection (d)(3) of this section, a facility has a violation if:

(1) the applicant or controlling person operating the facility did not challenge the violation;

(2) a final determination on the violation is pending; or

(3) the violation was upheld.

(f) An applicant that makes a request in accordance with subsection (a) of this section must submit to HHSC for approval via the online portal:

(1) the applicant's policies and procedures required by Subchapter F of this chapter (relating to Additional Licensing Standards for Certified Alzheimer's Assisted Living Facilities); and

(2) documentation demonstrating that the applicant is complying with Subchapter F of this chapter and §553.257(b)of this chapter (relating to Human Resources).

(g) HHSC certifies a facility or unit after an applicant makes a request in accordance with subsection (a) of this section if HHSC determines that the applicant:

(1) meets the good standing requirements described in §553.25(c) of this subchapter and subsection (d) of this section;

(2) has submitted information in accordance with subsection (f) of this section; and

(3) is in compliance with:

(A) §553.27 of this subchapter (relating to Certification of a Type B Facility or Unit for Persons with Alzheimer's Disease and Related Disorders); and

(B) §553.311 of this chapter (relating to Physical Plant Requirements for Alzheimer's Units).

(h) HHSC conducts an on-site health inspection to determine if the facility or unit meets the requirements of Subchapter F of this chapter within 90 days after the date HHSC certifies a facility or unit in accordance with subsection (g) of this section. During each on-site health inspection, HHSC observes the provision of care to at least one resident who has been admitted to the facility or unit.

(i) Until a facility or unit that is issued a certification under this section meets the requirements of the on-site health inspection described in subsection (h) of this section, the facility must attach a written addendum to the disclosure statement required by §553.307(a) of this chapter (relating to Admission Procedures, Assessment, and Service Plan) to notify a resident or a prospective resident that the facility or unit has not met the requirements of the on-site health inspection. At a minimum, the addendum must state that:

(1) the facility or unit has not met the requirements of an initial on-site health inspection for Alzheimer's certification; and

(2) HHSC conducts an on-site health inspection for Alzheimer's certification within 90 days after the date of certification.

(j) To obtain certification of a unit in a Type B facility that is already licensed, a license holder must comply with §553.27 of this subchapter.

§553.31. Provisional License.

(a) HHSC may issue a six-month provisional license in the case of a corporate change of ownership.

(b) HHSC issues a six-month provisional license for a newly constructed facility without conducting an NFPA 101 and physical plant inspection under Subchapter D of this chapter (relating to Facility Construction), and, as applicable §553.311, of this chapter (relating to Physical Plant Requirements for Alzheimer's Units), if:

(1) an applicant requests in writing a provisional license;

(2) the applicant submits working drawings and specifications to HHSC for review in accordance with applicable procedures for plan review, approval, and construction in Subchapter D of this chapter, before facility construction begins;

(3) the applicant obtains all approvals, including a certificate of occupancy in a jurisdiction that requires one, from local authorities having jurisdiction in the area in which the facility is located, such as the fire marshal, health department, and building inspector;

(4) the applicant submits a complete license application within 30 days after receipt of all local approvals described in paragraph (3) of this subsection;

(5) the applicant pays in full the license fees required by §553.47 of this subchapter (relating to License Fees);

(6) the applicant, or a person who is a controlling person and an owner of the applicant, has constructed another facility in this state that complies with applicable NFPA 101 and physical plant requirements in Subchapter D of this chapter, and, as applicable, §553.311 of this chapter; and

(7) the applicant is in compliance with resident-care standards for licensure required by Subchapter E of this chapter (relating to Standards for Licensure) based on an on-site inspection conducted

in accordance with §553.327 of this chapter (relating to Inspections, Investigations, and Other Visits).

(c) HHSC considers the date facility construction begins to be the date the building construction permit for the facility was approved by local authorities.

(d) A provisional license expires on the earlier of:

(1) the 180th day after the effective date of the provisional license or the end of any extension period granted by HHSC; or

(2) the date a three-year license is issued to the provisional license holder.

(e) HHSC conducts an NFPA 101 and physical plant inspection of a facility as soon as reasonably possible after HHSC issues a provisional license to the facility.

(f) After conducting an NFPA 101 and physical plant inspection, HHSC issues a license in accordance with Texas Health and Safety Code §247.023 to the provisional license holder if the facility passes the inspection and the applicant meets all requirements for a license.

§553.33. Renewal Procedures and Qualifications.

(a) The facility is responsible for submitting an application for license renewal via the online portal before the expiration date printed on the license. A license issued under this chapter:

(1) expires three years after the date issued;

(2) must be renewed before the license expiration date; and

(3) is not automatically renewed.

(b) An application for renewal must comply with the requirements of §553.19 of this subchapter (relating to General Application Requirements), and, as applicable, §553.21 of this subchapter (relating to Time Periods for Processing All Types of License Applications). The submission of a license fee alone does not constitute an application for renewal.

(c) To renew a license, a license holder must submit an application for renewal with HHSC via the online portal before the expiration date of the license. For purposes of Texas Government Code §2001.054, HHSC considers a license holder to have submitted a timely and sufficient application for the renewal of a license, which continues the license in effect and permits the facility to continue operations while HHSC is processing the renewal application, if the license holder submits to HHSC the basic fee described in §553.47(a)(1) or (2) of this subchapter (relating to License Fees); and:

(1) a complete application for renewal no later than 45 days before the expiration of the current license;

(2) an incomplete application for renewal, with a letter explaining the circumstances that prevented the inclusion of the missing information no later than 45 days before the expiration of the current license; or

(3) a complete application or an incomplete application, with a letter explaining the circumstances that prevented the inclusion of the missing information, and the late fee described in §553.47(b) of this chapter during the 45-day period ending on the date the current license expires.

(d) HHSC may propose to deny, in accordance with subsection (m) of this section, a timely and sufficient, but incomplete, renewal application submitted in accordance with subsection (c) of this section if the license holder fails to complete the application by paying in full all fees due beyond the basic fee and late fee paid in accordance with §553.47(b) of this chapter, and by submitting all information and documentation required to complete the license holder's renewal application before the date that the current license expires. HHSC does not grant a license unless a renewal application is complete. It is the license holder's responsibility to ensure that the application is timely submitted to HHSC.

(e) A license expires if the license holder fails to submit a timely and sufficient application in accordance with subsection (c) of this section before the expiration date of the license.

(f) A person whose license has expired may not operate a facility without obtaining a license in accordance with the application requirements for an initial license in §553.23 of this subchapter (relating to Initial License Application Procedures and Requirements). Operating a facility without a license is subject to civil and administrative penalties and other authorized civil remedies.

(g) HHSC reviews an application for a renewal license within 30 days after the date HHSC Licensing and Credentialing Section, Long-term Care Regulation receives the application and notifies the applicant if additional information is needed to complete the application.

(h) A license holder applying for a renewal license must show that the facility meets HHSC licensing standards based on an on-site inspection by HHSC. The on-site inspection must include an observation of the care of a resident.

(i) If an applicant is relying on meeting standards for accreditation in accordance with §553.17(c)(2) of this subchapter (relating to Criteria for Licensing) to show that it meets the requirements for licensure, the application for a renewal license must include a copy of the license holder's accreditation report from the accreditation commission with its application for renewal.

(j) HHSC may pend action on an application for the renewal of a license for up to six months if the facility does not meet licensure requirements during an on-site inspection.

(k) The issuance of a license constitutes official written notice from HHSC to the facility that its application is approved.

(l) HHSC may deny an application for the renewal of a license if the applicant, controlling person, or any person required to submit background and qualification information fails to meet the criteria for a license established in §553.17 of this subchapter.

(m) Before denying an application for renewal of a license, HHSC gives the license holder:

(1) notice by registered or certified mail of the facts or conduct alleged to warrant the proposed action; and

(2) an opportunity to show compliance with all requirements of law for the retention of the license.

(n) To request an opportunity to show compliance, the license holder must send its written request to the Associate Commissioner of Long-term Care Regulation. The request must:

(1) be postmarked no later than 10 days after the date of HHSC notice and be received in the office of the Associate Commissioner of Long-term Care Regulation no later than 10 days after the date of the postmark; and

(2) contain specific documentation refuting HHSC allegations.

(o) The opportunity to show compliance is limited to a review of documentation submitted by the license holder and information HHSC used as the basis for its proposed action and is not conducted

as an adversary hearing. HHSC gives the license holder a written affirmation or reversal of the proposed action.

(p) If HHSC denies an application for the renewal of a license, the applicant may request:

(1) an informal reconsideration by HHSC; and

(2) an administrative hearing or binding arbitration to appeal the denial, as described in §553.801 of this chapter (relating to Arbitration).

§553.35. Change of Ownership and Notice of Changes.

(a) A license holder may not transfer its license.

(b) A prospective license holder must submit, via the online portal, a complete HHSC application for an initial license based on a change of ownership in accordance with §553.23 of this subchapter (relating to Initial Application Procedures and Requirements). The full payment of the fees required in §553.47 of this subchapter (relating to License Fees) must be submitted no less than 30 days before the date the prospective license holder seeks to be licensed based on a change of ownership.

(c) To avoid a facility operating while unlicensed, an applicant must submit an application for an initial license based on a change of ownership at least 30 days before the anticipated date of the change of ownership. The effective date of the change of ownership cannot precede the date the application is received by the HHSC Licensing and Credentialing Section, Long-term Care Regulation.

(d) HHSC may assess an administrative penalty in accordance with Subchapter H, Division 9 of this chapter (relating to Administrative Penalties) against a person who fails to notify HHSC before the effective date of the change of ownership.

(e) Pending HHSC review of the application for an initial license based on a change of ownership, the current license holder must continue to meet all requirements for operation of the facility.

(f) HHSC staff conduct an on-site health inspection to verify compliance with the licensure requirements before issuing a license based on a change of ownership. HHSC may conduct a desk review instead of an on-site health inspection if HHSC determines that the prospective license holder will have a new tax identification number and:

(1) less than 50 percent of the direct or indirect ownership interest in the current license holder differs from that of the prospective license holder; or

(2) every owner with a disclosable interest in the prospective license holder has a disclosable interest in the current license holder.

(g) HHSC, in its sole discretion, may conduct an on-site Life Safety Code inspection of the facility to determine if the facility meets the applicable NFPA 101 and other physical plant requirements in Subchapter D of this chapter (relating to Facility Construction), and, as applicable, §553.311 of this chapter (relating to Physical Plant Requirements in Alzheimer's Units) before issuing a license based on a change of ownership.

(h) HHSC issues the license within 30 days after HHSC determines that the applicant and the facility have met the licensure requirements of this section. The issuance of a license constitutes HHSC's official written notice to the facility of the approval of the application for a change of ownership.

(i) HHSC may deny an application for a change of ownership if the applicant, controlling person, or any person required to submit background and qualification information fails to meet the criteria for a license established in §553.17 of this subchapter (relating to Criteria for Licensing).

(j) If HHSC denies an application for an initial license based on a change of ownership, HHSC sends the applicant a written notice of the denial and informs the applicant of the applicant's right to request an administrative hearing to appeal the denial. The administrative hearing is held in accordance with Texas Health and Human Services Commission rules at 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(k) If a license holder that is not a publicly traded company adds an owner with a disclosable interest, but the license holder does not undergo a change of ownership, the license holder must notify HHSC via the online portal no later than 30 days after the addition of the owner.

§553.37. Relocation.

(a) Relocation is the closing of a facility and the movement of its residents to another location for which the license holder does not hold a current license.

(b) A license holder may not relocate a facility without a license from HHSC for the facility at the new location.

(c) To apply for relocation, the license holder for the current location must submit an application via the online portal for an initial license for the new location in accordance with §553. 23 of this subchapter (relating to Initial Application Procedures and Requirements) and full payment of the fees required in §553.47 of this subchapter (relating to License Fees). The applicant must enter the proposed date of relocation on the application, subject to issuance of a license.

(d) Residents must not be relocated until the new building has been inspected and approved as meeting the Life Safety Code licensure requirements in Subchapter D of this chapter (relating to Facility Construction).

(e) Following Life Safety Code approval by HHSC, the license holder must notify HHSC via the online portal of the date the residents will be relocated.

(f) After a facility has met standards of operations in subsection (d) of this section, HHSC staff conduct an on-site health inspection if one was not conducted within the last licensure period, to determine if the facility meets the licensure requirements for standards of operation and resident care in Subchapter E of this chapter (relating to Standards for Licensure).

(g) HHSC issues a license for the new facility if the new facility meets the standards of operations in subsections (d) and (e) of this section.

(h) The license holder must continue to maintain the license at the current location and must continue to meet all requirements for operation of the facility until HHSC has approved the relocation. The issuance of a license constitutes HHSC approval of the relocation. The license for the current location becomes invalid upon issuance of the new license for the new location. The license from the other location must be returned to HHSC.

§553.39. Increase in Capacity.

(a) A license holder must not increase a facility's licensed capacity without approval from HHSC.

(b) The license holder must submit an application for an increase in capacity in accordance with §553.19 of this subchapter (relating to General Application Requirements) and the fee required in §553.47 of this subchapter (relating to License Fees).

(c) The license holder must arrange for an inspection of the facility by the local fire marshal and provide the signed fire marshal approval to HHSC.

(d) After HHSC's review of an application and after the applicant notifies HHSC via the online portal that the facility is ready for a Life Safety Code (LSC) inspection, HHSC staff conduct an on-site LSC inspection of the facility to determine if the facility meets the LSC licensure requirements in Subchapter D of this chapter (relating to Facility Construction).

(e) If the facility fails to meet the LSC licensure requirements within 120 days after the LSC inspection, HHSC denies the application for an increase in capacity.

(f) After a facility has met LSC licensure requirements, HHSC staff conduct an on-site health inspection, if one was not conducted within the last licensure period, to determine if the facility meets the licensure requirements for standards of operation and resident care in Subchapter E of this chapter (relating to Standards for Licensure).

(g) HHSC issues a new license with an increased capacity within 30 days after HHSC determines that all licensure requirements have been met. HHSC may grant approval to occupy the increased capacity once HHSC determines that all licensure requirements have been met.

(h) In order to meet the residents' health and safety needs in the event of a fire, natural disaster, or catastrophic event, HHSC may grant approval to temporarily exceed a facility's licensed capacity provided the health and safety of residents are not compromised and the facility can meet the required health care service needs of all residents. A facility may exceed its licensed capacity under this circumstance, monitored by HHSC, until residents can be transferred to a permanent location. HHSC issues authorization for the temporary increase in the facility's licensed capacity. The authorization to temporarily increase the capacity ends when the facility receives written notice from HHSC ending the authorization.

§553.41. Decrease in Capacity.

(a) A license holder that wishes to decrease the licensed capacity of the facility must provide notification via the online portal to HHSC's Licensing and Credentialing Section, Long-term Care Regulation. The notification must include the desired capacity for the new license.

(b) Upon receipt of the notification, HHSC issues a new license with the desired capacity as indicated in the notification.

§553.43. Disclosure of Facility Identification Number.

A facility must use its state-issued facility identification number in all advertisements, solicitations, and promotional materials, including yellow pages, brochures, and business cards.

§553.47. License Fees.

(a) Basic fees.

(1) Type A and Type B. The license fee is $300, plus $15 for each bed for which a license is sought, with a maximum of $2,250 for a three-year license. The fee must be paid with an initial application, change of ownership application, or renewal application.

(2) Increase in capacity. An approved increase in capacity is subject to an additional fee of $15 for each bed.

(b) Late renewal fee. An applicant that submits an application for license renewal later than the 45th day before the expiration date of the license must pay a late fee of an amount equal to one-half of the basic fee required in accordance with subsection (a)(1) and (2) of this section.

(c) Alzheimer's certification. In addition to the basic license fee described in subsection (a) of this section, a facility that applies for certification as an Alzheimer's facility under Subchapter E of this chapter (relating to Standards for Licensure) must pay an additional license fee. For a three-year license issued in accordance with subsection (a)(1) of this section or §553.33(a)(1) of this subchapter, the additional fee is $300.

(d) Trust fund fee.

(1) If the amount in the facility trust fund, established under Texas Health and Safety Code, Chapter 242, Subchapter D, and Chapter 247 §247.003(b), is less than $500,000, HHSC collects an annual fee from each facility. The fee is based on a monetary amount specified for each licensed unit of capacity or bed space and is in an amount sufficient to provide not more than $500,000 in the trust fund. When the trust fund fee is collected, HHSC sends written notice to each facility stating the amount of the fee and the date the fee is due. A facility must pay the amount of the fee within 90 days after the date the fee is due.

(2) HHSC may charge and collect a trust fund fee more than once a year if necessary to ensure that the amount in the facility trust fund is sufficient to make the disbursements required under Texas Health and Safety Code §242.0965. When this subsequent trust fund fee is collected, HHSC sends written notice to each facility stating the amount of the fee and the date the fee is due. A facility must pay the amount of the fee within 90 days after the date the fee is due.

(3) Failure to pay the trust fund fee within 90 days after the date the fee is due as stated on the written notice described in paragraphs (1) and (2) of this subsection may result in an assessment of an administrative penalty under the administrative penalties described in Subchapter H, Division 9 of this chapter (relating to Administrative Penalties).

(e) Plan review fee. An applicant may submit building plans for a new building, an addition, the conversion of a building not licensed, or for the remodeling of an existing licensed facility for review by HHSC architectural staff. If the applicant chooses to submit building plans for review, the applicant must pay a fee for the plan review according to the following schedule:

Figure: 26 TAC §553.47(e)

(f) Payment of fees. A facility or applicant must pay fees by check, cashier's check, money order, or credit card, made payable to HHSC. All fees are nonrefundable, except as provided in Texas Government Code, Chapter 2005, and in §553.21(d) of this chapter (relating to Time Periods for Processing All Types of License Applications).

(g) Optional expedited inspection and associated fee.

(1) An applicant for an assisted living facility license may obtain an expedited inspection described in subparagraph (A) or (B) of this paragraph if the applicant meets the requirements in both clauses of the applicable subparagraph.

(A) A Life Safety Code (LSC) inspection conducted no later than the 15th day after the date HHSC receives a request for an expedited inspection, if the applicant:

(i) meets the application requirements under this subchapter for the applicable license; and

(ii) submits the applicable expedited LSC inspection fee in accordance with the fee schedule in paragraph (2) of this subsection; or

(B) an on-site health inspection conducted no later than the 21st day after the date HHSC receives a request for an expedited inspection, if the applicant:

(i) meets the application requirements under this subchapter for the applicable license; and

(ii) submits the applicable expedited on-site health inspection fee in accordance with the fee schedule in paragraph (2) of this subsection.

(2) An applicant requesting an expedited inspection must include the applicable fee from the following fee schedule with a request for an expedited inspection submitted in accordance with paragraph (1) of this subsection.
Figure: 26 TAC §553.47(g)(2)

(h) If, after HHSC conducts two LSC inspections for a given application, the applicant requests an additional inspection, then the applicant must pay a fee of $25 per bed, with a minimum payment of $1,000 for the third and each subsequent inspection pertaining to the same 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 January 12, 2021.

TRD-202100154
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Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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SUBCHAPTER E. STANDARDS FOR LICENSURE

26 TAC §§553.253, 553.255, 553.257, 553.259, 553.261, 553.263, 553.265, 553.267, 553.269, 553.271 - 553.273, 553.275

STATUTORY AUTHORITY

The new sections 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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.253. Employee Qualifications and Training.

(a) Manager qualifications. Each facility must designate, in writing, a manager to have authority over the operation.

(1) Qualifications. In small facilities, the manager must have proof of graduation from an accredited high school or certification of equivalency of graduation. In large facilities, a manager must have:

(A) an associate's degree in nursing, health care management, or a related field;

(B) a bachelor's degree; or

(C) proof of graduation from an accredited high school or certification of equivalency of graduation and at least one year of experience working in management or in health care industry management.

(2) Training in management of assisted living facilities. A manager must complete at least one educational course on the management of assisted living facilities, which must include information on the assisted living standards; resident characteristics (including dementia), resident assessment and skills working with residents; basic principles of management; food and nutrition services; federal laws, with an emphasis on accessibility requirements under the Americans with Disabilities Act; community resources; ethics, and financial management.

(A) The course must be at least 24 hours in length.

(i) A manager must complete eight hours of training on the assisted living standards within the first three months of employment.

(ii) The 24-hour training requirement may not be met through in-services at the facility, but may be met through structured, formalized classes, correspondence courses, training videos, distance learning programs, or off-site training courses. All training must be provided or produced by academic institutions, assisted living corporations, or recognized state or national organizations or associations. Subject matter that deals with the internal affairs of an organization will not qualify for credit.

(iii) Evidence of training must be on file at the facility and must contain documentation of content, hours, dates, and provider.

(B) A manager who can show documentation of a previously completed comparable course of study are exempt from the training requirements.

(C) A manager must complete the training required by subparagraph (A) or (B) of this paragraph, as applicable, by the first anniversary of employment as manager.

(D) An assisted living manager who was employed by a licensed assisted living facility as the manager and changes employment to another licensed assisted living facility as the manager, with a break in employment of no longer than 30 days, is exempt from the 24-hour training requirement.

(3) Continuing education. All managers must show evidence of 12 hours of annual continuing education. This requirement will be met during the first year of employment by the 24-hour assisted living management course. The annual continuing education requirement must include at least two of the following areas:

(A) resident and provider rights and responsibilities, abuse and neglect, and confidentiality;

(B) basic principles of management;

(C) skills for working with residents, families, and other professional service providers;

(D) resident characteristics and needs;

(E) community resources;

(F) accounting and budgeting;

(G) basic emergency first aid; or

(H) federal laws, such as the Americans with Disabilities Act of 1990, as amended; the Civil Rights Act of 1991; the Rehabilitation Act of 1973, as amended; the Family and Medical Leave Act of 1993; and the Fair Housing Act, as amended.

(4) Manager's responsibilities. The manager must be on duty 40 hours per week and may manage only one facility, except for managers of small Type A facilities, who may have responsibility for no more than 16 residents in no more than four facilities. The managers of small Type A facilities must be available by telephone or pager when conducting facility business off-site.

(5) Manager's absence. An employee competent and authorized to act in the absence of the manager must be designated in writing.

(b) Attendants. Full-time facility attendants must be at least 18 years old or a high-school graduate.

(1) An attendant must be in the facility at all times when residents are in the facility.

(2) Attendants are not precluded from performing other functions as required by the facility.

(c) Staffing.

(1) A facility must develop and implement staffing policies, which require staffing ratios based upon the needs of the residents, as identified in their service plans.

(2) Prior to admission, a facility must disclose, to prospective residents and their families, the facility's normal 24-hour staffing pattern and post it monthly in accordance with §553.271 of this subchapter (relating to Postings).

(3) A facility must have sufficient staff to:

(A) maintain order, safety, and cleanliness;

(B) assist with medication regimens;

(C) prepare and serve meals that meet the daily nutritional and special dietary needs of each resident, in accordance with each resident's service plan;

(D) assist with laundry;

(E) assure that each resident receives the kind and amount of supervision and care required to meet his basic needs; and

(F) ensure safe evacuation of the facility in the event of an emergency.

(4) A facility must meet the staffing requirements described in this subparagraph.

(A) Type A facility: Night shift staff in a small facility must be immediately available. In a large facility, the staff must be immediately available and awake.

(B) Type B facility: Night shift staff must be immediately available and awake, regardless of the number of licensed beds.

(d) Staff training. The facility must document that staff members are competent to provide personal care before assuming responsibilities and have received the following training.

(1) All staff members must complete four hours of orientation before assuming any job responsibilities. Training must cover, at a minimum, the following topics:

(A) reporting of abuse and neglect;

(B) confidentiality of resident information;

(C) universal precautions;

(D) conditions about which they should notify the facility manager;

(E) residents' rights; and

(F) emergency and evacuation procedures.

(2) Attendants must complete 16 hours of on-the-job supervision and training within the first 16 hours of employment following orientation. Training must include:

(A) providing assistance with the activities of daily living;

(B) resident's health conditions and how they may affect provision of tasks;

(C) safety measures to prevent accidents and injuries;

(D) emergency first aid procedures, such as the Heimlich maneuver and actions to take when a resident falls, suffers a laceration, or experiences a sudden change in physical or mental status;

(E) managing disruptive behavior;

(F) behavior management, for example, prevention of aggressive behavior and de-escalation techniques, practices to decrease the frequency of the use of restraint, and alternatives to restraints; and

(G) fall prevention.

(3) Direct care staff must complete six documented hours of education annually, based on each employee's hire date. Staff must complete one hour of annual training in fall prevention and one hour of training in behavior management, for example, prevention of aggressive behavior and de-escalation techniques, practices to decrease the frequency of the use of restraint, and alternatives to restraints. Training for these subjects must be competency-based. Subject matter must address the unique needs of the facility. Suggested topics include:

(A) promoting resident dignity, independence, individuality, privacy, and choice;

(B) resident rights and principles of self-determination;

(C) communication techniques for working with residents with hearing, visual, or cognitive impairment;

(D) communicating with families and other persons interested in the resident;

(E) common physical, psychological, social, and emotional conditions and how these conditions affect residents' care;

(F) essential facts about common physical and mental disorders, for example, arthritis, cancer, dementia, depression, heart and lung diseases, sensory problems, or stroke;

(G) cardiopulmonary resuscitation;

(H) common medications and side effects, including psychotropic medications, when appropriate;

(I) understanding mental illness;

(J) conflict resolution and de-escalation techniques; and

(K) information regarding community resources.

(4) Facilities that employ licensed nurses, certified nurse aides, or certified medication aides must provide annual in-service training, appropriate to their job responsibilities, from one or more of the following areas:

(A) communication techniques and skills useful when providing geriatric care (skills for communicating with the hearing impaired, visually impaired and cognitively impaired; therapeutic touch; recognizing communication that indicates psychological abuse);

(B) assessment and interventions related to the common physical and psychological changes of aging for each body system;

(C) geriatric pharmacology, including treatment for pain management, food and drug interactions, and sleep disorders;

(D) common emergencies of geriatric residents and how to prevent them, for example falls, choking on food or medicines, injuries from restraint use; recognizing sudden changes in physical condition, such as stroke, heart attack, acute abdomen, acute glaucoma; and obtaining emergency treatment;

(E) common mental disorders with related nursing implications; and

(F) ethical and legal issues regarding advance directives, abuse and neglect, guardianship, and confidentiality.

§553.255. All Staff Policy for Residents with Alzheimer's Disease or a Related Disorder.

(a) A facility must adopt, implement, and enforce a written policy that:

(1) requires a facility employee who provides direct care to a resident with Alzheimer's disease or a related disorder to successfully complete training in the provision of care to residents with Alzheimer's disease and related disorders; and

(2) ensures the care and services provided by a facility employee to a resident with Alzheimer's disease or a related disorder meet the specific identified needs of the resident relating to the diagnosis of Alzheimer's disease or a related disorder.

(b) The training required for facility employees under subsection (a)(1) of this section must include information about:

(1) symptoms of dementia;

(2) stages of Alzheimer's disease;

(3) person-centered behavioral interventions; and

(4) communication with a resident with Alzheimer's disease or a related disorder.

§553.257. Human Resources.

(a) Personnel records. A facility must keep current and complete personnel records on a facility employee for review by HHSC staff including:

(1) documentation that the facility performed a criminal history check;

(2) an annual employee misconduct registry check;

(3) an annual nurse aide registry check;

(4) documentation of initial tuberculosis screenings referenced in §553.261(f) of this subchapter (relating to Coordination of Care);

(5) documentation of the employee's compliance with or exemption from the facility vaccination policy referenced in §553.261(f) of this subchapter; and

(6) the signed statement from the employee referenced in §553.273 of this subchapter (relating to Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities), acknowledging that the employee may be criminally liable for the failure to report abuse, neglect, and exploitation.

(b) Investigation of facility employees.

(1) A facility must comply with the provisions of Texas Health and Safety Code, Chapter 250.

(2) Before a facility hires an employee, the facility must search the employee misconduct registry (EMR) established under §253.007, Texas Health and Safety Code, and the HHSC nurse aide registry (NAR) to determine if the individual is designated in either registry as unemployable based on employee misconduct. Both registries can be accessed on the HHSC Internet website.

(3) A facility is prohibited from hiring or continuing to employ a person who is listed in the EMR or NAR as unemployable or who has been convicted of an offense listed in §250.006 as a bar to employment or is a contraindication to employment with the facility.

(4) A facility must provide notification about the EMR to an employee in accordance with 40 TAC §93.3 (relating to Employment and Registry Information).

(5) In addition to the initial search of the NAR and the EMR, a facility must conduct a search of the NAR and the EMR to determine if the employee is designated in either registry as unemployable at least every 12 months.

(6) A facility must keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file.

§553.259. Admission Policies and Procedures.

(a) Admission policies and disclosure statement.

(1) A facility may not admit or retain a resident whose needs cannot be met by the facility and who cannot secure the necessary services from an outside resource. As part of the facility's general supervision and oversight of the physical and mental well-being of its residents, the facility remains responsible for all care provided at the facility. If the individual is appropriate for placement in a facility, then the decision that additional services are necessary and can be secured is the responsibility of facility management with written concurrence of the resident, resident's attending physician, or legal representative. Regardless of the possibility of "aging in place" or securing additional services, the facility must meet all NFPA 101 and physical plant requirements in Subchapter D of this chapter (relating to Facility Construction), and, as applicable, §553.311 (relating to Physical Plant Requirements for Alzheimer's Units), based on each resident's evacuation capabilities, except as provided in subsection (e) of this section.

(2) There must be a written admission agreement between the facility and the resident. The agreement must specify such details as services to be provided and the charges for the services. If the facility provides services and supplies that could be a Medicare benefit, the facility must provide the resident a statement that such services and supplies could be a Medicare benefit.

(3) A facility must share a copy of the facility disclosure statement, rate schedule, and individual resident service plan with outside resources that provide any additional services to a resident. Outside resources must provide facilities with a copy of their resident care plans and must document, at the facility, any services provided, on the day provided.

(4) Each resident must have a health examination by a physician performed within 30 days before admission or 14 days after

admission, unless a transferring hospital or facility has a physical examination in the medical record.

(5) The facility must secure at the time of admission of a resident the following identifying information:

(A) full name of resident;

(B) social security number;

(C) usual residence (where resident lived before admission);

(D) sex;

(E) marital status;

(F) date of birth;

(G) place of birth;

(H) usual occupation (during most of working life);

(I) family, other persons named by the resident, and physician for emergency notification;

(J) pharmacy preference; and

(K) Medicaid/Medicare number, if available.

(b) Resident assessment and service plan. Within 14 days of admission, a resident comprehensive assessment and an individual service plan for providing care, which is based on the comprehensive assessment, must be completed. The comprehensive assessment must be completed by the appropriate staff and documented on a form developed by the facility. When a facility is unable to obtain information required for the comprehensive assessment, the facility should document its attempts to obtain the information.

(1) The comprehensive assessment must include the following items:

(A) the location from which the resident was admitted;

(B) primary language;

(C) sleep-cycle issues;

(D) behavioral symptoms;

(E) psychosocial issues (i.e., a psychosocial functioning assessment that includes an assessment of mental or psychosocial adjustment difficulty; a screening for signs of depression, such as withdrawal, anger or sad mood; assessment of the resident's level of anxiety; and determining if the resident has a history of psychiatric diagnosis that required in-patient treatment);

(F) Alzheimer's disease/dementia history;

(G) activities of daily living patterns (e.g., wakened to toilet all or most nights, bathed in morning/night, shower or bath);

(H) involvement patterns and preferred activity pursuits (i.e., daily contact with relatives, friends, usually attended religious services, involved in group activities, preferred activity settings, general activity preferences);

(I) cognitive skills for daily decision-making (e.g., independent, modified independence, moderately impaired, severely impaired);

(J) communication (i.e., ability to communicate with others, communication devices);
K) physical functioning (i.e., transfer status; ambulation status; toilet use; personal hygiene; ability to dress, feed and groom self);

(L) continence status;

(M) nutritional status (e.g., weight changes, nutritional problems or approaches);

(N) oral/dental status;

(O) diagnoses;

(P) medications (e.g., administered, supervised, self-administers);

(Q) health conditions and possible medication side effects;

(R) special treatments and procedures;

(S) hospital admissions within the past six months or since last assessment; and

(T) preventive health needs (e.g., blood pressure monitoring, hearing-vision assessment).

(2) The service plan must be approved and signed by the resident or a person responsible for the resident's health care decisions. The facility must provide care according to the service plan. The service plan must be updated annually and upon a significant change in condition, based upon an assessment of the resident.

(3) For respite clients, the facility may keep a service plan for six months from the date on which it is developed. During that period, the facility may admit the individual as frequently as needed.

(4) Emergency admissions must be assessed, and a service plan developed for them.

(c) Resident policies.

(1) Before admitting a resident, facility staff must explain and provide a copy of the disclosure statement to the resident, family, or responsible party. A facility that provides brain injury rehabilitation services must attach to its disclosure statement a specific statement that licensure as an assisted living facility does not indicate state review, approval, or endorsement of the facility's rehabilitative services. The facility must document receipt of the disclosure statement.

(2) The facility must provide residents with a copy of the Resident's Bill of Rights.

(3) When a resident is admitted, the facility must provide to the resident's immediate family, and document the family's receipt of, the HHSC telephone hotline number to report suspected abuse, neglect, or exploitation, as referenced in §553.273 of this subchapter (relating to Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities).

(4) The facility must have written policies regarding residents accepted, services provided, charges, refunds, responsibilities of facility and residents, privileges of residents, and other rules and regulations.

(5) The facility must make available copies of the resident policies to staff and to residents or residents' responsible parties at time of admission. Documented notification of any changes to the policies must occur before the effective date of the changes.

(6) Before or upon admission of a resident, a facility must notify the resident and, if applicable, the resident's legally authorized representative, of HHSC rules and the facility's policies related to restraint and seclusion.

(7) The facility must provide a resident and the resident's legally authorized representative with a written copy of the facility's emergency preparedness plan or an evacuation summary, as required under §553.275(d) of this subchapter (relating to Emergency Preparedness and Response.)

(d) Advance directives.

(1) The facility must maintain written policies regarding the implementation of advance directives. The policies must include a clear and precise statement of any procedure the facility is unwilling or unable to provide or withhold in accordance with an advance directive.

(2) The facility must provide written notice of these policies to residents at the time they are admitted to receive services from the facility.

(A) If, at the time notice is to be provided, the resident is incompetent or otherwise incapacitated and unable to receive the notice, the facility must provide the written notice, in the following order of preference, to:

(i) the resident's legal guardian;

(ii) a person responsible for the resident's health care decisions;

(iii) the resident's spouse;

(iv) the resident's adult child;

(v) the resident's parents; or

(vi) the person admitting the resident.

(B) If the facility is unable, after diligent search, to locate an individual listed under subparagraph (A) of this paragraph, the facility is not required to give notice.

(3) If a resident who was incompetent or otherwise incapacitated and unable to receive notice regarding the facility's advance directives policies later becomes able to receive the notice, the facility must provide the written notice at the time the resident becomes able to receive the notice.

(4) HHSC imposes an administrative penalty of $500 for failure to inform the resident of facility policies regarding the implementation of advance directives.

(A) HHSC sends a facility written notice of the recommendation for an administrative penalty.

(B) Within 20 days after the date on which HHSC sends written notice to a facility, the facility must give written consent to the penalty or make written request to HHSC for an administrative hearing.

(C) Hearings are held in accordance with the formal hearing procedures at 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedures Act).

(e) Inappropriate placement in Type A or Type B facilities.

(1) HHSC or a facility may determine that a resident is inappropriately placed in the facility if the resident experiences a change of condition but continues to meet the facility evacuation criteria.

(A) If HHSC determines the resident is inappropriately placed and the facility is willing to retain the resident, the facility is not required to discharge the resident if, within 10 working days after receiving the Statement of Licensing Violations and Plan of Correction, Form 3724, and the Report of Contact, Form 3614-A, from HHSC, the facility submits the following to the HHSC regional office:

(i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;

(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:

(I) the resident wants to remain at the facility; or

(II) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility; and

(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility.

(B) If the facility initiates the request for an inappropriately placed resident to remain in the facility, the facility must complete and date the forms described in subparagraph (A) of this paragraph and submit them to the HHSC regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the HHSC prescribed forms.

(2) HHSC or a facility may determine that a resident is inappropriately placed in the facility if the facility does not meet all requirements for the evacuation of a designated resident referenced in §553.5 of this chapter (relating to Types of Assisted Living Facilities).

(A) If, during a site visit, HHSC determines that a resident is inappropriately placed at the facility and the facility is willing to retain the resident, the facility must request an evacuation waiver, as described in subparagraph (C) of this paragraph, to the HHSC regional office within 10 working days after the date the facility receives the Statement of Licensing Violations and Plan of Correction, Form 3724, and the Report of Contact, Form 3614-A. If the facility is not willing to retain the resident, the facility must discharge the resident within 30 days after receiving the Statement of Licensing Violations and Plan of Correction and the Report of Contact.

(B) If the facility initiates the request for a resident to remain in the facility, the facility must request an evacuation waiver, as described in subparagraph (C) of this paragraph, from the HHSC regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the HHSC prescribed forms.

(C) To request an evacuation waiver for an inappropriately placed resident, a facility must submit to the HHSC regional office:

(i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;

(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:

(I) the resident wants to remain at the facility; or

(II) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility;

(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility;

(iv) a detailed emergency plan that explains how the facility will meet the evacuation needs of the resident, including:

(I) specific staff positions that will be on duty to assist with evacuation and their shift times;

(II) specific staff positions that will be on duty and awake at night; and

(III) specific staff training that relates to resident evacuation;

(v) a copy of an accurate facility floor plan, to scale, that labels all rooms by use and indicates the specific resident's room;

(vi) a copy of the facility's emergency evacuation plan;

(vii) a copy of the facility fire drill records for the last 12 months;

(viii) a copy of a completed Fire Marshal/State Fire Marshal Notification, Form 1127, signed by the fire authority having jurisdiction (either the local Fire Marshal or State Fire Marshal) as an acknowledgement that the fire authority has been notified that the resident's evacuation capability has changed;

(ix) a copy of a completed Fire Suppression Authority Notification, Form 1129, signed by the local fire suppression authority as an acknowledgement that the fire suppression authority has been notified that the resident's evacuation capability has changed;

(x) a copy of the resident's most recent comprehensive assessment that addresses the areas required by subsection (c) of this section and that was completed within 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;

(xi) the resident's service plan that addresses all aspects of the resident's care, particularly those areas identified by HHSC, including:

(I) the resident's medical condition and related nursing needs;

(II) hospitalizations within 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;

(III) any significant change in condition in the last 60 days, based on the date stated on the evacuation waiver form submitted to HHSC;

(IV) specific staffing needs; and

(V) services that are provided by an outside provider;

(xii) any other information that relates to the required fire safety features of the facility that will ensure the evacuation capability of any resident; and

(xiii) service plans of other residents, if requested by HHSC.

(D) A facility must meet the following criteria to receive a waiver from HHSC:

(i) The emergency plan submitted in accordance with subparagraph (C)(iv) of this paragraph must ensure that:

(I) staff is adequately trained;

(II) a sufficient number of staff are on all shifts to move all residents to a place of safety;

(III) residents will be moved to appropriate locations, given health and safety issues;

(IV) all possible locations of fire origin areas and the necessity for full evacuation of the building are addressed;

(V) the fire alarm signal is adequate;

(VI) there is an effective method for warning residents and staff during a malfunction of the building fire alarm system;

(VII) there is a method to effectively communicate the actual location of the fire; and

(VIII) the plan satisfies any other safety concerns that could have an effect on the residents' safety in the event of a fire; and

(ii) the emergency plan will not have an adverse effect on other residents of the facility who have waivers of evacuation or who have special needs that require staff assistance.

(E) HHSC reviews the documentation submitted under this subsection and notifies the facility in writing of its determination to grant or deny the waiver within 10 working days after the date the request is received in the HHSC regional office.

(F) Upon notification that HHSC has granted the evacuation waiver, the facility must immediately initiate all provisions of the proposed emergency plan. If the facility does not follow the emergency plan, and there are health and safety concerns that are not addressed, HHSC may determine that there is an immediate threat to the health or safety of a resident.

(G) HHSC reviews a waiver of evacuation during the facility's annual renewal licensing inspection.

(3) If an HHSC surveyor determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or fails to obtain the written statements or waiver required in this subsection, the facility must discharge the resident.

(A) The resident is allowed 30 days after the date of notice of discharge to move from the facility.

(B) A discharge required under this subsection must be made notwithstanding:

(i) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and

(ii) the terms of any contract.

(4) If a facility is required to discharge the resident because the facility has not submitted the written statements required by paragraph (1) of this subsection to the HHSC regional office, or HHSC denies the waiver as described in paragraph (2) of this subsection, HHSC may:

(A) assess an administrative penalty if HHSC determines the facility has intentionally or repeatedly disregarded the waiver process because the resident is still residing in the facility when HHSC conducts a future onsite visit; or

(B) seek other sanctions, including an emergency suspension or closing order, against the facility under Texas Health and Safety Code, Chapter 247, Subchapter C, if HHSC determines there is a significant risk and immediate threat to the health and safety of a resident of the facility.

(5) The facility's disclosure statement must notify the resident and resident's legally authorized representative of the waiver process described in this section and the facility's policies and procedures for aging in place.

(6) After the first year of employment and no later than the anniversary date of the facility manager's hire date, the manager must show evidence of annual completion of HHSC training on aging in place and retaliation.

§553.261. Coordination of Care.

(a) Medications.

(1) Administration. Medications must be administered according to physician's orders.

(A) Residents who choose not to or cannot self-administer their medications must have their medications administered by a person who:

(i) holds a current license under state law that authorizes the licensee to administer medication;

(ii) holds a current medication aide permit and who:

(I) acts under the authority of a person who holds a current nursing license under state law that authorizes the licensee to administer medication; and

(II) functions under the direct supervision of a licensed nurse on duty or on call by the facility; or

(iii) is an employee of the facility to whom medication administration has been delegated by a registered nurse, who has trained the employee to administer medications or verified their training. The delegation of the medication administration is governed by 22 TAC Chapter 225 (concerning RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions), which implements the Nursing Practice Act.

(B) Each resident's prescribed medication must be dispensed through a pharmacy or by the resident's treating physician or dentist.

(C) Physician sample medications may be given to a resident by the facility provided the medication has specific dosage instructions for the individual resident.

(D) Each resident's medications must be listed on the individual resident's medication profile record. The recorded information obtained from the prescription label must include the medication:

(i) name;

(ii) strength;

(iii) dosage;

(iv) amount received;

(v) directions for use;

(vi) route of administration;

(vii) prescription number;

(viii) pharmacy name; and

(ix) the date each medication was issued by the pharmacy.

(2) Supervision. Supervision of a resident's medication regimen by facility staff may be provided to residents who are incapable of self-administering without assistance to include and be limited to:

(A) reminders to take their medications at the prescribed time;

(B) opening containers or packages and replacing lids;

(C) pouring prescribed dosage according to medication profile record;

(D) returning medications to the proper locked areas;

(E) obtaining medications from a pharmacy; and

(F) listing on an individual resident's medication profile record the medication:

(i) name;

(ii) strength;

(iii) dosage;

(iv) amount received;

(v) directions for use;

(vi) route of administration;

(vii) prescription number;

(viii) pharmacy name; and

(ix) the date each medication was issued by the pharmacy.

(3) Self-administration.

(A) Residents who self-administer their own medications and keep them locked in their room must be counseled at least once a month by facility staff to ascertain if the residents continue to be capable of self-administering their medications or treatments and if security of medications can continue to be maintained. The facility must keep a written record of counseling.

(B) Residents who choose to keep their medications locked in the central medication storage area may be permitted entrance or access to the area for the purpose of self-administering their own medication or treatment regimen. A facility staff member must remain in or at the storage area the entire time any resident is present.

(4) General.

(A) Facility staff will immediately report to the resident's physician and responsible party any unusual reactions to medications or treatments.

(B) When the facility supervises or administers the medications, a written record must be kept when the resident does not receive or take his or her medications or treatments as prescribed. The documentation must include the date and time the dose should have been taken, and the name and strength of medication missed; however, the recording of missed doses of medication does not apply when the resident is away from the facility.

(5) Storage.

(A) The facility must provide a locked area for all medications. Examples of areas include:

(i) central storage area;

(ii) medication cart; and

(iii) resident room.

(B) Each resident's medication must be stored separately from other resident's medications within the storage area.

(C) A refrigerator must have a designated and locked storage area for medications that require refrigeration, unless it is inside a locked medication room.

(D) Poisonous substances and medications labeled for "external use only" must be stored separately within the locked medication area.

(E) If facilities store controlled drugs, facility policies and procedures must address the prevention of the diversion of the controlled drugs.

(6) Disposal.

(A) Medications no longer being used by the resident for the following reasons are to be kept separate from current medica-

tions and are to be disposed of by a registered pharmacist licensed in the State of Texas:

(i) medications discontinued by order of the physician;

(ii) medications that remain after a resident is deceased; or

(iii) medications that have passed the expiration date.

(B) Needles and hypodermic syringes with needles attached must be disposed as required by 25 TAC §§1.131 - 1.137.

(C) Medications kept in a central storage area are released to discharged residents when a receipt has been signed by the resident or responsible party.

(b) Accident, injury, or acute illness.

(1) In the event of accident or injury that requires emergency medical, dental or nursing care, or in the event of apparent death, the facility will

(A) make arrangements for emergency care or transfer to an appropriate place for treatment, such as a physician's office, clinic, or hospital;

(B) immediately notify the resident's physician and next of kin, responsible party, or agency who placed the resident in the facility; and

(C) describe and document the injury, accident, or illness on a separate report. The report must contain a statement of final disposition and be maintained on file.

(2) The facility must stock and maintain in a single location first aid supplies to treat burns, cuts, and poisoning.

(3) Residents who need the services of professional nursing or medical personnel due to a temporary illness or injury may have those services delivered by persons qualified to deliver the necessary service.

(c) Health Care Professional.

(1) A health care professional may coordinate the provision of services to a resident within the professional's scope of practice and as authorized under Texas Health and Safety Code, Chapter 247, however, a facility must not provide ongoing services to a resident that are comparable to the services available in a nursing facility licensed under Texas Health and Safety Code, Chapter 242.

(2) A resident may contract with a home and community support services agency licensed under Chapter 558 of this title, or with an independent health professional, to have health care services delivered to the resident at the facility.

(d) Activities program. The facility must provide an activity or social program at least weekly for the residents.

(e) Dietary services.

(1) A person designated by the facility is responsible for the total food service of the facility.

(2) At least three meals or their equivalent must be served daily, at regular times, with no more than a 16-hour span between a substantial evening meal and breakfast the following morning. All exceptions must be specifically approved by HHSC.

(3) Menus must be planned one week in advance and must be followed. Variations from the posted menus must be documented. Menus must be prepared to provide a balanced and nutritious diet, such as that recommended by the National Food and Nutrition Board. Food must be palatable and varied. Records of menus as served must be filed and maintained for 30 days after the date of serving.

(4) Therapeutic diets as ordered by the resident's physician must be provided according to the service plan. Therapeutic diets that cannot customarily be prepared by a layperson must be calculated by a qualified dietician. Therapeutic diets that can customarily be prepared by a person in a family setting may be served by the facility.

(5) Supplies of staple foods for a minimum of a four-day period and perishable foods for a minimum of a one-day period must be maintained on the premises.

(6) Food must be obtained from sources that comply with all laws relating to food and food labeling. If food subject to spoilage is removed from its original container, it must be kept sealed and labeled. Food subject to spoilage must also be dated.

(7) Plastic containers with tight fitting lids are acceptable for storage of staple foods in the pantry.

(8) Potentially hazardous food, such as meat and milk products, must be stored at 45 degrees Fahrenheit or below. Hot food must be kept at 140 degrees Fahrenheit or above during preparation and serving. Food that is reheated must be heated to a minimum of 165 degrees Fahrenheit.

(9) Freezers must be kept at a temperature of 0 degrees Fahrenheit or below and refrigerators must be 41 degrees Fahrenheit or below. Thermometers must be placed in the warmest area of the refrigerator and freezer to assure proper temperature.

(10) Food must be prepared and served with the least possible manual contact, with suitable utensils, and on surfaces that have been cleaned, rinsed, and sanitized before use to prevent cross-contamination.

(11) Facilities must prepare food in accordance with established food preparation practices and safety techniques.

(12) A food service employee, while infected with a communicable disease that can be transmitted by foods, or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, must not work in the food service area in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

(13) Effective hair restraints must be worn to prevent the contamination of food.

(14) Tobacco products may not be used in the food preparation and service areas.

(15) Kitchen employees must wash their hands before returning to work after using the lavatory.

(16) Dishwashing chemicals used in the kitchen may be stored in plastic containers if they are the original containers in which the manufacturer packaged the chemicals.

(17) Sanitary dishwashing procedures and techniques must be followed.

(18) Facilities that house 17 or more residents must comply with 25 TAC Chapter 228 (relating to Retail Food) and local health ordinances or requirements must be observed in the storage, preparation, and distribution of food; in the cleaning of dishes, equipment, and work area; and in the storage and disposal of waste.

(f) Infection prevention and control.

(1) Each facility must establish, implement, enforce, and maintain an infection prevention and control policy and procedure designated to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

(2) The facility must comply with rules regarding special waste in 25 TAC Chapter 1, Subchapter K (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(3) The facility must immediately report the name of any resident of a facility with a reportable disease as specified in 25 TAC Chapter 97, Subchapter A (relating to Control of Communicable Diseases) to the city health officer, county health officer, or health unit director having jurisdiction, and implement appropriate infection control procedures as directed by the local health authority.

(4) The facility must have, implement, enforce, and maintain written policies for the control of communicable disease among employees and residents, which must address tuberculosis (TB) screening and provision of a safe and sanitary environment for residents and employees.

(A) If an employee contracts a communicable disease that is transmissible to residents through food handling or direct resident care, the facility must exclude the employee from providing these services for the applicable period of communicability.

(B) The facility must maintain evidence of compliance with local and state health codes or ordinances regarding employee and resident health status.

(C) The facility must screen all employees for TB within two weeks of employment and annually, according to Centers for Disease Control and Prevention (CDC) screening guidelines. All persons who provide services under an outside resource contract must, upon request of the facility, provide evidence of compliance with this requirement.

(D) The facility's policies and practices for resident TB screening must ensure compliance with the recommendations of a resident's attending physician and consistency with CDC guidelines.

(5) The facility's infection prevention and control program established under paragraph (1) of this subsection must include written policies and procedures for:

(A) monitoring key infectious agents, including multidrug-resistant organisms, as those terms are respectively defined in §553.3 of this chapter (relating to Definitions);

(B) wearing personal protective equipment, such as gloves, a gown, or a mask when called on for anticipated exposure, and properly cleaning hands before and after touching another resident;

(C) cleaning and disinfecting environmental surfaces, including door knobs, handrails, light switches, and hand held electronic control devices;

(D) using universal precautions for blood and bodily fluids; and

(E) removing soiled items (such as used tissues, wound dressings, incontinence briefs, and soiled linens) from the environment at least once daily, or more often if an infection or infectious disease is present or suspected.

(6) The facility must establish, implement, enforce, and maintain a written policy and procedures for making a rapid influenza diagnostic test, as defined in §553.3 of this chapter, available to a resident who is exhibiting flu like symptoms.

(7) Personnel must handle, store, process, and transport linens to prevent the spread of infection.

(8) A facility must use universal precautions in the care of all residents.

(9) A facility must establish, implement, enforce, and maintain a written policy to protect a resident from vaccine preventable diseases in accordance with Texas Health and Safety Code, Chapter 224.

(A) The policy must:

(i) require an employee or a contractor providing direct care to a resident to receive vaccines for the vaccine preventable diseases specified by the facility based on the level of risk the employee or contractor presents to residents by the employee's or contractor's routine and direct exposure to residents;

(ii) specify the vaccines an employee or contractor is required to receive in accordance with clause (i) of this subparagraph;

(iii) include procedures for the facility to verify that an employee or contractor has complied with the policy;

(iv) include procedures for the facility to exempt an employee or contractor from the required vaccines for the medical conditions identified as contraindications or precautions by the CDC;

(v) include procedures the employee or contractor must follow to protect residents from exposure to disease for an employee or contractor who is exempt from the required vaccines, such as the use of protective equipment, like gloves and masks, based on the level of risk the employee or contractor presents to residents by the employee's or contractor's routine and direct exposure to residents;

(vi) prohibit discrimination or retaliatory action against an employee or contractor who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the CDC, except that required use of protective medical equipment, including gloves and masks, may not be considered retaliatory action;

(vii) require the facility to maintain a written or electronic record of each employee's or contractor's compliance with or exemption from the policy; and

(viii) include disciplinary actions the facility may take against an employee or contractor who fails to comply with the policy.

(B) The policy may:

(i) include procedures for an employee or contractor to be exempt from the required vaccines based on reasons of conscience, including religious beliefs; and

(ii) prohibit an employee or contractor who is exempt from the required vaccines from having contact with residents during a public health disaster, as defined in Texas Health and Safety Code §81.003.

(g) Restraints and seclusion. All restraints for purposes of behavioral management, staff convenience, or resident discipline are prohibited. Seclusion is prohibited.

(1) As provided in §553.267(a)(3) of this subchapter (relating to Rights), a facility may use physical or chemical restraints only:

(A) if the use is authorized in writing by a physician and specifies:

(i) the circumstances under which a restraint may be used; and

(ii) the duration for which the restraint may be used; or

(B) if the use is necessary in an emergency to protect the resident or others from injury.

(2) A behavioral emergency is a situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by a resident:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the resident or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) could not reasonably have been anticipated; and

(D) is not addressed in the resident's service plan.

(3) Except in a behavioral emergency, a restraint must be administered only by qualified medical personnel.

(4) A restraint may not be administered under any circumstance if it:

(A) obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;

(B) impairs the resident's breathing by putting pressure on the resident's torso;

(C) interferes with the resident's ability to communicate; or

(D) places the resident in a prone or supine position.

(5) If a facility uses a restraint hold in a circumstance described in paragraph (2) of this subsection, the facility must use an acceptable restraint hold.

(A) An acceptable restraint hold is a hold in which the individual's limbs are held close to the body to limit or prevent movement and that does not violate the provisions of paragraph (4) of this subsection.

(B) After the use of restraint, the facility must:

(i) with the resident's consent, make an appointment with the resident's physician no later than the end of the first working day after the use of restraint and document in the resident's record that the appointment was made; or

(ii) if the resident refuses to see the physician, document the refusal in the resident's record.

(C) As soon as possible but no later than 24 hours after the use of restraint, the facility must notify one of the following persons, if there is such a person, that the resident has been restrained:

(i) the resident's legally authorized representative; or

(ii) an individual actively involved in the resident's care, unless the release of this information would violate other law.

(D) If, under the Health Insurance Portability and Accountability Act, the facility is a "covered entity," as defined in 45 CFR §160.103, any notification provided under subparagraph (C)(ii) of this paragraph must be to a person to whom the facility is allowed to release information under 45 CFR §164.510.

(6) In order to decrease the frequency of the use of restraint, facility staff must be aware of and adhere to the findings of the resident assessment required in §553.259(b) of this subchapter (relating to Admission Policies and Procedures) for each resident.

(7) A facility may adopt policies that allow less use of restraint than allowed by the rules of this chapter.

(8) A facility may not discharge or otherwise retaliate against:

(A) an employee, resident, or other person because the employee, resident, or other person files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility; or

(B) a resident because someone on behalf of the resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility.

(h) Wheelchair self-release seat belts.

(1) For the purposes of this section, a "self-release seat belt" is a seat belt on a resident's wheelchair that the resident demonstrates the ability to fasten and release without assistance. A self-release seat belt is not a restraint.

(2) Except as provided in paragraph (3) of this subsection, a facility must allow a resident to use a self-release seat belt if:

(A) the resident or the resident's legal guardian requests that the resident use a self-release seat belt;

(B) the resident consistently demonstrates the ability to fasten and release the self-release seat belt without assistance;

(C) the use of the self-release seat belt is documented in and complies with the resident's individual service plan; and

(D) the facility receives written authorization, signed by the resident or the resident's legal guardian, for the resident to use the self-release seat belt.

(3) A facility that advertises as a restraint-free facility is not required to allow a resident to use a self-release seat belt if the facility:

(A) provides a written statement to all residents that the facility is restraint-free and is not required to allow a resident to use a self-release seat belt; and

(B) makes reasonable efforts to accommodate the concerns of a resident who requests a self-release seat belt in accordance with paragraph (2) of this subsection.

(4) A facility is not required to continue to allow a resident to use a self-release seat belt in accordance with paragraph (2) of this subsection if:

(A) the resident cannot consistently demonstrate the ability to fasten and release the seat belt without assistance;

(B) the use of the self-release seat belt does not comply with the resident's individual service plan; or

(C) the resident or the resident's legal guardian revokes in writing the authorization for the resident to use the self-release seat belt.

§553.263. Health maintenance activities.

(a) A facility may allow personal care staff to perform a health maintenance activity (HMA) for a resident, without being delegated, only if:

(1) the activity is performed for a person with a functional disability as defined in §553.3 of this chapter (relating to Definitions);

(2) a registered nurse (RN) acting on behalf of the facility conducts and documents an assessment in accordance with subsection (b) of this section, and determines, based on the assessment, that the activity qualifies as an HMA not requiring delegation; and

(3) the facility ensures and documents that all the conditions and requirements of subsection (d) of this section are met:

(A) the resident, the resident's legally authorized representative, or other adult chosen by the resident, as applicable, is willing and able to direct personal care staff to perform the task without RN supervision; and

(B) the resident, the resident's legally authorized representative, or other adult chosen by the resident, as applicable, is willing and able and has agreed in writing, to participate in directing the unlicensed person's actions in carrying out the HMA;

(4) the activity addresses a condition that is stable and predictable, as defined in §553.3 of this chapter; and

(5) the activity is performed for a resident who could perform the task on his or her own but for a functional disability that prevents it.

(b) The RN conducting an assessment for purposes of subsection (a)(1) of this section must conduct it in accordance with Board of Nursing rules at 22 TAC §225.6 (relating to RN Assessment of the Client).

(1) The RN's assessment must consider each element listed in 22 TAC §225.6, and all relevant aspects of the resident's environment, to develop an overall understanding of the resident's health status.

(2) In assessing each element required by paragraph (1) of this subsection, the RN may consider strength in one element to compensate for or offset a weakness in another element, as long as the RN determines that all required conditions in subsection (c) of this section are met.

(3) The RN is not required to know the identity of the personal care staff member who will perform the activity or his or her specific qualifications. The RN is not required to determine the competency of the personal care staff who will perform the activity.

(4) The RN must reassess a resident's status in accordance with this subsection any time there is a change in the resident's condition that may affect the resident's physical or cognitive abilities, or the stability or predictability of the resident's condition and, at a minimum, must reassess the resident's status:

(A) at least once annually; or

(B) at least once every six months if the resident has been diagnosed with Alzheimer's disease or a related disorder or resides in an Alzheimer's disease certified facility or unit.

(c) To meet the condition of subsection (a)(2) of this section, the RN, in addition to conducting a resident assessment meeting the requirements of subsections (a)(1) and (b) of this section, must determine and document that all of the conditions listed in 22 TAC §225.8(a)(2) (relating to Health Maintenance Activities Not Requiring Delegation) exist.

(d) If the RN determines under subsection (a)(1) of this section that an activity does not qualify as an HMA not requiring delegation, personal care staff may perform that activity for the resident only if:

(1) the RN has determined in accordance with 22 Texas Administrative Code (TAC) Chapter 225 (relating to RN Delegation to Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions) that:

(A) the activity can be delegated to a personal care staff member; and

(B) the activity constitutes the medication administration;

(2) the RN has properly delegated the task to the personal care staff member in accordance with 22 TAC Chapter 225 and §553.261(a)(1)(A)(iii) of this chapter (relating to Coordination of Care); and

(3) the medication and medication administration requirements of §553.261(a) of this chapter are otherwise met.

§553.265. Resident Records and Retention.

(a) Resident records.

(1) Records that pertain to residents must be treated as confidential and properly safeguarded from unauthorized use, loss, or destruction.

(2) Resident records must contain:

(A) information contained in the facility's standard and customary admission form;

(B) a record of the resident's assessments;

(C) the resident's service plan;

(D) physician's orders, if any;

(E) any advance directives;

(F) documentation of a health examination by a physician performed within 30 days before admission or 14 days after admission, unless:

(i) a transferring hospital or facility has a physical examination in the medical record; or

(ii) the resident is a Christian Scientist;

(G) documentation by health care professionals of any services delivered in accordance with the licensing, certification, or other regulatory standards applicable to the health care professional under law; and

(H) a copy of the most recent court order appointing a guardian of a resident or a resident's estate and letters of guardianship that the facility received in response to the request made in accordance with subsection (c) of this section.

(3) Records must be available to residents, their legal representatives, and HHSC staff.

(b) Resident finances. The facility must keep a simple financial record on all charges billed to the resident for care and these records must be available to HHSC. If the resident entrusts the handling of any personal finances to the facility, a simple financial record must be maintained to document accountability for receipts and expenditures, and these records must be available to HHSC. Receipts for payments from residents or family members must be issued upon request.

(c) Guardianship Record Requirements.

(1) A facility must request, from a resident's legally authorized representative or the person responsible for the resident's support, a copy of:

(A) the current court order appointing a guardian for the resident or the resident's estate; and

(B) current letters of guardianship for the resident.

(2) A facility must request the court order and letters of guardianship:

(A) when the facility admits an individual; and

(B) when the facility becomes aware a guardian is appointed after the facility admits a resident.

(3) A facility must request an updated copy of the court order and letters of guardianship at each annual assessment and retain documentation of any change.

(4) A facility must make at least one follow-up request within 30 days after the facility makes a request in accordance with paragraphs (2) or (3) of this subsection if the facility has not received:

(A) a copy of the court order and letters of guardianship; or

(B) a response that there is no court order or letters of guardianship.

(5) A facility must keep in the resident's record:

(A) documentation of the results of the request for the court order and letters of guardianship; and

(B) a copy of the court order and letters of guardianship.

§553.267. Rights.

(a) Residents' Bill of Rights.

(1) A facility must:

(A) provide a copy of the Residents' Bill of Rights to each resident; and

(B) post the Residents' Bill of Rights, as provided by HHSC, in a prominent place in the facility and written in the primary language of each resident.

(2) A resident has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where lawfully restricted. The resident has the right to be free of interference, coercion, discrimination, and reprisal in exercising these civil rights.

(3) Each resident in the facility has the right to:

(A) be free from physical and mental abuse, including corporal punishment or physical and chemical restraints that are administered for the purpose of discipline or convenience and not required to treat the resident's medical symptoms;

(i) A provider may use physical or chemical restraints only if the use is authorized in writing by a physician or if the use is necessary in an emergency to protect the resident or others from injury.

(ii) A physician's written authorization for the use of restraints must specify the circumstances under which the restraints may be used and the duration for which the restraints may be used.

(iii) Except in an emergency, restraints may only be administered by qualified medical personnel.

(B) participate in activities of social, religious, or community groups unless the participation interferes with the rights of others.

(C) practice the religion of the resident's choice.

(D) if intellectually disabled, with a court-appointed guardian of the person, participate in a behavior modification program involving use of restraints, consistent with subparagraph (A) of this paragraph, or adverse stimuli only with the informed consent of the guardian.

(E) be treated with respect, consideration, and recognition of his or her dignity and individuality, without regard to race, religion, national origin, sex, age, disability, marital status, or source of payment. This means that the resident:

(i) has the right to make his or her own choices regarding personal affairs, care, benefits, and services;

(ii) has the right to be free from abuse, neglect, and exploitation; and

(iii) if protective measures are required, has the right to designate a guardian or representative to ensure the right to quality stewardship of his or her affairs.

(F) a safe and decent living environment.

(G) not be prohibited from communicating in his or her native language with other residents or employees for the purpose of acquiring or providing any type of treatment, care, or services.

(H) complain about the resident's care or treatment. The complaint may be made anonymously or communicated by a person designated by the resident. The provider must promptly respond to resolve the complaint. The provider must not discriminate or take other punitive action against a resident who makes a complaint.

(I) receive and send unopened mail, and the provider must ensure that the resident's mail is sent and delivered promptly.

(J) unrestricted communication, including personal visitation with any person of the resident's choice, including family members and representatives of advocacy groups and community service organizations, at any reasonable hour.

(K) make contacts with the community and to achieve the highest level of independence, autonomy, and interaction with the community of which the resident is capable.

(L) manage his or her financial affairs.

(1) The resident may authorize in writing another person to manage his or her money.

(2) The resident may choose the manner in which his or her money is managed, including a money management program, a representative payee program, a financial power of attorney, a trust, or a similar method, and the resident may choose the least restrictive of these methods.

(3) The resident must be given, upon request of the resident or the resident's representative, but at least quarterly, an accounting of financial transactions made on his or her behalf by the facility should the facility accept his or her written delegation of this responsibility to the facility in conformance with state law.

(M) access the resident's records, which are confidential and may not be released without the resident's consent, except:

(i) to another provider, if the resident transfers residence; or

(ii) if the release is required by another law.

(N) choose and retain a personal physician and to be fully informed in advance about treatment or care that may affect the resident's well-being.

(O) participate in developing his or her individual service plan that describes the resident's medical, nursing, and psychological needs and how the needs will be met.

(P) be given the opportunity to refuse medical treatment or services after the resident:

(i) is advised by the person providing services of the possible consequences of refusing treatment or services; and

(ii) acknowledges that he or she understands the consequences of refusing treatment or services.

(Q) unaccompanied access to a telephone at a reasonable hour or in case of an emergency or personal crisis.

(R) privacy, while attending to personal needs and a private place for receiving visitors or associating with other residents, unless providing privacy would infringe on the rights of other residents.

(1) This right applies to medical treatment, written communications, telephone conversations, meeting with family, and access to resident councils.

(2) If a resident is married and the spouse is receiving similar services, the couple may share a room.

(S) retain and use personal possessions, including clothing and furnishings, as space permits, and may be limited for the health and safety of other residents.

(T) determine his or her dress, hair style, or other personal effects according to individual preference, except the resident has the responsibility to maintain personal hygiene.

(U) retain and use personal property in his or her immediate living quarters and to have an individual locked area (cabinet, closet, drawer, footlocker, etc.) in which to keep personal property.

(V) refuse to perform services for the facility, except as contracted for by the resident and operator.

(W) be informed by the provider no later than the 30th day after admission:

(i) whether the resident is entitled to benefits under Medicare or Medicaid; and

(ii) which items and services are covered by these benefits, including items or services for which the resident may not be charged.

(X) not be transferred or discharged unless:

(i) the transfer is for the resident's welfare, and the resident's needs cannot be met by the facility;

(ii) the resident's health is improved sufficiently so that services are no longer needed;

(iii) the resident's health and safety or the health and safety of another resident would be endangered if the transfer or discharge was not made;

(iv) the provider ceases to operate or to participate in the program that reimburses for the resident's treatment or care; or

(v) the resident fails, after reasonable and appropriate notice, to pay for services.

(Y) not be transferred or discharged, except in an emergency, until the 30th day after the date the facility provides written notice to the resident, the resident's legal representative, or a member of the resident's family, stating:

(i) that the facility intends to transfer or discharge the resident;

(ii) the reason for the transfer or discharge;

(iii) the effective date of the transfer or discharge;

(iv) if the resident is to be transferred, the location to which the resident will be transferred; and

(v) any appeal rights available to the resident.

(Z) leave the facility temporarily or permanently, subject to contractual or financial obligations.

(AA) have access to the State Ombudsman and a certified ombudsman.

(BB) execute an advance directive, under Texas Health and Safety Code, Chapter 166, or designate a guardian in advance of need to make decisions regarding the resident's health care should the resident become incapacitated.

(b) Providers' Bill of Rights.

(1) A facility must post a Providers' Bill of Rights in a prominent place in the facility.

(2) The Providers' Bill of Rights must provide that a provider of assisted living services has the right to:

(A) be shown consideration and respect that recognizes the dignity and individuality of the provider and the facility;

(B) terminate a resident's contract for just cause after a written 30-day notice;

(C) terminate a contract immediately, after notice to HHSC, if the provider finds that a resident creates a serious or immediate threat to the health, safety, or welfare of other residents of the facility, except during evening hours and on weekends or holidays, notice to HHSC must be made to 1-800-458-9858;

(D) present grievances, file complaints, or provide information to state agencies or other persons without threat of reprisal or retaliation;

(E) refuse to perform services for the resident or the resident's family other than those contracted for by the resident and the provider;

(F) contract with the community to achieve the highest level of independence, autonomy, interaction, and services to residents;

(G) access patient information concerning a client referred to the facility, which must remain confidential as provided by law;

(H) refuse a person referred to the facility if the referral is inappropriate;

(I) maintain an environment free of weapons and drugs; and

(J) be made aware of a resident's problems, including self-abuse, violent behavior, alcoholism, or drug abuse.

(c) Access to residents. The facility must allow an employee of HHSC or an employee of a local authority into the facility as necessary to provide services to a resident.

(d) Authorized electronic monitoring (AEM).

(1) A facility must permit a resident, or the resident's guardian or legal representative, to monitor the resident's room through the use of electronic monitoring devices.

(2) A facility may not refuse to admit an individual and may not discharge a resident because of a request to conduct authorized electronic monitoring.

(3) HHSC Information Regarding Authorized Electronic Monitoring form must be signed by or on behalf of all new residents upon admission. The form must be completed and signed by or on behalf of all current residents. A copy of the form must be maintained in the active portion of the resident's clinical record.
Figure: 26 TAC §553.267(d)(3)

(4) A resident, or the resident's guardian or legal representative, who wishes to conduct AEM must request AEM by giving a completed, signed, and dated HHSC Request for Authorized Electronic Monitoring form to the manager or designee. A copy of the form must be maintained in the active portion of the resident's clinical record.

(A) If a resident has the capacity to request AEM and has not been judicially declared to lack the required capacity, only the resident may request AEM, notwithstanding the terms of any durable power of attorney or similar instrument.

(B) If a resident has been judicially declared to lack the capacity required to request AEM, only the guardian of the resident may request AEM.

(C) If a resident does not have the capacity to request AEM and has not been judicially declared to lack the required capacity, only the legal representative of the resident may request AEM.

(i) A resident's physician makes the determination regarding the capacity to request AEM. Documentation of the determination must be made in the resident's clinical record.

(ii) When a resident's physician determines the resident lacks the capacity to request AEM, a person from the following list, in order of priority, may act as the resident's legal representative for the limited purpose of requesting AEM:

(I) a person named in the resident's medical power of attorney or other advance directive;

(II) the resident's spouse;

(III) an adult child of the resident who has the waiver and consent of all other qualified adult children of the resident to act as the sole decision-maker;

(IV) a majority of the resident's reasonably available adult children;

(V) the resident's parents; or

(VI) the individual clearly identified to act for the resident by the resident before the resident became incapacitated or the resident's nearest living relative.

(5) A resident, or the resident's guardian or legal representative, who wishes to conduct AEM must also obtain the consent of other residents in the room, using the HHSC Consent to Authorized Electronic Monitoring form. When complete, the form must be given to the manager or designee. A copy of the form must be maintained in the active portion of the resident's clinical record. AEM cannot be conducted without the consent of other residents in the room.

(A) Consent to AEM may be given only by:

(i) the other resident or residents in the room;

(ii) the guardian of the other resident, if the resident has been judicially declared to lack the required capacity; or

(iii) the legal representative of the other resident, determined by following the same procedure established under paragraph (4)(C) of this subsection.

(B) Another resident in the room may condition consent on:

(i) pointing the camera away from the consenting resident, when the proposed electronic monitoring is a video surveillance camera; and

(ii) limiting or prohibiting the use of an audio electronic monitoring device.

(C) AEM must be conducted in accordance with any limitation placed on the monitoring as a condition of the consent given by or on behalf of another resident in the room. The resident's roommate, or the roommate's guardian or legal representative, assumes responsibility for assuring AEM is conducted according to the designated limitations.

(D) If AEM is being conducted in a resident's room, and another resident is moved into the room who has not yet consented to AEM, the monitoring must cease until the new resident, or the resident's guardian or legal representative, consents.

(6) When the completed HHSC Request for Authorized Electronic Monitoring form and the HHSC Consent to Authorized Electronic Monitoring form, if applicable, have been given to the manager or designee, AEM may begin.

(A) Anyone conducting AEM must post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that the room is being monitored by an electronic monitoring device.

(B) The resident, or the resident's guardian or legal representative, must pay for all costs associated with conducting AEM, including installation in compliance with life safety and electrical codes, maintenance, removal of the equipment, posting and removal of the notice, or repair following removal of the equipment and notice, other than the cost of electricity.

(C) The facility must meet residents' requests to have a video camera obstructed to protect their dignity.

(D) The facility must make reasonable physical accommodation for AEM, which includes providing:

(i) a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

(ii) access to power sources for the video surveillance camera or other electronic monitoring device.

(7) All facilities, regardless of whether AEM is being conducted, must post an 8 1/2-inch by 11-inch notice at the main facility entrance. The notice must be entitled "Electronic Monitoring" and must state, in large, easy-to-read type, "The rooms of some residents may be monitored electronically by or on behalf of the residents. Monitoring may not be open and obvious in all cases."

(8) A facility may:

(A) require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room, and meets all local and state regulations;

(B) require AEM to be conducted in plain view; and

(C) place a resident in a different room to accommodate a request for AEM.

(9) A facility may not discharge a resident because covert electronic monitoring is being conducted by or on behalf of a resident. If a facility discovers a covert electronic monitoring device and it is no longer covert as defined in §553.3 of this chapter (relating to Definitions), the resident must meet all the requirements for AEM before monitoring is allowed to continue.

(10) All instances of abuse or neglect must be reported to HHSC, as required by §553.273 of this subchapter (relating to Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities). For purposes of the duty to report abuse or neglect, the following apply.

(A) A person who is conducting electronic monitoring on behalf of a resident is considered to have viewed or listened to a recording made by the electronic monitoring device on or before the 14th day after the date the recording is made.

(B) If a resident, who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring, gives a recording made by the electronic monitoring device to a person and directs the person to view or listen to the recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the recording is considered to have viewed or listened to the recording on or before the seventh day after the date the person receives the recording.

(C) A person is required to report abuse based on the person's viewing of or listening to a recording only if the incident of abuse is acquired on the recording. A person is required to report neglect based on the person's viewing of or listening to a recording only if it is clear from viewing or listening to the recording that neglect has occurred.

(D) If abuse or neglect of the resident is reported to the facility and the facility requests a copy of any relevant recording made by an electronic monitoring device, the person who possesses the recording must provide the facility with a copy at the facility's expense. The cost of the copy must not exceed the community standard. If the contents of the recording are transferred from the original technological format, a qualified professional must do the transfer.

(E) A person who sends more than one recording to HHSC must identify each recording on which the person believes an incident of abuse or evidence of neglect may be found. Tapes or recordings should identify the place on the recording that an incident of abuse or evidence of neglect may be found.

§553.269. Access to Residents and Records by the State Long-Term Care Ombudsman Program.

(a) A resident has the right to be visited by the State Ombudsman, a certified ombudsman, or an ombudsman intern.

(b) In accordance with 42 United States Code (U.S. Code) §3058g (b)(1)(A) and 45 CFR §1324.11(e)(2), a facility must allow:

(1) the State Ombudsman, a certified ombudsman, and an ombudsman intern to have:

(A) immediate, private, and unimpeded access to enter the facility at any time during the facility's regular business hours or regular visiting hours;

(B) immediate, private, and unimpeded access to a resident; and

(C) immediate and unimpeded access to the name and contact information of the resident's legally authorized representative, if the State Ombudsman, a certified ombudsman, or an ombudsman intern determines the information is needed to perform a function of the Ombudsman Program; and

(2) the State Ombudsman and a certified ombudsman to have immediate, private, and unimpeded access to enter the facility at a time other than regular business hours or visiting hours, if the State Ombudsman or a certified ombudsman determines access may be required by the circumstances to be investigated.

(c) A facility, in accordance with 42 U.S. Code §3058g (b)(1)(B) and 45 CFR §1324.11(e)(2), must allow the State Ombudsman and a certified ombudsman to have immediate access to:

(1) all files, records, and other information concerning a resident, including an incident report involving the resident, if:

(A) the State Ombudsman or certified ombudsman has the consent of the resident or legally authorized representative;

(B) the resident is unable to communicate consent to access and has no legally authorized representative; or

(C) such access is necessary to investigate a complaint and the following occurs:

(i) the resident's legally authorized representative refuses to give consent to access to the records, files, and other information;

(ii) the State Ombudsman or certified ombudsman has reasonable cause to believe that the legally authorized representative is not acting in the best interests of the resident; and

(iii) if it is the certified ombudsman seeking access to the records, files, or other information, the certified ombudsman obtains the approval of the State Ombudsman to access the records, files, or other information without the legally authorized representative's consent; and

(2) the administrative records, policies, and documents of the facility to which the residents or general public have access.

(d) The rules adopted under the Health Insurance Portability and Accountability Act of 1996, 45 CFR part 164, subparts A and E, do not preclude a facility from releasing protected health information or other identifying information regarding a resident to the State Ombudsman or a certified ombudsman if the requirements of subsections (b)(1)(C) and (c)(1) of this section are otherwise met. The State Ombudsman and a certified ombudsman are each a "health oversight agency" as that phrase is defined in 45 CFR §164.501.

§553.271. Postings.

An assisted living facility must prominently and conspicuously post for display in a public area of the facility that is readily available to residents, employees, and visitors:

(1) the license issued under this chapter;

(2) a sign prescribed by HHSC that specifies complaint procedures established under these rules and specifies how complaints may be filed with HHSC;

(3) a notice in the form prescribed by HHSC stating that inspection and related reports are available at the facility for public inspection and providing HHSC toll-free telephone number that may be used to obtain information concerning the facility;

(4) a copy of the most recent inspection report relating to the facility;

(5) Residents' Bill of Rights;

(6) Providers' Bill of Rights;

(7) the telephone number of the managing local ombudsman and the toll-free number of the Ombudsman Program, 1-800-252-2412;

(8) the facility's normal 24-hour staffing patterns; and

(9) a sign stating: "Cases of Suspected Abuse, Neglect, or Exploitation must be reported to HHSC by calling 1-800-458-9858."

§553.272. Advertisements, Solicitations, and Promotional Material. A facility must use its state-issued facility identification number in all advertisements, solicitations, and promotional materials, including yellow pages, brochures, and business cards.

§553.273. Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities.

(a) An assisted living facility staff who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse, neglect, or exploitation or that the resident has died due to abuse or neglect, must report the abuse, neglect, or exploitation to:

(1) HHSC Consumer Rights and Services section at 1-800-458-9858 or via the HHSC website; and

(2) one of the following law enforcement agencies:

(A) a municipal law enforcement agency, if the facility is located within the territorial boundaries of a municipality; or

(B) the sheriff's department of the county in which the facility is located if the facility is not located within the territorial boundaries of a municipality.

(b) An assisted living facility must follow its internal policies regarding the prevention, detection, and reporting of abuse, neglect, or exploitation.

(c) The following information must be reported to HHSC:

(1) name, age, and address of the resident;

(2) name and address of the person responsible for the care of the resident, if available;

(3) nature and extent of the elderly or disabled person's condition;

(4) basis of the reporter's knowledge; and

(5) any other relevant information.

(d) An assisted living facility must immediately make an oral report to HHSC of the alleged abuse, neglect, or exploitation and must investigate the allegation and send a written report of the investigation to HHSC state office no later than the fifth calendar day after the oral report.

(e) An assisted living facility may not retaliate against a person for filing a complaint, presenting a grievance, or providing in good faith information relating to personal care services provided by the facility.

(f) An assisted living facility must require facility staff, as a condition of employment with the facility, to sign a statement indicating that the employee may be criminally liable for the failure to report abuse, neglect, or exploitation.

§553.275. Emergency Preparedness and Response.

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

(1) Designated emergency contact--A person that a resident, or a resident's legally authorized representative, identifies in writing for the facility to contact in the event of a disaster or emergency.

(2) Disaster or emergency--An impending, emerging, or current situation that:

(A) interferes with normal activities of a facility and its residents;

(B) may:

(i) cause injury or death to a resident or staff member of the facility; or

(ii) cause damage to facility property;

(C) requires the facility to respond immediately to mitigate or avoid the injury, death, damage, or interference; and

(D) except as it relates to an epidemic or pandemic, or to the extent it is incident to another disaster or emergency, does not include a situation that arises from the medical condition of a resident, such as cardiac arrest, obstructed airway, or cerebrovascular accident.

(3) Emergency management coordinator (EMC)--The person who is appointed by the local mayor or county judge to plan, coordinate, and implement public health emergency preparedness planning and response within the local jurisdiction.

(4) Emergency preparedness coordinator (EPC)--The facility staff person with the responsibility and authority to direct, control, and manage the facility's response to a disaster or emergency.

(5) Evacuation summary--A current summary of the facility's emergency preparedness and response plan that includes:

(A) the name, address, and contact information for each receiving facility or pre-arranged evacuation destination identified by the facility under subsection (g)(3)(B) of this section;

(B) the procedure for safely transporting residents and any other individuals evacuating a facility;

(C) the name or title, and contact information, of the facility staff member to contact for evacuation information;

(D) the facility's primary mode of communication to be used during a disaster or emergency and the facility's supplemental or alternate mode of communication;

(E) the facility's procedure for notifying persons referenced in subsection (g)(5) of this section as soon as practicable about facility actions affecting residents during a disaster or emergency, including an impending or actual evacuation, and for maintaining ongoing communication with them for the duration of the disaster, emergency, or evacuation;

(F) a statement about training that is available to a resident, the resident's legally authorized representative, and each designated emergency contact for the resident, on procedures under the facility's plan that involve or impact each of them, respectively; and

(G) the facility's procedures for when a resident evacuates with a person other than a facility staff member.

(6) Plan--A facility's emergency preparedness and response plan.

(7) Receiving facility--A separate licensed assisted living facility:

(A) from which a facility has documented acknowledgement, from an identified authorized representative, as described in subsection (i)(2)(C) of this section; and

(B) to which the facility has arranged in advance of a disaster or emergency to evacuate some or all of a facility's residents, on a temporary basis due to a disaster or emergency, if, at the time of evacuation:

(i) the receiving facility can safely receive and accommodate the residents; and

(ii) the receiving facility has any necessary licensure or emergency authorization required to do so.

(8) Risk assessment--The process of evaluating, documenting, and examining potential disasters or emergencies that pose the highest risk to a facility, and their foreseeable impacts, based on the facility's geographical location, structural conditions, resident needs and characteristics, and other influencing factors, in order to develop an effective emergency preparedness and response plan.

(b) A facility must conduct and document a risk assessment that meets the definition in subsection (a)(8) of this section for potential internal and external emergencies or disasters relevant to the facility's operations and location, and that pose the highest risk to a facility, such as:

(1) a fire or explosion;

(2) a power, telecommunication, or water outage; contamination of a water source; or significant interruption in the normal supply of any essential, such as food or water;

(3) a wildfire;

(4) a hazardous materials accident;

(5) an active or threatened terrorist or shooter, a detonated bomb or bomb threat, or a suspicious object or substance;

(6) a flood or a mudslide;

(7) a hurricane or other severe weather conditions;

(8) an epidemic or pandemic;

(9) a cyber attack; and

(10) a loss of all or a portion of the facility.

(c) A facility must develop and maintain a written emergency preparedness and response plan based on its risk assessment under subsection (b) of this section and that is adequate to protect facility residents and staff in a disaster or emergency.

(1) The plan must address the eight core functions of emergency management, which are:

(A) direction and control;

(B) warning;

(C) communication;

(D) sheltering arrangements;

(E) evacuation;

(F) transportation;

(G) health and medical needs; and

(H) resource management.

(2) The facility must prepare for a disaster or emergency based on its plan and follow each plan procedure and requirement, including contingency procedures, at the time it is called for in the event of a disaster or emergency. In addition to meeting the other requirements of this section, the emergency preparedness plan must:

(A) document the contact information for the EMC for the area, as identified by the office of the local mayor or county judge;

(B) include a process that ensures communication with the EMC, both as a preparedness measure and in anticipation of and during a developing and occurring disaster or emergency; and

(C) include the location of a current list of the facility's resident population, which must be maintained as required under subsection (g)(3) of this section, that identifies:

(i) residents with Alzheimer's disease or related disorders;

(ii) residents who have an evacuation waiver approved under §553.41(f)(2) of this chapter (relating to Decrease in Capacity); and

(iii) residents with mobility limitations or other special needs who may need specialized assistance, either at the facility or in case of evacuation.

(3) A facility must notify the EMC of the facility's emergency preparedness and response plan, take actions to coordinate its planning and emergency response with the EMC, and document communications with the EMC regarding plan coordination.

(d) A facility must:

(1) maintain a current printed copy of the plan in a central location that is accessible to all staff, residents, and residents' legally authorized representatives at all times;

(2) at least annually and after an event described in subparagraphs (A) - (D) of this paragraph, review the plan, its evacuation summary, if any, and the contact lists described in subsection (g)(3) of this section, and update each:

(A) to reflect changes in information, including when an evacuation waiver is approved under §553.41(f)(2) of this chapter;

(B) within 30 days or as soon as practicable following a disaster or emergency if a shortcoming is manifested or identified during the facility's response;

(C) within 30 days after a drill, if, based on the drill, a shortcoming in the plan is identified; and

(D) within 30 days after a change in a facility policy or HHSC rule that would impact the plan;

(3) document reviews and updates conducted under paragraph (2) of this subsection, including the date of each review and dated documentation of changes made to the plan based on a review;

(4) provide residents and the residents' legally authorized representatives with a written copy of the plan or an evacuation summary, as defined in subsection (a)(5) of this section, upon admission, on request, and when the facility makes a significant change to a copy of the plan or evacuation summary it has provided to a resident or a resident's legally authorized representative;

(5) provide the information described in subsection (a)(5)(A) of this section to a resident or legally authorized representative who does not receive an evacuation summary under paragraph (4) of this subsection and requests that information;

(6) notify each resident, next of kin, or legally authorized representative, in writing, how to register for evacuation assistance with the Texas Information and Referral Network (2-1-1 Texas); and

(7) register as a provider with 2-1-1 Texas to assist the state in identifying persons who may need assistance in a disaster or emergency. In doing so, the facility is not required to identify or register individual residents for evacuation assistance.

(e) Core Function One: Direction and Control. A facility's plan must contain a section for direction and control that:

(1) designates the EPC, who is the facility staff person with the responsibility and authority to direct, control, and manage the facility's response to a disaster or emergency;

(2) designates an alternate EPC, who is the facility staff person with the responsibility and authority to act as the EPC if the EPC is unable to serve in that capacity; and

(3) assigns responsibilities to staff members by designated function or position and describes the facility's system for ensuring that each staff member clearly understands the staff member's own role and how to execute it, in the event of a disaster or emergency.

(f) Core Function Two: Warning. A facility's plan must contain a section for warning that:

(1) describes applicable procedures, methods, and responsibility for the facility and for the EMC and other outside organizations, based on facility coordination with them, to notify the EPC or alternate EPC, as applicable, of a disaster or emergency;

(2) identifies who, including during off hours, weekends, and holidays, the EPC or alternate EPC, as applicable, will notify of a disaster or emergency, and the methods and procedures for notification;

(3) describes a procedure for keeping all persons present in the facility informed of the facility's present plan for responding to a potential or current disaster or emergency that is impacting or threatening the area where the facility is located; and

(4) addresses applicable procedures, methods, and responsibility for monitoring local news and weather reports regarding a disaster or potential disaster or emergency, taking into consideration factors such as:

(A) location-specific natural disasters;

(B) whether a disaster is likely to be addressed or forecast in the reports; and

(C) the conditions, natural or otherwise, under which designated staff become responsible for monitoring news and weather reports for a disaster or emergency.

(g) Core Function Three: Communication. A facility's plan must contain a section for communication that:

(1) identifies the facility's primary mode of communication to be used during an emergency and the facility's supplemental or alternate mode of communication, and procedures for communication if telecommunication is affected by a disaster or emergency;

(2) includes instructions on when to call 911;

(3) includes the location of a list of current contact information, where it is easily accessible to staff, for each of the following:

(A) the legally authorized representative and designated emergency contacts for each resident;

(B) each receiving facility and pre-arranged evacuation destination, including alternate pre-arrangements, together with the written acknowledgement for each, as described and required in subsection (i)(2)(C) of this section;

(C) home and community support services agencies and independent health care professionals that deliver health care services to residents in the facility;

(D) personal contact information for facility staff, and

(E) the facility's resident population, which must identify residents who may need specialized assistance at the facility or in case of evacuation, as described in subsection (c)(2)(C) of this section;

(4) provides a method for the facility to communicate information to the public about its status during an emergency; and

(5) describes the facility's procedure for notifying at least the following persons, as applicable and as soon as practicable, about facility actions affecting residents during an emergency, including an impending or actual evacuation, and for maintaining ongoing communication for the duration of the emergency or evacuation:

(A) all facility staff members, including off-duty staff;

(B) each facility resident;

(C) any legally authorized representative of a resident;

(D) each resident's designated emergency contacts;

(E) each home and community support services agency or independent health care professional that delivers health care services to a facility resident;

(F) each receiving facility or evacuation destination to be utilized, if there is an impending or actual evacuation, which, if utilized at the time of evacuation, must be utilized in accordance with the pre-arranged acknowledged procedures described in subsection (i)(2)(C) of this section, where applicable, and must verify with the applicable destination that it is available, ready, and legally authorized at the time to receive the evacuated residents and can safely do so;

(G) the driver of a vehicle transporting residents or staff, medication, records, food, water, equipment, or supplies during an evacuation, and the employer of a driver who is not a facility staff person, and

(H) the EMC.

(h) Core Function Four: Sheltering Arrangements. A facility's plan must contain a section for sheltering arrangements that:

(1) describes the procedure for making and implementing a decision to remain in the facility during a disaster or emergency, that includes:

(A) the arrangements, staff responsibilities, and procedures for accessing and obtaining medication, records, equipment and supplies, water and food, including food to accommodate an individual who has a medical need for a special diet;

(B) facility arrangements and procedures for providing power and safe ambient temperatures in areas used by residents during a disaster or emergency; and

(C) if necessary, sheltering facility staff or emergency staff involved in responding to an emergency and, as necessary and appropriate, their family members; and

(2) includes a procedure for notifying HHSC Regulatory Services regional office for the area in which the facility is located and, in accordance with subsection (g)(5)(H) of this section, the EMC, immediately after the EPC or alternate EPC, as applicable, makes a decision to remain in the facility during a disaster or emergency.

(i) Core Function Five: Evacuation.

(1) A facility has the discretion to determine when an evacuation is necessary for the health and safety of residents and staff. However, a facility must evacuate if the county judge of the county in which the facility is located, the mayor of the municipality in which the facility is located mandates it by an evacuation order issued independently or concurrently with the governor.

(2) A facility's plan must contain a section for evacuation that:

(A) identifies evacuation destinations and routes, including at least each pre-arranged evacuation destination and receiving facility described in subparagraph (C) of this paragraph, and includes a map that shows each identified destination and route;

(B) describes the procedure for making and implementing a decision to evacuate some or all residents to one or more receiving facilities or pre-arranged evacuation destinations, with contingency procedures, and a plan for any pets or service animals that reside in the facility;

(C) includes the location of a current documented acknowledgment with an identified authorized representative of at least one receiving facility or pre-arranged evacuation destination, and at least one alternate. The documented acknowledgment must include acknowledgement by the receiving facility or pre-arranged evacuation destination of:

(i) arrangements for the receiving facility or pre-arranged destination to receive an evacuating facility's residents; and

(ii) the process for the facility to notify each applicable receiving facility or pre-arranged destination of the facility's plan to evacuate and to verify with the applicable destination that it is available, ready, and not legally restricted at the time from receiving the evacuated residents, and can do so safely;

(D) includes the procedure and the staff responsible for:

(i) notifying HHSC Regulatory Services regional office for the area in which the facility is located and, in accordance with subsection (g)(5)(H) of this section, the EMC, immediately after the EPC or alternate EPC, as applicable, makes a decision to evacuate, or as soon as feasible thereafter, if it is not safe to do so at the time of decision;

(ii) ensuring that sufficient facility staff with qualifications necessary to meet resident needs accompany evacuating residents to the receiving facility, pre-arranged evacuation destination, or other destination to which the facility evacuates, and remain with the residents, providing any necessary care, for the duration of the residents' stay in the receiving facility or other destination to which the facility evacuates;

(iii) ensuring that residents and facility staff present in the building have been evacuated;

(iv) accounting for and tracking the location of residents, facility staff, and transport vehicles involved in the facility evacuation, both during and after the facility evacuation, through the time the residents and facility staff return to the evacuated facility;

(v) accounting for residents absent from the facility at the time of the evacuation and residents who evacuate on their own or with a third party, and notifying them that the facility has been evacuated;

(vi) overseeing the release of resident information to authorized persons in an emergency to promote continuity of a resident's care;

(vii) contacting the EMC to find out if it is safe to return to the geographical area after an evacuation;

(viii) making or obtaining, as appropriate, a comprehensive determination whether and when it is safe to re-enter and occupy the facility after an evacuation;

(ix) returning evacuated residents to the facility and notifying persons listed in subsection (g)(5) of this section who were not involved in the return of the residents; and

(x) notifying the HHSC Regulatory Services regional office for the area in which the facility is located immediately after each instance when some or all residents have returned to the facility after an evacuation.

(j) Core Function Six: Transportation. A facility's plan must contain a section for transportation that:

(1) identifies current arrangements for access to a sufficient number of vehicles to safely evacuate all residents;

(2) identifies facility staff designated during an evacuation to drive a vehicle owned, leased, or rented by the facility; notification procedures to ensure designated staff's availability at the time of an evacuation; and methods for maintaining communication with vehicles, staff, and drivers transporting facility residents or staff during evacuation, in accordance with subsection (g)(5)(A) and (G) of this section;

(3) includes procedures for safely transporting residents, facility staff, and any other individuals evacuating a facility; and

(4) includes procedures for the safe and secure transport of, and staff's timely access to, the following resident items needed during an evacuation: oxygen, medications, records, food, water, equipment, and supplies.

(k) Core Function Seven: Health and Medical Needs. A facility's plan must contain a section for health and medical needs that:

(1) identifies special services that residents use, such as dialysis, oxygen, or hospice services;

(2) identifies procedures to enable each resident, notwithstanding an emergency, to continue to receive from the appropriate provider the services identified under paragraph (1) of this subsection; and

(3) identifies procedures for the facility to notify home and community support services agencies and independent health care professionals that deliver services to residents in the facility of an evacuation in accordance with subsection (g)(5)(E) of this section.

(l) Core Function Eight: Resource Management. A facility's plan must contain a section for resource management that:

(1) identifies a plan for identifying, obtaining, transporting, and storing medications, records, food, water, equipment, and supplies needed for both residents and evacuating staff during an emergency;

(2) identifies facility staff, by position or function, who are assigned to access or obtain the items under paragraph (1) of this subsection and other necessary resources, and to ensure their delivery to the facility, as needed, or their transport in the event of an evacuation;

(3) describes the procedure to ensure medications are secure and maintained at the proper temperature throughout an emergency; and

(4) describes procedures and safeguards to protect the confidentiality, security, and integrity of resident records throughout an emergency and any evacuation of residents.

(m) Receiving Facility. To act as a receiving facility, as defined in paragraph (a)(7) of this section, a facility's plan must include procedures for accommodating a temporary emergency placement of one or more residents from another assisted living facility, only in an emergency and only if:

(1) the facility does not exceed its licensed capacity, unless pre-approved in writing by HHSC, and the excess is not more than 10 percent of the facility's licensed capacity;

(2) the facility ensures that the temporary emergency placement of one or more residents evacuated from another assisted living facility does not compromise the health or safety of any evacuated or facility resident, facility staff, or any other individual;

(3) the facility is able to meet the needs of all evacuated residents and any other persons it receives on a temporary emergency basis, in accordance with §553.18(h) of this chapter, while continuing to meet the needs of its own residents, and of any of its own staff or other individuals it is sheltering at the facility during an emergency, in accordance with its plan under subsection (h) of this section;

(4) the facility maintains a log of each additional individual being housed in the facility that includes the individual's name, address, and the date of arrival and departure.

(5) the receiving facility ensures that each temporarily placed resident has at arrival, or as soon after arrival as practicable and no later than necessary to protect the health of the resident, each of the following necessary to the resident's continuity of care:

(A) necessary physician orders for care;

(B) medications;

(C) a service plan;

(D) existing advance directives; and

(E) contact information for each legally authorized representative and designated emergency contact of an evacuated resident, and a record of any notifications that have already occurred.

(n) Emergency preparedness and response plan training. The facility must:

(1) provide staff training on the emergency preparedness plan at least annually;

(2) train a facility staff member on the staff member's responsibilities under the plan:

(A) prior to the staff member assuming job responsibilities; and

(B) when a staff member's responsibilities under the plan change;

(3) conduct at least one unannounced annual drill with facility staff for severe weather or another emergency identified by the facility as likely to occur, based on the results of the risk assessment required by subsection (b) of this section;

(4) offer training, and document, for each, the provision or refusal of such training, to each resident, legally authorized representative, if any, and each designated emergency contact, on procedures under the facility's plan that involve or impact each of them, respectively; and

(5) document the facility's compliance with each paragraph of this subsection at the time it is completed.

(o) Self-reported incidents related to a disaster or emergency.

(1) A facility must report a fire to HHSC as follows:

(A) by calling 1-800-458-9858 immediately after the fire or as soon as practicable during the course of an extended fire; and

(B) by submitting a completed HHSC form titled "Fire Report for Long Term Care Facilities" within 15 calendar days after the fire.

(2) A facility must report to HHSC a death or serious injury of a resident, or threat to resident health or safety, resulting from an emergency or disaster as follows:

(A) by calling 1-800-458-9858 immediately after the incident, or, if the incident is of extended duration, as soon as practicable after the injury, death, or threat to the resident; and

(B) by conducting an investigation of the emergency and resulting resident injury, death, or threat, and submitting a completed HHSC Form 3613-A titled "SNF, NF, ICF/IID, ALF, DAHS and PPECC Provider Investigation Report with Cover Sheet." The facility must submit the completed form within five working days after making the telephone report required by paragraph (2)(A) of this subsection.

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 January 12, 2021.

TRD-202100155
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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SUBCHAPTER F. ADDITIONAL LICENSING STANDARDS FOR CERTIFIED ALZHEIMER'S ASSISTED LIVING FACILITIES

26 TAC §§553.301, 553.303, 553.305, 553.307, 553.309, 553.311

STATUTORY AUTHORITY

The new sections 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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.301. Manager Qualifications and Training.

(a) The manager of the certified Alzheimer's facility or the supervisor of the certified Alzheimer's unit must be 21 years of age, and have:

(1) an associate's degree in nursing or health care management;

(2) a bachelor's degree in psychology, gerontology, nursing, or a related field; or

(3) proof of graduation from an accredited high school or certification of equivalency of graduation and at least one year of experience working with persons with dementia.

(b) The manager or supervisor must complete six hours of annual continuing education regarding dementia care.

§553.303. Staff Training.

(a) In addition to the staff training requirements under §553.253 of this chapter (relating to Employee Qualifications and Training), all staff members must receive four hours of dementia-specific orientation prior to assuming any job responsibilities. Training must cover, at a minimum, the following topics:

(1) basic information about the causes, progression, and management of Alzheimer's disease;

(2) managing dysfunctional behavior; and

(3) identifying and alleviating safety risks to residents with Alzheimer's disease.

(b) In addition to the staff training requirements under §553.253 of this chapter, attendants must receive 16 hours of on-the-job supervision and training within the first 16 hours of employment following orientation. Training must cover:

(1) providing assistance with the activities of daily living;

(2) emergency and evacuation procedures specific to the dementia population;

(3) managing dysfunctional behavior; and

(4) behavior management, including prevention of aggressive behavior and de-escalation techniques, fall prevention, or alternatives to restraints.

(c) In addition to the staff training requirements under §553.253 of this chapter, attendants must annually complete 12 hours of in-service education regarding Alzheimer's disease. One hour of annual training must address behavior management, including prevention of aggressive behavior and de-escalation techniques, or fall prevention, or alternatives to restraints. Training for these subjects must be competency-based. Subject matter must address the unique needs of the facility. Additional suggested topics include:

(1) assessing resident capabilities and developing and implementing service plans;

(2) promoting resident dignity, independence, individuality, privacy, and choice;

(3) planning and facilitating activities appropriate for the dementia resident;

(4) communicating with families and other persons interested in the resident;

(5) resident rights and principles of self-determination;

(6) care of elderly persons with physical, cognitive, behavioral, and social disabilities;

(7) medical and social needs of the resident;

(8) common psychotropics and side effects; and

(9) local community resources.

§553.305. Staffing.

A facility must employ sufficient staff to provide services for and meet the needs of its Alzheimer's residents. In large facilities or units with 17 or more residents, two staff members must be immediately available when residents are present.

§553.307. Admission Procedures, Assessment, and Service Plan.

(a) Alzheimer's Assisted Living Disclosure Statement form. A facility must use the Alzheimer's Assisted Living Disclosure Statement form and amend the form if changes in the operation of the facility affect the information in the form.

(b) Pre-admission. The facility must establish procedures, such as an application process, interviews, and home visits, to ensure that the placement of prospective residents is appropriate and that their needs can be met.

(1) Prior to admitting a resident, facility staff must discuss and explain the Alzheimer's Assisted Living Disclosure Statement form with the family or responsible party.

(2) The facility must give the Alzheimer's Assisted Living Disclosure Statement form to any individual seeking information about the facility's care or treatment of residents with Alzheimer's disease and related disorders.

(c) Assessment. The facility must make a comprehensive assessment of each resident within 14 days after admission and annually. The assessment must include the items listed in §553.259(b)(1) of this chapter (relating to Admission Policies and Procedures).

(d) Service plan. Facility staff, with input from the family, if available, must develop an individualized service plan for each resident, based upon the resident assessment, within 14 days after admission. The service plan must address the individual needs, preferences, and strengths of the resident. The service plan must be designed to help the resident maintain the highest possible level of physical, cognitive, and social functioning. The service plan must be updated annually and upon a significant change in condition, based on an assessment of the resident.

§553.309. Activities Program.

(a) A facility must encourage socialization, cognitive awareness, self-expression, and physical activity in a planned and structured activities program. Activities must be individualized, based upon the resident assessment, and appropriate for each resident's abilities.

(b) The activity program must contain a balanced mixture of activities addressing cognitive, recreational, and activity of daily living (ADL) needs.

(1) Cognitive activities include arts, crafts, storytelling, poetry readings, writing, music, reading, discussion, reminiscences, and reviews of current events.

(2) Recreational activities include all socially interactive activities, such as board games and cards, and physical exercise. Care of pets is encouraged.

(3) Self-care ADLs include grooming, bathing, dressing, oral care, and eating. Occupational ADLs include cleaning, dusting, cooking, gardening, and yard work. Residents must be allowed to perform self-care ADLs as long as they are able, to promote independence and self-worth.

(c) Residents must be encouraged, but never forced, to participate in activities. Residents who choose not to participate in a large group activity must be offered at least one small group or one-on-one activity per day.

(d) Facilities must have an employee responsible for leading activities.

(1) Facilities with 16 or fewer residents must designate an employee to plan, supply, implement, and record activities.

(2) Facilities with 17 or more residents must employ, at a minimum, an activity director for 20 hours weekly. The activity director must be a qualified professional who:

(A) is a qualified therapeutic recreation specialist or an activities professional who is eligible for certification as a therapeutic recreation specialist, a therapeutic recreation assistant, or an activities professional by a recognized accrediting body, such as the National Council for Therapeutic Recreation Certification, the National Certification Council for Activity Professionals, or the Consortium for Therapeutic Recreation/Activities Certification, Inc.;

(B) has two years of experience in a social or recreational program within the last five years, one year of which was full-time in an activities program in a health care setting; or

(C) has completed an activity director training course approved by the National Association for Activity Professionals or the National Therapeutic Recreation Society.

(e) The activity director or designee must review each resident's medical and social history, preferences, and dislikes, in determining appropriate activities for the resident. Activities must be tailored to each resident's unique requirements and skills.

(f) The activities program must provide opportunities for group and individual settings. On weekdays, each resident must be offered at least one cognitive activity, two recreational activities, and three ADL activities each day. The cognitive and recreational activities (structured activities) must be at least 30 minutes in duration, with a minimum of six and a half hours of structured activity for the entire week. At least an hour and a half of structured activities must be provided during the weekend and must include at least one cognitive activity and one physical activity.

(g) The activity director or designee must create a monthly activities schedule. Structured activities should occur at the same time and place each week to ensure a consistent routine within the facility.

(h) The activity director or designee must annually attend at least six hours of continuing education regarding Alzheimer's disease or related disorders.

(i) Special equipment and supplies necessary to accommodate persons with a physical disability or other persons with special needs must be provided as appropriate.

§553.311. Physical Plant Requirements for Alzheimer's Units.

Alzheimer's units, if segregated from other parts of the Type B facility with approved security devices, must meet the following requirements within the Alzheimer's unit:

(1) Resident living areas must be in compliance with applicable requirements in Subchapter D of this chapter (relating to Facility Construction).

(2) Resident dining areas must be in compliance with applicable requirements in Subchapter D of this chapter for resident dining areas.

(3) Resident toilet and bathing facilities must be in compliance with applicable requirements in Subchapter D of this chapter for resident toilet and bathing facilities.

(4) A monitoring station must be provided within the Alzheimer's unit with a writing surface such as a desk or counter, chair, task illumination, telephone or intercom, and lockable storage for resident records.

(5) Access to at least two approved exits remote from each other must be provided in order to meet the NFPA 101 requirements.

(6) In large facilities, cross corridor control doors, if used for the security of the residents, must be similar to smoke doors, which are each 34 inches in width and swing in opposite directions. A latch or other fastening device on a door must be provided with a knob, handle, panic bar, or other simple type of releasing device.

(7) An outdoor area of at least 800 square feet must be provided in at least one contiguous space. This area must be connected to, be a part of, be controlled by, and be directly accessible from the facility.

(A) Such areas must have walls or fencing that do not allow climbing or present a hazard and meet the following requirements. These minimum dimensions do not apply to additional fencing erected along property lines or building setback lines for privacy or to meet requirements of local building authorities.

(i) Minimum distance of the enclosure fence from the building is 8 feet if the fence is parallel to the building and there are no window openings.

(ii) Minimum distance of the enclosure fence (parallel with building walls) from bedroom windows is 20 feet if the fencing is solid and 15 feet from bedroom windows if the fencing is open.

(iii) For unusual or unique site conditions, areas of enclosure may have alternate configurations with HHSC approval.

(B) Access to at least two approved exits remote from each other must be provided from the enclosed area in order to meet the Life Safety Code requirements.

(C) If the enclosed area involves a required exit from the building, the following additional requirements must be met:

(i) A minimum of two gates must be remotely located from each other if only one exit is enclosed. If two or more exits are enclosed by the fencing and entry access can be made at each door, a minimum of one gate is required.

(ii) The gates must be located to provide a continuous path of travel from the building exit to a public way, including walkways of concrete, asphalt, or other approved materials.

(iii) If gates are locked, the gate nearest the exit from the building must be locked with an electronic lock that operates the same as electronic locks on control doors or exit doors and is in compliance with the National Electrical Code for exterior exposure. Additional gates may also have electronic locks or may have keyed locks provided staff carry the keys. All gates may have keyed locks, provided all staff carry the keys, and the outdoor area has an area of refuge which:

(I) extends beyond a minimum of 30 feet from the building; and

(II) the area of refuge allows at least 15 square feet per person (resident, staff, visitor) potentially present at the time of a fire.

(8) Locking devices may be used on the control doors provided the following criteria are met:

(A) The building must have an approved sprinkler system and an approved fire alarm system to meet the licensing standards.

(B) The locking device must be electronic and must be released when any one of the following occurs:

(i) activation of the fire alarm or sprinkler system;

(ii) power failure to the facility; or

(iii) activation of a switch or button located at the monitoring station and at the main staff station.

(C) A key pad or buttons may be located at the control doors for routine use by staff.

(9) Locking devices may be used on the exit doors provided:

(A) the locking arrangements meet §7.2.1.6 of the NFPA 101; or

(B) the following criteria are met:

(i) the building must have an approved sprinkler system and an approved fire alarm system to meet the licensing standards;

(ii) the locking device must be electro-magnetic; that is, no type of throw-bolt is to be used;

(iii) the device must release when any one of the following occurs:

(I) activation of the fire alarm or sprinkler system;

(II) power failure to the facility; or

(III) activation of a switch or button located at the monitoring station and at the main staff station;

(iv) a key pad or buttons may be located at the control doors for routine use by staff;

(v) a manual fire alarm pull must be located within five feet of each exit door with a sign stating, "Pull to release door in an emergency"; and

(vi) staff must be trained in the methods of releasing the door device.

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 January 12, 2021.

TRD-202100156
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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SUBCHAPTER G. INSPECTIONS, INVESTIGATIONS, AND INFORMAL DISPUTE RESOLUTION

26 TAC §§553.327, 553.329, 553.331, 553.333, 553.335, 553.337

STATUTORY AUTHORITY

The new sections 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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.327. Inspections, Investigations, and Other Visits.

(a) HHSC inspection and survey personnel perform inspections and surveys, follow-up visits, complaint investigations, investigations of abuse or neglect, and other contact visits from time to time as they deem appropriate, or as required for carrying out the responsibilities of licensing.

(b) In addition to the inspections required under Subchapter B of this chapter (relating to Licensing), HHSC inspects a facility at least once every two years after the initial inspection.

(c) An inspection may be conducted by an individual surveyor or by a team, depending on the purpose of the inspection or survey, size of facility, and service provided by the facility, and other factors.

(d) To determine standard compliance which cannot be verified during regular working hours, HHSC, with the least possible interference to staff and residents, may conduct night or weekend inspections to cover specific aspects of a facility's operation.

(e) Generally, HHSC conducts routine and nonroutine inspections, surveys, complaint investigations and other visits made for the purpose of determining the appropriateness of resident care and day-to-day operations of a facility on an unannounced basis, unless there is justification for an exception.

(f) Certain visits may be announced, including, but not limited to, conditions when certain emergencies arise, such as fire, windstorm, or malfunctioning or nonfunctioning of electrical or mechanical systems.

(g) When HHSC conducts a complaint investigation, HHSC notifies the facility of the complaint received and a summary of the complaint, without identifying the source of the complaint. A complaint is an allegation received by HHSC regarding:

(1) abuse, neglect, or exploitation of a resident; or

(2) a violation of state standards.

(h) The facility must make all books, records, and other documents maintained by or on behalf of a facility accessible to HHSC upon request.

(1) HHSC is authorized to photocopy documents, photograph residents, and use any other available recording devices to preserve all relevant evidence of conditions found during an inspection, survey, or investigation that HHSC reasonably believes threaten the health and safety of a resident.

(2) Records and documents which may be requested and photocopied or otherwise reproduced include, but are not limited to, admission sheets, medication profiles, observation notes, medication refusal notes, and menu records.

(3) When the facility is requested to furnish the copies, the facility may charge HHSC at the rate not to exceed the rate charged by HHSC for copies. Collection must be by billing HHSC. The procedure of copying is the responsibility of the administrator or his designee. If copying requires removal of the records from the facility, a representative of the facility will be expected to accompany the records and assure their order and preservation.

(4) HHSC protects the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and HHSC policy.

§553.329. HHSC Investigation of Allegations of Abuse, Neglect or Exploitation.

(a) In accordance with the memorandum of understanding (relating to Memorandum of Understanding Concerning Protective Services for the Elderly), between HHSC and the Texas Department of Family and Protective Services (DFPS), HHSC receives and investigates reports of abuse, neglect, and exploitation of elderly and disabled persons or other residents living in facilities licensed under this chapter.

(b) HHSC only investigates complaints of abuse, neglect, or exploitation when the act occurs in the facility, when the licensed facility is responsible for the supervision of the resident at the time the act occurs, or when the alleged perpetrator is affiliated with the facility. Other complaints of abuse, neglect, or exploitation not meeting these criteria must be referred to DFPS.

(c) Complaint investigations include a visit to the resident's facility and consultation with persons thought to have knowledge of the circumstances. If the facility fails to admit HHSC staff for a complaint investigation, HHSC seeks a probate or county court order for admission. Investigators may request of the court that a peace officer accompany them.

(d) In cases concluded to be physical abuse, HHSC submits the written report of the HHSC investigation to the appropriate law enforcement agency.

§553.331. Determinations and Actions (Investigation Findings).

(a) HHSC determines if a facility meets HHSC licensing rules, including physical plant and facility operation requirements, by conducting inspections, surveys, investigations, and on-site visits.

(b) HHSC lists violations of licensing rules on a report of contact. The report of contact includes a specific reference to a licensing rule that has been violated.

(c) At the conclusion of an inspection, survey, investigation, or on-site visit, an HHSC surveyor conducts an exit conference to advise the facility of the findings resulting from the inspection, survey, investigation, or on-site visit.

(d) At the exit conference, the surveyor provides a copy of the report of contact described in subsection (b) of this section to the facility.

(e) If, after the initial exit conference, an HHSC surveyor cites an additional licensing rule violation, the surveyor conducts another exit conference regarding the newly identified violations and updates the report of contact with a specific reference to the licensing rule that has been violated.

(f) HHSC provides to the facility a written statement of violations from an inspection, survey, investigation, or on-site visit on HHSC Form 3724 within 10 days after the final exit conference. The statement of violations includes a clear and concise summary in non-technical language of each licensing rule violation. The statement of violations does not include names of residents or staff, statements that identify a resident, or other prohibited information.

(g) A facility must submit an acceptable plan of correction to the HHSC regional director for the HHSC surveyor within 10 working days after receiving the statement of violations described in subsection (f) of this section. An acceptable plan of correction must address:

(1) how corrective action will be accomplished for a resident affected by a violation of a licensing rule;

(2) how the facility will identify other residents who may be affected by the violation of the licensing rule;

(3) how the corrective action the facility implements will ensure the violation does not reoccur;

(4) how the facility will monitor its corrective action to ensure the violation is being corrected and will not reoccur; and

(5) dates when corrective action will be completed.

§553.333. Informal Dispute Resolution.

(a) If a facility disputes a violation of a licensing rule, which HHSC cites on a statement of violations in accordance with §553.331(f) of this subchapter (relating to Determinations and Actions (Investigation Findings)), the facility may request informal dispute resolution conducted in accordance with Texas Government Code §531.058 and Texas Health and Safety Code §247.051, and, to the extent consistent with those statutes, 1 TAC §393.2 (relating to Informal Dispute Resolution for Assisted Living Facilities).

(b) To request informal dispute resolution, a facility must follow the informal dispute resolution process provided on the HHSC website and submit a completed Informal Dispute Resolution Request Form to HHSC in accordance with the form's instructions no later than 10 calendar days after the facility receives the statement of violations. The request form must summarize each violation that the facility disputes.

(c) If a facility requests informal dispute resolution in accordance with subsection (b) of this section, HHSC sends to the facility a copy of all documents referenced in the disputed statement of violations or on which a cited licensure violation is based in connection with the survey, inspection, investigation, or other regulatory visit, including any notes taken by, or emails or messages sent by, an HHSC employee involved with the survey, inspection, investigation, or other regulatory visit, no later than 20 working days after HHSC receives the facility's request for informal dispute resolution. HHSC redacts or excludes the following information from the documents it sends to the facility:

(1) the name of any complainant, witness, or informant;

(2) information that would reasonably lead to the identification of a complainant, witness, or informant;

(3) information obtained from or contained in the records of the facility;

(4) information that is publicly available; and

(5) information that is confidential by law.

(d) HHSC may charge a facility $15 per hour for the time HHSC spends to redact the information described in subsection (c)(1)

and (2) of this section. A facility must pay any amounts that HHSC charges it in accordance with this subsection.

(e) If a facility requesting informal dispute resolution requests any documents other than documents which HHSC provides under subsection (c) of this section, it must reimburse HHSC for any costs associated with HHSC's preparation, copying, and delivery of information responsive to the facility's request.

§553.335. Confidentiality and Release of Information.

(a) Confidentiality. All reports, records, and working papers used or developed by HHSC in an investigation are confidential and may be released only as provided in this subsection.

(1) Completed written investigation reports on cases concluded to be abuse or neglect must be furnished to the district attorney and appropriate law enforcement agency. HHSC also may release these reports to any other public agency HHSC deems appropriate to the investigation.

(2) Completed written investigation reports are open to the public, provided the report is deidentified. The process of deidentification means removing all names and other personally identifiable data, including any information from witnesses and others furnished to HHSC as part of the investigation.

(3) HHSC notifies the reporter and the facility of the results of the HHSC investigation of a reported case of abuse or neglect, whether HHSC concludes that abuse or neglect occurred or did not occur.

(b) Immunity. A person who reports suspected instances of abuse or neglect, in the absence of bad faith or malicious conduct, is immune from civil or criminal liability which might have otherwise resulted from making the report. Such immunity extends to participation in any judicial proceeding resulting from the report.

(c) Privileged communications. In a proceeding regarding a report or investigation conducted under this subchapter, evidence may not be excluded on a claim of privileged communication except in the case of a communication between an attorney and a client.

(d) Central registry. HHSC maintains a central registry of reported cases of abuse and neglect at the central office in Austin.

(e) Releasing Public Records.

(1) As further described in this section, Texas Government Code, Chapter 552, governs procedures for inspection of public records.

(2) Long-term Care Regulation, Regulatory Services Division is responsible for the maintenance and release of records on licensed facilities, and other related records.

(3) The application for inspection of public records is subject to the following criteria.

(A) The application must be made to Long-term Care Regulation, Regulatory Services Division, P.O. Box 149030 (E-349), Austin, Texas 78714-9030.

(B) The requestor must identify himself or herself.

(C) The requestor must give reasonable prior notice of the time for inspection and copying of records.

(D) The requestor must specify the records requested.

(E) On written applications, if HHSC is unable to ascertain the records being requested, HHSC may return the written application to the requestor for further specificity.

(F) HHSC provides the requested records as soon as possible. However, if the records are in active use, or in storage, or time is needed for proper deidentification or preparation of the records for inspection, HHSC so advises the requestor and sets an hour and date within a reasonable time for records to be available.

(4) Original records may be inspected or copied, but in no instance will original records be removed from HHSC offices.

(5) Records maintained by HHSC are open to the public, except to the extent a record is made confidential by law or otherwise exempted from disclosure under Texas Government Code, Chapter 552. Without limitation:

(A) incomplete reports, audits, evaluations, and investigations made of, for, or by HHSC are confidential;

(B) reports of abuse and neglect are confidential;

(C) all names and related personal, medical, or other identifying information about a resident are confidential;

(D) information about any identifiable person that is defamatory, or an invasion of privacy is confidential;

(E) information identifying complainants or informants is confidential;

(F) itineraries of surveys and inspections are confidential; and

(G) to implement this subsection, HHSC may not alter or deidentify original records. Instead, HHSC makes available for public review or release only a properly deidentified copy of the original record.

(6) Charging for copies of records must be in accordance with the following criteria.

(A) To inspect records without requesting copies, the requestor must specify the records to be inspected and HHSC does not charge for this service, except where HHSC determines that a charge is appropriate based on the nature of the request.

(B) If the requestor wants to request copies of a record, the requestor will specify in writing the records to be copied, and HHSC notifies the requestor of the cost of the records, which the requestor must pay in advance. Checks and other instruments of payment must be made payable to the Texas Health and Human Services Commission.

(C) Any expenses for standard-size copies incurred in the reproduction, preparation, or retrieval of records must be borne by the requestor on a cost basis in accordance with costs established by the Office of the Attorney General in 1 TAC Chapter 70 (relating to Costs of Copies of Public Information) or, where permitted by those rules, by HHSC for office machine copies.

(D) For documents that are mailed, HHSC charges for the postage at the time it charges for the reproduction and adds applicable sales taxes to the cost of copying records.

(7) HHSC makes a reasonable effort to furnish records promptly and will extend to the requestor all reasonable comfort and facility for the full exercise of the rights granted by Texas Government Code, Chapter 552.

§553.337. Retaliation.

An HHSC employee may not retaliate against an assisted living facility, an employee of an assisted living facility, or a person in control of an assisted living facility for:

(1) complaining about the conduct of an HHSC employee;

(2) disagreeing with an HHSC employee about the existence of a violation of this chapter or a rule adopted under this chapter; or

(3) asserting a right under state or federal law.

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

Filed with the Office of the Secretary of State on January 12, 2021.

TRD-202100157
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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SUBCHAPTER H. ENFORCEMENT
DIVISION 1. GENERAL INFORMATION

26 TAC §553.351, §553.353

STATUTORY AUTHORITY

The new sections 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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.351. When may HHSC take an enforcement action?

HHSC may take enforcement action when a facility is in violation of:

(1) the sections of this chapter;

(2) the Texas Health and Safety Code, Chapter 247;

(3) an order adopted under Texas Health and Safety Code, Chapter 247; or

(4) a license issued under Texas Health and Safety Code, Chapter 247.

§553.353. What enforcement actions may HHSC take?

HHSC may:

(1) suspend a license;

(2) order immediate closing of all or part of the facility;

(3) revoke a license;

(4) refer the violation to the Office of the Attorney General for involuntary appointment of a trustee, injunction, or for the assessment of civil penalties; or

(5) assess administrative penalties.

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 January 12, 2021.

TRD-202100158
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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DIVISION 2. ACTIONS AGAINST A LICENSE: SUSPENSION

26 TAC §§553.401, 553.403, 553.405, 553.407, 553.409, 553.411, 553.413, 553.415, 553.417, 553.419, 553.421, 553.423, 553.425, 553.427, 553.429, 553.431, 553.433, 553.435, 553.437, 553.439

STATUTORY AUTHORITY

The new sections 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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.401. When may HHSC suspend a facility's license?

HHSC may suspend a facility's license when the applicant, license holder, or a controlling person violates:

(1) the Texas Health and Safety Code, Chapter 247; a section, standard or order adopted under Texas Health and Safety Code, Chapter 247; or a license issued under Chapter 247 in a repeated or substantial manner; or

(2) §553.751(a)(2) - (9) of this subchapter (relating to Administrative Penalties).

§553.403. Does HHSC provide notice of a license suspension and the opportunity for a hearing to the applicant, license holder, or a controlling person?

Yes.

§553.405. May HHSC suspend a license at the same time another enforcement action is occurring?

Yes.

§553.407. How does HHSC notify a license holder of a proposed suspension?

HHSC notifies a license holder by certified mail.

§553.409. What information does HHSC provide the license holder concerning a proposed suspension?

HHSC provides the license holder with the facts or conduct alleged to warrant the suspension.

§553.411. Does the license holder have an opportunity to show compliance with all requirements for keeping the license before HHSC begins proceedings to suspend a license?
Yes.

§553.413. How does a license holder request an opportunity to show compliance?
A license holder must send a written request for an opportunity to show compliance to the Associate Commissioner of Long-term Care Regulation.

§553.415. How much time does a license holder have to request an opportunity to show compliance?
A request for an opportunity to show compliance must be postmarked within 10 calendar days of the date of HHSC notice and must be received in the office of the Associate Commissioner of Long-term Care Regulation within 10 calendar days after the postmark.

§553.417. What must the request for an opportunity to show compliance contain?
The request must contain specific documentation showing how the facts or conduct that support the proposed suspension are incorrect.

§553.419. How does HHSC conduct the opportunity to show compliance?
HHSC review is limited to documentation submitted by the license holder and information used by HHSC as the basis for its proposed action. The review is not conducted as an adversary hearing.

§553.421. Does HHSC give the license holder a written affirmation or reversal of the proposed action?
Yes.

§553.423. How does HHSC notify a license holder of its final decision to suspend a license?
HHSC notifies the facility by certified mail.

§553.425. May the facility request a formal hearing?
Yes.

§553.427. How long does a license holder have to request a formal hearing?
The license holder has 15 calendar days from receipt of the certified mail notice to request a hearing.

§553.429. If a license holder does not appeal, when does the suspension take effect?
The suspension takes effect after the deadline for an appeal passes.

§553.431. If a license holder appeals, when does the suspension take effect?
The status of the license remains in effect until after the appeal is complete.

§553.433. May a facility operate during a suspension?
A facility may continue to operate as long as the suspension is under appeal.

§553.435. How long is the suspension?
The suspension remains in effect until HHSC determines that the reason for the suspension no longer exists, but no longer than the license expiration date.

§553.437. How does HHSC decide to remove the suspension?
HHSC conducts an on-site inspection.

§553.439. Must the license be returned to HHSC during a license suspension?
Yes.

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 January 12, 2021.

TRD-202100159
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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DIVISION 3. ACTIONS AGAINST A LICENSE: REVOCATION

26 TAC §§553.451, 553.453, 553.455, 553.457, 553.459, 553.461, 553.463, 553.465, 553.467, 553.469, 553.471, 553.473, 553.475, 553.477, 553.479, 553.481, 553.483

STATUTORY AUTHORITY

The new sections 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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.451. When may HHSC revoke a license?

HHSC may revoke a license when the applicant, license holder, or a controlling person:

(1) violates §553.751(a)(2) - (9) of this subchapter (relating to Administrative penalties);

(2) violates the Texas Health and Safety Code, Chapter 247; a section, standard or order adopted under Texas Health and Safety Code, Chapter 247; or a license issued under Texas Health and Safety Code, Chapter 247 in a repeated or substantial manner;

(3) submits false statements on a license application;

(4) submits false statements on license application attachments;

(5) submits misleading statements on a license application;

(6) submits misleading statements on license application attachments;

(7) uses subterfuge or other evasive means to obtain a license;

(8) conceals a material fact on a license application that would have been the basis for denying a license under §553.17 of this chapter (relating to Criteria for Licensing);

(9) fails to disclose information, as required by Subchapter B of this chapter (relating to Licensing) that would have been the basis to deny a license under §553.17 of this chapter; or

(10) violates the Texas Health and Safety Code §247.021.

§553.453. Does HHSC provide notice of a license revocation and opportunity for a hearing to the applicant, license holder, or controlling person?

Yes.

§553.455. May HHSC take more than one enforcement action at a time against a license?

Yes.

§553.457. How does HHSC notify a license holder of a proposed revocation?

HHSC notifies a license holder by certified mail.

§553.459. What information does HHSC provide the license holder concerning a proposed revocation?

HHSC provides the license holder with the facts or conduct alleged to warrant the revocation.

§553.461. Does the license holder have an opportunity to show compliance with all requirements for keeping the license before HHSC begins proceedings to revoke a license?

Yes.

§553.463. How does a license holder request an opportunity to show compliance?

A license holder must send a written request for an opportunity to show compliance to the Associate Commissioner of Long-term Care Regulation.

§553.465. How much time does a license holder have to request an opportunity to show compliance?

A request for an opportunity to show compliance must be postmarked within 10 calendar days of the date of HHSC notice and must be received in the office of the Associate Commissioner of Long-term Care Regulation within 10 calendar days of the postmark.

§553.467. What must the request for the opportunity to show compliance contain?

The request must contain specific documentation showing how the facts or conduct that support the proposed revocation are incorrect.

§553.469. How does HHSC conduct the opportunity to show compliance?

HHSC review is limited to documentation submitted by the license holder and information used by HHSC as the basis for its proposed action. The review is not conducted as an adversary hearing.

§553.471. Does HHSC give the license holder a written affirmation or reversal of the proposed action?

Yes.

§553.473. Does the license holder have an opportunity for a formal hearing?

Yes.

§553.475. How long does a license holder have to request a formal hearing?

The license holder has 15 calendar days from receipt of the certified mail notice to request a hearing.

§553.477. When does the revocation take effect if the license holder does not appeal?

The revocation takes effect after the deadline for an appeal passes.

§553.479. When does the revocation take effect if the license holder appeals the revocation?

The status of the license remains in effect until after the appeal is complete.

§553.481. May a facility operate during a revocation?

A facility may continue to operate, as long as the revocation is under appeal.

§553.483. What happens to a license if it is revoked?

If revoked, the license must be returned to HHSC.

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 January 12, 2021.

TRD-202100160
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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DIVISION 4. ACTIONS AGAINST A LICENSE: TEMPORARY RESTRAINING ORDERS AND INJUNCTIONS

26 TAC §553.501, §553.503

STATUTORY AUTHORITY

The new sections 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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.501. Why does HHSC refer a facility to the Office of the Attorney General or local prosecuting authority for a temporary restraining order or an injunction?

HHSC refers a facility to the Office of the Attorney General or local prosecuting authority for a temporary restraining order or an injunction when:

(1) a violation creates an immediate threat or threat to the health and safety of residents;

(2) a facility is operating without a license; or

(3) HHSC is denied entry to a facility that is alleged to be operating without a license.

§553.503. To whom does HHSC refer a facility that is operating without a license?

HHSC refers a facility that is operating without a license to the:

(1) district attorney;

(2) county attorney;

(3) city attorney; or

(4) Attorney General.

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 January 12, 2021.

TRD-202100161
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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DIVISION 5. ACTIONS AGAINST A LICENSE: EMERGENCY LICENSE SUSPENSION AND CLOSING ORDER

26 TAC §§553.551, 553.553, 553.555, 553.557, 553.559, 553.561, 553.563, 553.565, 553.567, 553.569, 553.571, 553.573, 553.575, 553.577, 553.579, 553.581, 553.583, 553.585, 553.587, 553.589, 553,591, 553.593, 553.595, 553.597

STATUTORY AUTHORITY

The new sections 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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.551. When may HHSC suspend a license or order an immediate closing of all or part of a facility?

HHSC may suspend a license or order an immediate closing of all or part of a facility when:

(1) the facility is operating in violation of the licensure rules; and

(2) the violation creates an immediate threat to the health and safety of a resident.

§553.553. How does HHSC notify a facility of a license suspension or immediate closing of all or part of a facility?

A notice is hand-delivered to a facility staff member.

§553.555. When does an order suspending a license or closing all or part of a facility go into effect?

The order goes into effect immediately upon receipt of the hand-delivered written notice or on a later date specified in the order.

§553.557. How long is an order suspending a license or closing all or part of a facility valid?

An order is valid for 10 calendar days after the effective date of the order.

§553.559. May a license holder request a hearing?

Yes.

§553.561. Where can a license holder find information about administrative hearings?

Information about administrative hearings is located in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act), Texas Government Code, Chapter 2001, and 1 TAC Chapter 155 (relating to Rules of Procedure).

§553.563. Does a request for an administrative hearing suspend the effectiveness of the order?

No.

§553.565. Does anything happen to a resident's rights or freedom of choice during an emergency relocation?

No.

§553.567. Who does HHSC notify if all or part of a facility is closed?

If all or part of a facility is closed, HHSC notifies:

(1) the local health department director;

(2) the city or county health authority; and

(3) representatives of the appropriate state agencies.

§553.569. Who must a facility notify if all or part of the facility is closed?

A facility must notify each resident's:

(1) guardian or responsible party; and

(2) attending physician.

§553.571. Who decides where to relocate a resident?

The resident, the resident's guardian, or the resident's responsible person may designate a preference for a specific facility or for other arrangements.

§553.573. Who arranges the relocation?

HHSC arranges to relocate residents to other facilities in the area.

§553.575. Is a resident's preference considered?

Yes.

§553.577. What requirements must the facility a resident chooses for relocation meet?

The following apply when a resident chooses a facility for relocation:

(1) The facility must be in good standing with HHSC.

(2) If the facility is certified under 42 United States Code, Chapter 7, Subchapters XVIII and XIX, it must be in good standing under its contract.

(3) The facility must be able to meet the needs of the resident.

§553.579. Is a receiving facility allowed to temporarily exceed its licensed capacity?

Yes.

§553.581. Under what conditions is a receiving facility allowed to temporarily exceed its licensed capacity?

HHSC may grant a waiver to a receiving facility to temporarily exceed its licensed capacity to prevent substantial transportation of a resident.

§553.583. What requirements must a facility meet to obtain a temporary waiver?

To be eligible for a temporary waiver to exceed its licensed capacity, a facility must:

(1) not compromise the health and safety of residents; and

(2) meet the increased demands for direct care personnel and dietary services.

§553.585. How long can a facility have a temporary waiver?

A facility may have a temporary waiver until residents can be transferred to a permanent location.

§553.587. Does HHSC monitor a facility with a temporary waiver?

Yes.

§553.589. What records, reports, and supplies are sent to the receiving facility for transferred residents?

The following reports, records, and supplies must be sent to the receiving institution for each transferred resident:

(1) a copy of the current physician's orders for:

(A) medication;

(B) treatment;

(C) diet; and

(D) special services required;

(2) personal information, such as name and address of next of kin, guardian, or responsible party;

(3) attending physician;

(4) Medicare and Medicaid identification number, if applicable;

(5) social security number;

(6) other identification information as deemed necessary and available;

(7) a copy of the resident's current comprehensive assessment and service plan;

(8) all medications dispensed in the resident's name that have current physician's orders.

(A) Medications must be inventoried and transferred with the resident. Medications past expiration date or discontinued by physician order must be inventoried for disposition in accordance with state law.

(B) Only current prescription medications taken on a regular or as-needed basis may be transferred with the resident;

(9) the resident's personal belongings, clothing, and toilet articles. The closing facility must make an inventory of personal property and valuables; and

(10) resident trust fund accounts maintained by the closing facility. All items must be properly inventoried, and receipts obtained for audit purposes by the appropriate state agency.

§553.591. May a resident return to the closed facility if it reopens within 90 calendar days?

Yes.

§553.593. Do the relocated residents have any special admission rights at the closed facility?

If the closed facility is allowed to reopen within 90 calendar days, the relocated residents have the first right to return to the facility.

§553.595. What options does a relocated resident have?

Relocated residents may choose to:

(1) return to the reopened facility;

(2) stay in the receiving facility, if the facility is not exceeding its licensed capacity; or

(3) choose other accommodations.

§553.597. Are relocated residents who return to the facility considered new admissions?

Yes. Any relocated resident who returns to the facility must be treated as a new admission. All procedures regarding new admissions apply.

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 January 12, 2021.

TRD-202100162
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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DIVISION 6. ACTIONS AGAINST A LICENSE: CIVIL PENALTIES

26 TAC §553.601, §553.603

STATUTORY AUTHORITY

The new sections 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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.601. When may HHSC refer a facility to the Office of the Attorney General for assessment of civil penalties?

HHSC may refer a facility for a violation that threatens the health and safety of a resident.

§553.603. What is the amount of the civil penalty that can be assessed for operating without a license?

A civil penalty of $1,000 to $10,000 per day may be assessed for operating without a license.

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

Filed with the Office of the Secretary of State on January 12, 2021.

TRD-202100163
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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DIVISION 7. TRUSTEES: INVOLUNTARY APPOINTMENT OF A TRUSTEE

26 TAC §§553.651, 553.653. 553.655, 553.657, 553.659, 553.661

STATUTORY AUTHORITY

The new sections 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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.651. When may HHSC petition a court for the involuntary appointment of a trustee to operate a facility?

HHSC may petition a court for the involuntary appointment of a trustee to operate a facility when one or more of the following conditions exist:

(1) the facility is operating without a license;

(2) the facility's license has been suspended or revoked;

(3) an imminent threat to the health and safety of the residents exists, and license suspension or revocation procedures are pending against the facility;

(4) an emergency exists that presents an immediate threat to the health and safety of the residents; or

(5) the facility is closing, whether voluntarily or through an emergency closure order, and arrangements for relocation of the residents to other licensed institutions have not been made before closure.

§553.653. When may HHSC disburse emergency assistance funds?

HHSC may disburse emergency assistance funds when a court order is given.

§553.655. Must a facility reimburse HHSC for emergency assistance funds?

Yes.

§553.657. When is reimbursement for emergency assistance funds due to HHSC?

Reimbursement is due not later than one year after the date the trustee received the funds.

§553.659. Who is responsible for reimbursement?

The owner of the facility at the time the trustee was appointed is responsible for reimbursement.

§553.661. What happens if a facility does not reimburse HHSC in one year?

A license holder is referred to the Office of the Attorney General. HHSC also may decide the facility is not eligible for a Medicaid provider contract.

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 January 12, 2021.

TRD-202100164
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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DIVISION 8. TRUSTEES: APPOINTMENT OF A TRUSTEE BY AGREEMENT

26 TAC §§553.701, 553.703, 553,705, 553.707, 553.709, 553.711

STATUTORY AUTHORITY

The new sections 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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.701. May a facility request the appointment of a trustee to assume operation of a facility?

Yes.

§553.703. Who may make the request?

A person holding a controlling interest in a facility may request that HHSC assume the operation of the facility through the appointment of a trustee.

§553.705. What are the requirements for a trustee agreement?

An agreement must:

(1) specify all terms and conditions of the trustee's appointment and authority; and

(2) preserve all legal rights of the residents.

§553.707. When does an agreement for a trustee terminate?
An agreement for a trustee terminates at a time specified in the agreement or upon receipt of notice of intent to terminate sent by HHSC or by the person holding a controlling interest in the facility.

§553.709. What happens if the controlling person wants to terminate the agreement, but HHSC determines termination of the agreement is not in the best interest of the residents?
HHSC petitions a court for an involuntary appointment of a trustee under the terms of §553.651 of this subchapter (relating to When may HHSC petition a court for the involuntary appointment of a trustee to operate a facility?).

§553.711. When HHSC appoints a trustee, is the facility always required to pay assessed civil money penalties?
Yes.

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 January 12, 2021.

TRD-202100165
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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DIVISION 9. ADMINISTRATIVE PENALTIES

26 TAC §553.751

STATUTORY AUTHORITY

The new section 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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.751. Administrative Penalties.

(a) Assessment of an administrative penalty. HHSC may assess an administrative penalty if a license holder:

(1) violates:

(A) Texas Health and Safety Code, Chapter 247;

(B) a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or

(C) a term of a license issued under Texas Health and Safety Code, Chapter 247;

(2) makes a false statement of material fact that the license holder knows or should know is false:

(A) on an application for issuance or renewal of a license;

(B) in an attachment to the application; or

(C) with respect to a matter under investigation by HHSC;

(3) refuses to allow an HHSC representative to inspect:

(A) a book, record, or file that a facility must maintain; or

(B) any portion of the premises of a facility;

(4) willfully interferes with the work of, or retaliates against, an HHSC representative or the enforcement of this chapter;

(5) willfully interferes with, or retaliates against, an HHSC representative preserving evidence of a violation of Texas Health and Safety Code, Chapter 247; a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or a term of a license issued under Texas Health and Safety Code, Chapter 247;

(6) fails to pay an administrative penalty not later than the 30th calendar day after the penalty assessment becomes final;

(7) fails to notify HHSC of a change of ownership before the effective date of the change of ownership;

(8) willfully interferes with the State Ombudsman, a certified ombudsman, or an ombudsman intern performing the functions of the Ombudsman Program as described in Chapter 88 of this title (relating to State Long-Term Care Ombudsman Program); or

(9) retaliates against the State Ombudsman, a certified ombudsman, or an ombudsman intern:

(A) with respect to a resident, employee of a facility, or other person filing a complaint with, providing information to, or otherwise cooperating with the State Ombudsman, a certified ombudsman, or an ombudsman intern; or

(B) for performing the functions of the Ombudsman Program as described in Chapter 88 of this title.

(b) Criteria for assessing an administrative penalty. HHSC considers the following in determining the amount of an administrative penalty:

(1) the gradations of penalties established in subsection (d) of this section;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the situation, and the hazard or potential hazard created by the situation to the health or safety of the public;

(3) the history of previous violations;

(4) deterrence of future violations;

(5) the license holder's efforts to correct the violation;

(6) the size of the facility and of the business entity that owns the facility; and

(7) any other matter that justice may require.

(c) Late payment of an administrative penalty. A license holder must pay an administrative penalty within 30 calendar days after the penalty assessment becomes final. If a license holder fails to timely pay the administrative penalty, HHSC may assess an administrative penalty under subsection (a)(6) of this section, which is in

addition to the penalty that was previously assessed and not timely paid.

(d) Administrative penalty schedule. HHSC uses the schedule of appropriate and graduated administrative penalties in this subsection to determine which violations warrant an administrative penalty.
Figure: 26 TAC §553.751(d)

(e) Administrative penalty assessed against a resident. HHSC does not assess an administrative penalty against a resident, unless the resident is also an employee of the facility or a controlling person.

(f) Proposal of administrative penalties.

(1) HHSC issues a preliminary report stating the facts on which HHSC concludes that a violation has occurred after HHSC has:

(A) examined the possible violation and facts surrounding the possible violation; and

(B) concluded that a violation has occurred.

(2) HHSC may recommend in the preliminary report the assessment of an administrative penalty for each violation and the amount of the administrative penalty.

(3) HHSC provides a written notice of the preliminary report to the license holder not later than 10 calendar days after the date on which the preliminary report is issued. The written notice includes:

(A) a brief summary of the violation;

(B) the amount of the recommended administrative penalty;

(C) a statement of whether the violation is subject to correction in accordance with subsection (g) of this section and, if the violation is subject to correction, a statement of:

(i) the date on which the license holder must file with HHSC a plan of correction for approval by HHSC; and

(ii) the date on which the license holder must complete the plan of correction to avoid assessment of the administrative penalty; and

(D) a statement that the license holder has a right to an administrative hearing on the occurrence of the violation, the amount of the penalty, or both.

(4) Not later than 20 calendar days after the date on which a license holder receives a written notice of the preliminary report, the license holder may:

(A) give HHSC written consent to the preliminary report, including the recommended administrative penalty; or

(B) make a written request to HHSC for an administrative hearing.

(5) If a violation is subject to correction under subsection (g) of this section, the license holder must submit a plan of correction to HHSC for approval not later than 10 calendar days after the date on which the license holder receives the written notice described in paragraph (3) of this subsection.

(6) If a violation is subject to correction under subsection (g) of this section, and after the license holder reports to HHSC that the violation has been corrected, HHSC inspects the correction or takes any other step necessary to confirm the correction and notifies the facility that:

(A) the correction is satisfactory and HHSC is not assessing an administrative penalty; or

(B) the correction is not satisfactory, and a penalty is recommended.

(7) Not later than 20 calendar days after the date on which a license holder receives a notice that the correction is not satisfactory and that a penalty is recommended under paragraph (6)(B) of this subsection, the license holder may:

(A) give HHSC written consent to HHSC report, including the recommended administrative penalty; or

(B) make a written request to HHSC for an administrative hearing.

(8) If a license holder consents to the recommended administrative penalty or does not timely respond to a notice sent under paragraph (3) of this subsection (written notice of the preliminary report) or paragraph (6)(B) of this subsection (notice that the correction is not satisfactory and recommendation of a penalty):

(A) HHSC assesses the recommended administrative penalty;

(B) HHSC gives written notice of the decision to the license holder; and

(C) the license holder must pay the penalty not later than 30 calendar days after the written notice given in subparagraph (B) of this paragraph.

(g) Opportunity to correct.

(1) HHSC allows a license holder to correct a violation before assessing an administrative penalty, except a violation described in paragraph (2) of this subsection. To avoid assessment of a penalty, a license holder must correct a violation not later than 45 calendar days after the date the facility receives the written notice described in subsection (f)(3) of this section.

(2) HHSC does not allow a license holder to avoid a penalty assessment based on its correction of a violation:

(A) described by subsection (a)(2) - (9) of this section;

(B) of Texas Health and Safety Code §260A.014 or §260A.015;

(C) related to advance directives as described in §553.259(d) of this chapter (relating to Admission Policies and Procedures);

(D) that is the second or subsequent violation of:

(i) a right of the same resident under §553.267 of this chapter (relating to Rights);

(ii) the same right of all residents under §553.267 of this chapter; or

(iii) §553.255 of this chapter (relating to All Staff Policy for Residents with Alzheimer's Disease or a Related Disorder) that occurs before the second anniversary of the date of a previous violation of §553.255 of this chapter;

(E) that is written because of an inappropriately placed resident, except as described in §553.259(e) of this chapter;

(F) that is a pattern of violation that results in actual harm;

(G) that is widespread in scope and results in actual harm;

(H) that is widespread in scope, constitutes a potential for more than minimal harm, and relates to:

(i) resident assessment as described in §553.259(b) of this chapter;

(ii) staffing, including staff training, as described in §553.253 of this chapter (relating to Employee Qualifications and Training);

(iii) medication administration as described in §553.261(a) of this chapter (relating to Coordination of Care);

(iv) infection control as described in §553.261(f) of this chapter;

(v) restraints as described in §553.261(g) of this chapter; or

(vi) emergency preparedness and response as described in §553.275 of this chapter (relating to Emergency Preparedness and Response); or

(I) is an immediate threat to the health or safety of a resident.

(3) Maintenance of violation correction.

(A) A license holder that corrects a violation must maintain the correction. If the license holder fails to maintain the correction until at least the first anniversary of the date the correction was made, HHSC may assess and collect an administrative penalty for the subsequent violation.

(B) An administrative penalty assessed under this paragraph is equal to three times the amount of the original administrative penalty that was assessed but not collected.

(C) HHSC is not required to offer the license holder an opportunity to correct the subsequent violation.

(h) Hearing on an administrative penalty. If a license holder timely requests an administrative hearing as described in subsection (f)(3) or (7) of this section, the administrative hearing is held in accordance with HHSC rules at 1 TAC Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act).

(i) HHSC may charge interest on an administrative penalty. The interest begins the day after the date the penalty becomes due and ends on the date the penalty is paid in accordance with Texas Health and Safety Code §247.0455(e).

(j) Amelioration of a violation.

(1) In lieu of demanding payment of an administrative penalty, the commissioner may allow a license holder to use, under HHSC supervision, any portion of the administrative penalty to ameliorate the violation or to improve services, other than administrative services, in the facility affected by the violation. Amelioration is an alternate form of payment of an administrative penalty, not an appeal, and does not remove a violation or an assessed administrative penalty from a facility's history.

(2) A license holder cannot ameliorate a violation that HHSC determines constitutes immediate jeopardy to the health or safety of a resident.

(3) HHSC offers amelioration to a license holder not later than 10 calendar days after the date a license holder receives a final notification of the recommended assessment of an administrative penalty that is sent to the license holder after an informal dispute resolution process but before an administrative hearing.

(4) A license holder to whom amelioration has been offered must:

(A) submit a plan for amelioration not later than 45 calendar days after the date the license holder receives the offer of amelioration from HHSC; and

(B) agree to waive the license holder's right to an administrative hearing if HHSC approves the plan for amelioration.

(5) A license holder's plan for amelioration must:

(A) propose changes to the management or operation of the facility that will improve services to or quality of care of residents;

(B) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents;

(C) establish clear goals to be achieved through the proposed changes;

(D) establish a time line for implementing the proposed changes; and

(E) identify specific actions the license holder will take to implement the proposed changes.

(6) A license holder's plan for amelioration may include proposed changes to:

(A) improve staff recruitment and retention;

(B) offer or improve dental services for residents; and

(C) improve the overall quality of life for residents.

(7) HHSC may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter.

(8) HHSC approves or denies a license holder's amelioration plan not later than 45 calendar days after the date HHSC receives the plan. If HHSC approves the amelioration plan, any pending request the license holder has submitted for an administrative hearing must be withdrawn by the license holder.

(9) HHSC does not offer amelioration to a license holder:

(A) more than three times in a two-year period; or

(B) more than one time in a two-year period for the same or a similar violation.

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 January 12, 2021.

TRD-202100166
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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DIVISION 10. ARBITRATION

26 TAC §553.801

STATUTORY AUTHORITY

The new section 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, and is authorized to adopt rules governing the rights and duties of persons regulated by the health and human services system; and by Texas Health and Safety Code §247.025 and §247.026, which respectively require the Executive Commissioner to adopt rules necessary to implement Texas Health and Safety Code, Chapter 247, relating to assisted living facilities, and to prescribe by rule minimum standards to protect the health and safety of an assisted living facility resident.

The new section implements Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 247.

§553.801. Arbitration.

A facility may elect binding arbitration in accordance with Texas Health and Safety Code §247.082. Arbitration is conducted in accordance with §§247.083 - 247.098 and may be used to resolve a dispute between the facility and HHSC relating to:

(1) renewal of a license;

(2) suspension, revocation, or denial of a license;

(3) assessment of a civil penalty; or

(4) assessment of an administrative penalty.

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 January 12, 2021.

TRD-202100167
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 438-3161

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER F. INLAND MARINE INSURANCE AND MULTI-PERIL INSURANCE

28 TAC §5.5002

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §5.5002, concerning inland marine insurance. Section 5.5002 implements Insurance Code §2251.004 and §2301.005. The amendments classify pet insurance as inland marine insurance.

EXPLANATION. Pet insurance covers veterinary expenses arising from pet injury or illness. It is commonly considered a type of inland marine insurance, but Texas currently treats it as a miscellaneous kind of property and casualty insurance, meaning that insurers cannot offer pet insurance through group policies. The proposed amendment to §5.5002 would classify pet insurance as inland marine insurance, giving insurers more flexibility in how they offer it. Specifically, insurers could offer both individual and group pet insurance policies.

Although pet insurance represents a small fraction of the property and casualty insurance market, pet insurance is growing and becoming popular as an employer-offered benefit.

Under its current treatment as a miscellaneous kind of property and casualty insurance, pet insurance rates must be filed and forms must be approved by TDI before they are used. In contrast, inland marine products are designated as "filed" or "non-regulated" in §5.5002. The amended rule would add subparagraph (QQ) to designate pet insurance as a "non-regulated" inland marine product, meaning that rules, rates, and forms will no longer need to be filed or approved. Designating pet insurance as a non-filed type of inland marine, instead of a filed type, will help maintain a level playing field among insurers, because Lloyd's plans, reciprocals, and interinsurance exchanges are not required to file inland marine rates or forms.

In addition, the proposed amendment includes nonsubstantive editorial and formatting changes to conform the text of §5.5002 to the agency's current style and to improve the rule's clarity. These changes include changing "shall" to "must" or other clearer language and removing unnecessary wording. The amendment also corrects a typographical mistake in a reference to Property Code §59.001.

TDI received comments on an informal draft posted on TDI's website on October 8, 2020. TDI considered those comments when drafting this proposal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. David Muckerheide, assistant director of the Property and Casualty Lines Office, has determined that during each year of the first five years the proposed amendment is 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. Mr. Muckerheide made this determination 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.

Mr. Muckerheide does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendment is in effect, Mr. Muckerheide expects that administering the proposed amendment will have the public benefit of allowing group pet insurance policies and maintaining a level playing field between insurers, since Lloyd's plans, reciprocals, and interinsurance exchanges are not currently required to file inland marine forms or rates.

Mr. Muckerheide expects that the proposed amendment will not increase the cost of compliance with Insurance Code Chapters 2251 and 2301 because the amendment does not impose requirements beyond those in the statute. Additionally, the proposed amendment will reduce the cost of compliance and regulatory burden for some insurers because they will no longer have to file pet insurance rules, rates, or forms.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendment will not have an adverse economic effect on small or micro businesses, or on rural communities. The proposed amendment would increase the availability of pet insurance, regardless of the size or location of the prospective consumers or providers. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons.

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 rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will expand an existing regulation;

- will not 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 March 1, 2021. 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 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 p.m., central time, on March 1, 2021. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes §5.5002 under Insurance Code §§2251.004, 2301.005, and 36.001.

Insurance Code §2251.004 provides that the Commissioner may adopt rules governing how rates are regulated for the various classifications of risks insured under inland marine insurance, as determined by the Commissioner.

Insurance Code §2301.005 provides that the Commissioner may adopt rules governing how forms are regulated for the various classifications of risks insured under inland marine insurance, as determined by 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. Section 5.5002 implements Insurance Code §2251.004 and §2301.005.

§5.5002. Texas Definition of Inland Marine Insurance.

Inland marine insurance is defined and classified as follows.

(1) Imports (non-regulated). Imports may be insured under inland marine policies, when such property is not subject to import risk under marine (ocean) policies, as follows.

(A) Imports on consignment may be covered wherever the property may be and without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation. A shipment on consignment means property consigned and entrusted to a factor or agent to be held in his or her care, or under his or her control for sale, for account of another, or for exhibit or trial or approval or auction, and if not disposed of, to be returned.

(B) Imports not on consignment in such places of storage as are usually employed by importers, provided the coverage of the issuing companies includes hazards of transportation. Such policies may also include the same coverage in respect to property purchased on cost-insurance-freight terms or spot purchases for inclusion with or in substitution for bona fide importations. An import, as a proper subject for inland marine insurance, is deemed to maintain its character as such so long as the property remains segregated in the original form or package in such a way that it can be identified and has not become incorporated and mixed with the general mass of property in the United States, and will [~~shall~~] be deemed to have been completed when such property has been:

(i) sold and delivered by the importer, factor, or consignee; or

(ii) removed from place of storage as described in this subparagraph and placed on sale as part of importer's stock in trade at a point of sales distribution; or

(iii) delivered and accepted for manufacture, processing, or change in form to premises of the importer or of another used for any such purposes.

(2) Exports (non-regulated). Inland marine policies may cover property for export, when such property is not subject to export risk under marine (ocean) policies, as follows.

(A) Export property may be covered wherever the property may be without restriction as to time, provided the coverage of the issuing companies includes hazards of transportation.

(B) Export property is deemed to acquire its character as such when designated as such or while being prepared for export and retains that character unless diverted for domestic trade, and when so diverted, the provisions of these sections respecting domestic shipment apply [~~shall apply~~]; provided, however, these provisions do not apply to long-established [~~long established~~] methods of insuring certain commodities, e.g., cotton.

(3) Domestic shipments (non-regulated).

(A) Domestic shipments on consignment for consignor and/or consignee may be written as follows, provided that in all events the policy covers [~~shall cover~~] while in transit:

(i) on consignment for sale or distribution for account of consignor, with no restriction as to time in storage or deposit, while in the custody of others and including return shipments, provided that in no event will [~~shall~~] the policy cover on premises owned, leased, or controlled by the consignor;

(ii) on consignment for sale or distribution for account of consignee while in the custody of others and including return shipments, provided that in no event may [~~shall~~] coverage be granted in excess of 120 days at premises owned, leased, or controlled by consignee; further provided that if coverage be issued jointly to consignee and consignor the same limitation of 120 days for coverage at premises owned, leased, or controlled by consignee will [~~shall~~] be applicable only with respect to the interest of the consignee; and

(iii) on consignment for account of consignor and/or consignee for exhibition, trial, approval, or auction, without restriction as to time in storage or deposit or on exhibition and while in the custody of others and including return shipments.

(B) Domestic shipments not on consignment may be written as follows, provided that in all events the policy covers [~~shall cover~~] while in transit:

(i) at premises of transportation companies or freight forwarders pending transportation without restriction as to time in storage or deposit. [~~Note:~~] For purposes of insurance under this clause, a "freight forwarder" [~~freight forwarder~~] is defined as a warehouse or transportation concern who takes custody of the property of others for storage and transport either by schedule or upon call;

(ii) furniture shipment policies without restriction as to time in storage or deposit to cover only used household furniture and used furniture and fixtures in course of transit while awaiting determination or availability of final destination. Such policies may [~~shall~~] not cover after delivery to final destination and may [~~shall~~] not include merchandise held for sale; and

(iii) in all other situations provided the coverage may [~~shall~~] not exceed 120 days at any place of storage or deposit operated by the assured except coverage at points of sales distribution or at manufacturing premises of the assured which may be written without regard to such restriction of time in storage; provided, however, that in no event will [~~shall~~] any policy cover the perils of fire and extended coverage at such points of sales distribution or such manufacturing premises.

(4) Bridges, tunnels and other instrumentalities of transportation and communication (non-regulated). No policy may [~~shall~~] be issued under this paragraph where the perils of fire and extended coverage are the only hazards to be covered; provided further that in all cases policies must [~~shall~~] exclude buildings, office furniture, and supplies held in storage therein. Policies covering piers, wharves, docks, and slips must [~~shall~~] exclude the hazards of fire and extended coverage. Other aids to navigation and transportation, including dry docks and marine railways, may be covered against any [~~and all~~] risks. Property insured under this paragraph may include, but is not [~~necessarily~~] limited to:

(A) pipelines, including on-line propulsion, regulating, and other equipment appurtenant to such pipelines, but excluding all property at manufacturing, producing, refining, converting, treating, or conditioning plants;

(B) power transmission and telephone and telegraph lines, excluding all property at generating, converting, or transforming stations, substations, and exchanges;

(C) radio and television communication equipment in commercial use as such, including towers and antennae, auxiliary equipment, electrical operating and control apparatus, and other property directly used for transmitting and/or receiving; and

(D) outdoor cranes, loading bridges, and similar equipment used to load, unload, and transport.

(5) Other inland marine risks.

(A) Accounts receivable (filed).

(B) Agricultural machinery and equipment (excluding dealers) (filed).

(C) Bailee customers policies (non-regulated). Covering property in the custody of bleacheries, throwsters, fumigatories, dyers, cleaners, laundries, needle workers, and other bailees for the purpose of storage or performing work thereon. Such policies may [~~shall~~] include coverage while in transit but may [~~shall~~] not cover bailee's property at his or her premises.

(D) Block policies. Block policies presently approved under this section are:

(i) camera dealers (filed);

(ii) equipment dealers (filed);

(iii) furrier's block (non-regulated);

(iv) jeweler's block:

(I) retailers with average inventories of less than $250,000 (filed); and

(II) all other classes (non-regulated);

(v) musical instrument dealers (filed).

(E) Cold storage locker plant policies (non-regulated). Covering merchandise of customers such as meats, game, fish, poultry, fruit, vegetables, and property of a similar nature.

(F) Cotton buyers transit policies (filed).

(G) Domestic bulk liquids policies (non-regulated). Covering domestic bulk liquids stored in tanks, provided the risks of fire and extended coverage are excluded therefrom.

(H) Exhibition policies covering property while on exhibition and in transit to or from such exhibition (non-regulated).

(I) Film floaters, including builders' risk during the production and coverage on completed negatives and positives and sound records (filed).

(J) Fine arts policies covering objects of art such as pictures, bronzes, and antiques, rare manuscripts and books, articles of virtu, etc.:

(i) private collections (filed);

(ii) dealers (non-regulated); and

(iii) all other commercial risks (filed).

(K) Floor plan policies (filed). Covering property for sale while in possession of dealers under a floor plan or any similar plan under which the dealer borrows money from a bank or lending institution with which to pay the manufacturer, provided:

(i) such merchandise is specifically identifiable as encumbered to the bank or lending institution;

(ii) the dealer's right to sell or otherwise dispose of such merchandise is conditioned upon its being released from encumbrance by the bank or lending institution; and

(iii) that such policies cover the merchandise in transit and do not extend beyond the termination of the dealer's interest and may [~~shall~~] not cover merchandise for which the dealer's collateral is the stock or inventory as distinguished from merchandise specifically identifiable as encumbered to the lending institution.

(L) Furriers' customers policies (non-regulated). Policies under which certificates or receipts are issued by furriers or fur storers covering specified articles, the property of customers.

(M) Garment contractors floaters (non-regulated).

(N) Government service floaters (non-regulated).

(O) Home freezers and contents against loss resulting from power failure and/or mechanical breakdown (non-regulated).

(P) Installation risks or builders' risks (non-regulated). Covering loss to owner, seller, or contractor on account of physical damage to machinery, equipment, building materials, or building supplies being used with and during the course of installation, testing, building, renovating, or repairing of dwelling, commercial, or industrial construction. Such policies may cover at points or places where work is being performed, while in transit, and during temporary storage or deposit of property designated for and awaiting specific installation, building renovating, or repairing. In no event may [~~shall~~] any policy cover such properties while contained in stock of merchandise held for sale to the public by dealers and such coverage must [~~shall~~] be limited to installation risks or builders' risks where perils in addition to fire and extended coverage are to be insured. If written for account of owner, the coverage must [~~shall~~] cease upon completion and acceptance thereof or if written for account of a seller or contractor, the coverage must [~~shall~~] terminate when the interest of the seller or contractor ceases.

(Q) Inland marine insurance classes of coverage, commonly referred to as consumer credit property insurance and commercial credit property insurance, set out in clauses (i) and (ii), respectively, as follows:

(i) Coverage resulting from an open- or closed-end [~~open or closed end~~] consumer credit transaction that is a retail installment transaction (filed). For purposes of this subparagraph, "retail installment transaction" has the meaning assigned in [~~the~~] Finance Code, §345.001. The credit property insurance addressed in this clause must comply with provisions in subclauses (I) through (VIII) of this clause.

(I) Policies offering coverage addressed in this clause must include coverage while in transit and may be extended to include the interest of a vendee, mortgagor, or lessee, but in no event may [~~shall~~] the policy cover the vendor's, mortgagee's, or lessor's interest beyond the termination of that interest.

(II) All policies or certificates issued under this clause must [~~shall~~] include a clear statement to the insured about the method of payment allocation to all outstanding purchase obligations by reference to the applicable lending documents to determine how the coverage will be applied.

(III) Premium calculations for coverage addressed in this clause involving a closed-end [~~closed end~~] consumer transaction may not be based on amounts paid for services, meals, entertainment, finance or service fees, loan interest, delivery charges, or other insurance premiums (e.g., credit life, credit disability, credit property, or credit involuntary unemployment insurance coverage).

(IV) An offer to extend coverage for a closed-end [~~closed end~~] consumer transaction addressed in this clause must [~~shall~~] include, at the time of the invitation to contract, the following prominent written disclosure in no smaller than 10-point boldface type: "This coverage might duplicate existing coverage if you have a residential property insurance policy. This coverage ceases when you have fully paid the debt. This coverage is primary, so it is the first source to be used in the event of a loss on property it covers. You may cancel this coverage at any time by calling the insurer at the toll-free telephone number provided to you, or by writing to the insurer. This coverage costs (set out the total identifiable credit property insurance charge)."

(V) An offer to extend coverage for an open-end [~~open end~~] consumer transaction addressed in this clause must [~~shall~~] include, at the time of the invitation to contract, the following prominent written disclosure in no smaller than 10-point boldface type: "This coverage might duplicate existing coverage if you have a residential property insurance policy. It applies to any item of covered property on which you owe a debt. This coverage is primary, so it is the first source to be used in the event of a loss on property it covers. You may cancel this coverage at any time by calling the insurer at the toll-free telephone number provided to you, or by writing to the insurer. This coverage costs $(enter amount) per $100 of outstanding balance on your account. The premium charged for this coverage is based on your entire outstanding balance, but the coverage only applies to tangible personal property purchased on an open-end credit account. Services, meals or other consumables, entertainment, finance or service fees, loan interest, delivery charges, or other insurance premiums, which may be part of your outstanding balance, are not covered."

(VI) Policies or certificates extending the coverage addressed in this clause must [~~shall~~] be provided to the insured at the time coverage is accepted by the insurer, along with written instructions on filing claims under the coverage. The instructions must [~~shall~~] include the insurer's toll-free telephone number, as well as a list of essential elements for inclusion by the insured to perfect a claim. All such policies or certificates provided to insureds must [~~shall~~] include the disclosure set out in subclause (IV) of this clause, or subclause (V) of this clause, as applicable, subject to the same type face and size requirements.

(VII) Policies and certificates of insurance issued to cover open-end [~~open end~~] consumer transactions must [~~shall~~] provide that the policyholder or certificate holder will be furnished the following disclosure notice on the face of the account statement or through a statement insert not less than semi-annually in no smaller than 6-point boldface type if on the face of that statement or in no smaller than 10-point boldface type if on a statement insert: "If you are paying a credit property insurance premium, that premium is based on the entire outstanding balance of this account. You may cancel this coverage at any time by calling the insurer at the toll-free telephone number it has provided to you, or by writing to the insurer. Any premium charged for credit property insurance coverage is based on your entire outstanding balance, but the coverage only applies to tangible personal property purchased on an open-end credit account. Services, meals or other consumables, entertainment, finance or service fees, loan interest, delivery charges, or other insurance premiums, which may be part of your outstanding balance, are not covered."

(VIII) Policies and certificates of insurance offering coverage for an open-end [~~open end~~] consumer transaction must [~~shall~~] provide that the policyholder or certificate holder will be furnished a statement each billing cycle, but not less frequently than quarterly, which indicates:

(-a-) the amount of the credit property insurance charge, shown separately from any total insurance charge;

(-b-) the amount of the insured's indebtedness to which the insurance charge rate was applied;

(-c-) the date the rate was applied; and

(-d-) the period covered by such monthly charge.

(ii) Coverage resulting from commercial credit transactions involving installment sales, leased property, and deferred payment contracts (non-regulated). For purposes of this subparagraph, a commercial credit transaction is one which does not fall within the meaning of an open- or closed-end [open or closed end] or consumer credit transaction that is a retail installment transaction under clause (i) of this subparagraph. The credit property insurance coverage addressed in this clause covers the interest of a vendor or mortgagee in property sold in a commercial transaction under an installment sales contract, or a partial or deferred payment contract , ~~,~~ and the interest of a lessor in property leased. Credit property insurance policies subject to this clause must include coverage while in transit and may be extended to include the interest of the vendee, mortgagor, or lessee, but in no event may [~~shall~~] the policy cover beyond termination of the vendor's, mortgagee's, or lessor's interest.

(R) Live animal floaters as follows:

(i) cattle kept for feeding, dairy, breeding, or show purposes, sheep, swine, horses, and mules, except horses and mules used exclusively for racing or show including breeding therefor (filed); and

(ii) range cattle and range sheep while on ranges; horses or mules used exclusively for racing or show, including breeding therefor; livestock while being transported to or from or while at stockyards; policies issued to assureds conducting sales or auction, covering livestock of others for public sale; livestock insured under mortality policies covering, among other perils, against death or destruction due to natural causes; livestock of circus, carnival, or theatrical enterprises; policies issued to veterinarians and humane societies to cover livestock of others in their custody or control for professional purposes (non-regulated).

(S) Mobile equipment and miscellaneous movable property (non-regulated) . [~~e.g.,~~] For example, this includes contractors' equipment, industrial and other special equipment not primarily designed for highway use, mechanical sales devices, storage batteries, stevedores, divers' equipment, undertakers' equipment, outboard boats and motors, parachutes, [~~and~~] balloons, [~~,~~] scientific [~~Scientific~~] and surveyors' instruments, articles for sport and recreation, musical scores and orchestrations, and all other similar movable and identified property not on sale or consignment, or in the course of manufacture, which has come into the custody and/or control of parties who intend to use such property for the purpose for which it was manufactured or created. Such policies may [~~shall~~] not include coverage of storage risks at premises of the assured, except where incidental to the regular use of the equipment or property away from the premises.

(T) Musical instrument floaters (radios, televisions, record players, and combinations thereof are not deemed musical instruments) (filed).

(U) Nuclear insurance (non-regulated). Insurance against loss resulting from physical damage (including risks in course of construction) to:

(i) designated nuclear facilities, including property associated therewith and subject to radiation damage therefrom;

(ii) other property directly related to such nuclear facilities; and

(iii) other facilities involving substantial quantities of radiation.

(V) Oil and gas lease property (filed).

(W) Pattern and die floaters, excluding coverage on the owner's premises (non-regulated).

(X) Personal effects floaters (filed).

(Y) Personal fur floaters (filed).

(Z) Personal jewelry floaters (filed).

(AA) Personal property floaters (filed).

(BB) Physicians' and surgeons' equipment floaters (excluding dealers) (filed).

(CC) Radium floaters (non-regulated).

(DD) Rolling stock covering locomotives and other rolling stock used on a railway system. Coverage may be provided on an all risk basis or named peril basis, subject to the inclusion of the perils of fire, collision, derailment, overturn, strikes, and riots (non-regulated).

(EE) Salespersons' [~~Salesmen's~~] samples floaters (non-regulated).

(FF) Sign and street clock policies, covering neon signs, automatic or mechanical signs, street clocks, while in use as such (filed).

(GG) Silverware floaters (filed).

(HH) Stamp and coin floaters:

(i) private collection (filed); and

(ii) commercial risks (non-regulated).

(II) Self-service storage customer floater policies (filed for policy forms and endorsements; non-regulated for rates) may be issued to a tenant of a self-storage facility and covering property stored at such facility. Coverage is limited to property in storage for the perils set forth in the policies, which must include coverage for property while in transit. Coverage may not be provided for any motor vehicles subject to motor vehicle registration and inspection. It is not intended that this coverage definition will allow coverage of property stored in any facility where the lessor issues a warehouse receipt, bill of lading, or other document of title relating to the stored property, or in facilities other than storage facilities that have multiple storage units. Accordingly, the terms "self-service storage facility" and "tenant" [~~shall~~] have the meaning prescribed by [~~the~~] Texas Property Code, §59.001 [~~§59.000~~], i.e., "self-service storage facility" means real property that is rented to be used exclusively for storage of property and is cared for and controlled by the tenant. "Tenant" [~~Tenant~~] means a person entitled under a rental agreement to the exclusive use of storage space at a self-service storage facility.

(JJ) Theatrical floaters, excluding buildings and their improvements and betterments and furniture and fixtures that do not travel about with theatrical troupes (filed).

(KK) Tourists' floaters (filed).

(LL) Travel baggage (non-regulated).

(MM) Valuable papers and records (filed).

(NN) Wedding present floaters (non-regulated).

(OO) Wool growers and wool buyers floater policies, covering property usual to the conduct of the assured's business while in transit and all other situations customary and incidental thereto (non-regulated).

(PP) Electronic Equipment Protection Policy (filed). Coverage may be provided for electronic equipment, including data processing equipment and components, connections, extensions, and systems; electronic media including converted data; and extra expense incurred in order to continue normal operations which are interrupted as a result of an insured loss. The policy must provide coverage on such property while in transit.

(QQ) Pet insurance (non-regulated). Individual or group insurance policies covering veterinary expenses for pet illness or injury.

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 January 11, 2021.

TRD-202100131
James Person
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 676-6584

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes amendments to §§115.111, 115.112, 115.119, 115.121, and 115.357 and new §§115.170 - 115.181, and 115.183.

If adopted, the new and amended sections of Chapter 115 will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

The 1990 Federal Clean Air Act (FCAA) Amendments (42 United States Code (USC), §§7401 *et seq.)* require the EPA to establish primary National Ambient Air Quality Standards (NAAQS) that protect public health and to designate areas as either in attainment or nonattainment with the NAAQS, or as unclassifiable. Each state is required to submit a SIP to the EPA that provides for attainment and maintenance of the NAAQS.

FCAA, §172(c)(1) requires that the SIP incorporate all reasonably available control measures, including reasonably available control technology (RACT), for sources of relevant pollutants. The EPA defines RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 *Federal Register* (FR) 53761, September 17, 1979). For a nonattainment area classified as moderate and above, FCAA, §182(b)(2)(A) requires the state to submit a SIP revision that implements RACT for sources of Volatile Organic Compounds (VOC) addressed in a Control Techniques Guidelines (CTG) document issued between November 15, 1990 and the area's attainment date.

The CTG documents provide information to assist states and local air pollution control authorities in determining RACT for specific emission sources. The CTG documents describe the EPA's evaluation of available information, including emission control options and associated costs, and provide the EPA's RACT recommendations for controlling emissions from these sources. The CTG documents do not impose any legally binding regulations or change any applicable regulations. The EPA's guidance on RACT indicates that states can choose to implement the CTG recommendations, implement an alternative approach, or demonstrate that additional control for the CTG emission source category is not technologically or not economically feasible in the area.

Under the 2008 eight-hour ozone NAAQS, Texas has two ozone nonattainment areas that meet the requirement to address VOC RACT for sources covered by these CTG documents. The two ozone nonattainment areas are the Dallas-Fort Worth (DFW) area consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties and the Houston-Galveston-Brazoria (HGB) area consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties. These areas are both designated serious nonattainment, effective September 23, 2019 (84 FR 44238), with an attainment date of July 20, 2021.

On October 27, 2016, the EPA issued the Control Techniques Guidelines for the Oil and Natural Gas Industry (EPA-453/B-16-001) (oil and gas CTG) that recommended VOC RACT requirements for existing oil and natural gas industry sources (81 FR 74798). As permitted under FCAA, §182(b)(2)(C), the oil and gas CTG directed states to submit SIP revisions addressing VOC RACT for the emission sources addressed in the oil and gas CTG by October 27, 2018.

On March 9, 2018, the EPA proposed a potential withdrawal of the oil and gas CTG (83 FR 10478) predicated on its reconsideration of the 2016 Oil and Natural Gas Sector New Source Performance Standard (NSPS) and the fact that the recommendations made in the oil and gas CTG were fundamentally linked to the conclusions in the 2016 NSPS. Therefore, the TCEQ did not initiate rulemaking to address the CTG. The TCEQ submitted comments to the EPA in support of withdrawal of this CTG. Subsequently, on May 22, 2019, the EPA indicated on its Unified Agenda that it planned to release a supplemental notice of a potential withdrawal. However, the EPA did not publish any supplemental notice nor did the EPA take any other formal action to finalize the withdrawal. On January 22, 2020, the Center for Biological Diversity and the Center for Environmental Health filed a lawsuit against the EPA for failure to take action concerning nine states (including Texas) that did not submit RACT SIP revisions for the oil and gas CTG by October 27, 2018. On October 29, 2020, the EPA issued the finding of failure to submit in *Center for Biological Diversity, et al., v. Wheeler,* No. 3:20-cv-00448 (N.D. Cal.) indicating that under FCAA, §110(c), such a finding triggers an obligation for the EPA to promulgate a federal implementation plan no later than two years after issuance of the finding for states that have not submitted, and for which the EPA

has not approved, the required RACT SIP submittal. The notice further indicated that if EPA failed to find a RACT SIP submittal complete within 18 months of the effective date of the finding notice, the offset sanction in FCAA, §179(b)(2) for the affected ozone nonattainment area applies. Subsequently, six months after the offset sanction is imposed, the highway funding sanction will be triggered for the affected ozone nonattainment area in accordance with FCAA, §179(b)(1), if EPA finds the RACT SIP submittal is incomplete. This proposed rulemaking would fulfill Texas' obligation to address RACT for the oil and gas CTG and revise the SIP to include the proposed RACT rules.

The EPA's oil and gas CTG addresses VOC emissions from specific types of equipment in the oil and natural gas industry. Specifically, storage tanks, centrifugal and reciprocating compressors, pneumatic pumps, pneumatic controllers, and fugitive emission components at different points in the industry are recommended for VOC emission control. The EPA's recommendations were based on review of its 1983 Guidelines Series report "Control of VOC Equipment Leaks from Natural Gas/Gasoline Processing Plants" (December 1983, EPA-450/3-83-007); the technical support documents for multiple revisions of the "Standards of Performance for Crude Oil and Natural Gas Production, Transmission, and Distribution" NSPS; existing state regulations; and information on costs, emissions, and available VOC emission control technologies. The model rules in the appendices of the EPA's oil and gas CTG, for which the RACT recommendations in the oil and gas CTG are based, mirror the 2016 NSPS and the Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006 (November 16, 2007) in 40 Code of Federal Regulations (CFR) Part 60, Subpart VVa, for fugitive emission components at a natural gas processing plant.

The oil and gas CTG included model rule language that states may rely on to develop rule language; however, the model rule language was not recommended or presumed by the EPA to be RACT, except where explicitly discussed. The EPA's oil and gas CTG also provided recommendations on developing compliance procedures, such as monitoring, testing, reporting, and recordkeeping for the types of equipment addressed in the document. These recommendations were in addition to the recommendations of the RACT level of control and were generally consistent with the approach used in the existing Chapter 115 rules of establishing cohesive and comprehensive rules to support demonstration of the RACT level of control for a particular source type. The commission developed the proposed RACT requirements and other requirements supporting the implementation of RACT, such as monitoring and recordkeeping requirements, using elements of both the model rule language and the existing Chapter 115 rule requirements. Although the commission proposes some rule requirements consistent with the model rule language, the commission is not proposing the model rules wholesale for this rulemaking and does not consider all of the model rules to be necessary for the implementation of RACT for the oil and gas CTG emission source categories.

Certain equipment covered by the EPA's oil and gas CTG is currently regulated under the Chapter 115 rules. For this equipment, the commission proposes to specifically exclude such equipment from the existing rule applicable to the equipment beginning on the January 1, 2023 compliance date for the proposed new rules. The commission does not intend to subject a particular piece of equipment to the same requirements in two separate rules.

To keep together the new and existing RACT provisions for oil and gas production and gas processing in the DFW and HGB areas, the existing RACT rule requirements necessary to maintain RACT for storage tanks currently regulated under Chapter 115, Subchapter B, Division 1 and the new RACT requirements for the other types of equipment covered under the EPA's oil and gas CTG would be placed into Subchapter B, new Division 7. Language is also proposed in Chapter 115 Subchapters B, Divisions 1 and 2 and Subchapter D, Division 3 to reflect the change in the Chapter 115 rule applicability for the types of equipment currently required to comply with existing rule requirements but that would be subject to the Subchapter B, new Division 7 rule requirements upon the compliance date. The proposed revisions to the existing rules would not interfere with RACT currently in place for this equipment and are not intended to amend any requirements for the types of equipment that are not addressed by this proposed rulemaking.

Demonstrating Noninterference under FCAA, §110(l)

The revisions proposed in this rulemaking would establish new rule language for centrifugal compressors; reciprocating compressors; storage tanks (between the wellhead and custody transfer); pneumatic pumps; pneumatic controllers; natural gas processing plant fugitive emission components; and well site and gathering and boosting station fugitive emission components in the DFW and HGB areas, as required under FCAA, §172(c)(1) and §182(b)(2) for nonattainment areas classified as moderate and above. The proposed rule requirements, including inspection, testing, and control efficiency requirements would affect some equipment types currently subject to the Chapter 115 rules and would affect new types of equipment that are not currently regulated in the Chapter 115 rules. Storage tanks and fugitive emission components at a natural gas processing plant are already covered under existing Chapter 115 RACT rules. The other types of equipment proposed for regulation are generally not subject to the existing rules. In the instances where the other types of equipment are subject to existing Chapter 115 rules, the proposed rules in Subchapter B, Division 7 are at least as stringent as those existing rules. Therefore, the commission has determined that the proposed revisions would not negatively affect the status of the state's progress towards attainment with the ozone NAAQS, would not interfere with control measures, and would not prevent reasonable further progress toward attainment of the ozone NAAQS.

Section by Section Discussion

The commission proposes non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, establish consistency in the rules, and conform to the standards in the Texas Legislative Council Drafting Manual, September 2020. These non-substantive changes are not intended to alter the existing rule requirements in any way and are not specifically discussed in this preamble.

SUBCHAPTER B: GENERAL VOLATILE ORGANIC COMPOUND SOURCES

DIVISION 1: STORAGE OF VOLATILE ORGANIC COMPOUNDS

§115.111, Exemptions

The commission proposes adding a new exemption as §115.111(a)(14) for storage tanks in the DFW and HGB areas

specifying the tanks that would no longer be included in the applicability for Subchapter B, Division 1 when compliance is achieved with Subchapter B, Division 7. Compliance with Subchapter B, Division 7 would be required no later than the compliance date of January 1, 2023. These tanks would not be covered under or subject to any requirement of Subchapter B, Division 1 rules after December 31, 2022 and would instead be covered under and subject to the requirements in the proposed Subchapter B, Division 7 rules. Crude oil and condensate storage tanks in the DFW and HGB areas subject to the requirements in Subchapter B, Division 1 that would not be subject to the proposed Subchapter B, Division 7 rules would remain subject to the existing requirements. This change in applicability would be necessary as a result of combining the proposed rules that address the oil and gas CTG into one division. The owner or operator should continue to comply with the applicable requirements in the Subchapter B, Division 1 rules until compliance with the Subchapter B, new Division 7 rules is achieved, on or before January 1, 2023. There is not intended to be any gap in applicable requirements for the storage tanks that are currently subject to these rules but that would be subject to the Subchapter B, Division 7 rules by the January 1, 2023 compliance date.

§115.112, Control Requirements

The commission proposes to amend §115.112(e) to reflect the change in applicability for the crude oil and condensate storage tanks in the DFW and HGB areas currently subject to the rules in Subchapter B, Division 1. The proposed amendment to subsection (e) would specify that beginning January 1, 2023 the requirements in the subsection no longer apply to storage tanks storing crude oil or condensate that are subject to proposed Subchapter B, Division 7. This proposal is intended to exclude from Subchapter B, Division 1, all storage tanks subject to the compliance requirements of Subchapter B, Division 7, including those that currently store crude oil or condensate but that do not meet the criteria in §115.112(e)(4) or (5) to control the flashed emissions from the tank. The commission determined in this proposed rulemaking that because it would be economically and technologically feasible to control such storage tanks with at 6.0 tons per year (tpy) of VOC emissions, the proposed new control requirements in Division 7 would be applied to storage tanks at a threshold lower than the existing major source threshold in current §115.112(e)(4) or (5) requiring flash emission control. The applicability of the control requirements in Subchapter B, Division 1 is based on metrics different than the metrics to determine applicability to the Subchapter B, Division 7 rules. For this reason, it would be possible for a single tank or group of storage tanks required to control VOC emissions in accordance with existing subsection (e)(1) to be exempt from the control requirements in Subchapter B, Division 7. Although such tanks would not be subject to Subchapter B, Division 1 beginning on the compliance date in Subchapter B, Division 7, these tanks would be required to continue to comply with the same control requirements in existing §115.112(e) that currently apply. To facilitate this compliance and prevent potential backsliding, the §115.112(e) control requirements are proposed in new §115.175.

§115.119, Compliance Schedules

The commission proposes to amend §115.119 by deleting subsection (b)(2), renumbering the subsequent paragraph, and adding subsection (h) specifying that in Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, Waller, and Wise Counties, the owner or operator of a storage tank storing crude oil or condensate would be required to continue to comply with the requirements in the Subchapter B, Division 1 rules until compliance with the requirements in Subchapter B, new Division 7 is achieved or until compliance is required on January 1, 2023, whichever is earlier. The commission intends for there to be no gap in compliance as affected storage tanks shift from coverage under Subchapter B, Division 1 to coverage under Subchapter B, Division 7.

SUBCHAPTER B: GENERAL VOLATILE ORGANIC COMPOUND SOURCES

DIVISION 2: VENT GAS CONTROL

§115.121, Emission Specifications

The commission proposes to amend existing §115.121(a)(1) to provide an exception for compressors that would be subject to Subchapter B, new Division 7 for emissions from compressor rod packing that are contained and routed through a vent from being subject to §115.121(a)(1) beginning when compliance is achieved with the proposed Subchapter B, Division 7 rules, which is required no later than January 1, 2023. The proposed Subchapter B, Division 7 rules would apply to reciprocating compressors upstream of the point where custody of produced products occurs and include requirements to control VOC emissions from rod packing such as those currently covered under the vent gas rules in Subchapter B, Division 2. To avoid subjecting the rod packing to dual rule applicability and to accommodate combining the proposed rules that address the EPA's oil and gas CTG into one division, the commission proposes the change to §115.121(a)(1). TCEQ does not expect any backsliding issues because the control efficiency required in Subchapter B, Division 2 for a control device used to reduce VOC emissions from compressor rod packing is 90% but would increase to 95% in the proposed Subchapter B, Division 7 rules.

The owner or operator should continue to comply with the applicable requirements in the Subchapter B, Division 2 rules until compliance with the Subchapter B, new Division 7 rules is achieved, on or before January 1, 2023. There is not intended to be any gap in applicable requirements for those compressors that are currently subject to these rules but that would be subject to the Subchapter B, Division 7 rules on or before the January 1, 2023 compliance date.

SUBCHAPTER B: GENERAL VOLATILE ORGANIC COMPOUNDS SOURCES

DIVISION 7: OIL AND NATURAL GAS IN OZONE NONATTAINMENT AREAS

§115.170, Applicability

The commission proposes new §115.170 to establish applicability to which the new requirements proposed in Subchapter B, Division 7 would apply. The proposed new section would specify that the requirements in Subchapter B, Division 7 apply to certain oil and gas equipment in the DFW and HGB areas, as these areas are currently defined in §115.10. The applicability listed in §115.170 is recommended in the oil and gas CTG and incorporated into Subchapter B, Division 7 to ensure RACT is addressed for the types of equipment in the DFW and HGB areas specified in the EPA's CTG. Each type of equipment specified in proposed new §115.170 exists in the DFW and HGB areas; therefore, the commission is required to address RACT for the equipment per FCAA, §182(b)(2)(A).

The commission proposes new §115.170(1) to specify that the provisions of Subchapter B, Division 7 are applicable to centrifugal compressors with wet seals and reciprocating compressors used to transfer VOC gases in a transport piping system downstream of the wellhead. The applicability extends to the point where custody is transferred to another owner or operator of a natural gas transmission or storage operation.

The commission proposes new §115.170(2) to specify that pneumatic controllers in use between a wellhead and either a natural gas processing plant or point of custody transfer to a crude oil pipeline, inclusively, would be subject to Subchapter B, Division 7. The existing Chapter 115 rules do not require controlling the VOC emissions from a pneumatic controller.

The commission proposes new §115.170(3) to specify that any pneumatic pump located at a well site or a natural gas processing plant would be subject to Subchapter B, Division 7. The existing Chapter 115 rules do not require controlling the VOC emissions from a pneumatic pump.

The commission proposes new §115.170(4) to specify that storage tanks in use at a well site through the point where custody of the oil is transferred to a pipeline or where the natural gas stream enters a distribution system, inclusively, would be subject to Subchapter B, Division 7. The EPA recommended, as described in the oil and gas CTG, all storage tanks in all segments of the oil and gas industry except the distribution segment, be subject to RACT. The proposed applicability would be the same as in the existing Subchapter B, Division 1 rules; however, the criteria that determine the control requirements that would be applicable would be different in proposed Subchapter B, new Division 7 than in the existing rules. The Subchapter B, Division 1 rule applicability for storage tanks, proposed as storage tanks in Subchapter B, Division 7, for crude oil or condensate storage is based on capacity and vapor pressure of the material stored, for requirements other than flash emission control requirements. For such flash emission control requirements in existing Subchapter B, Division 1, applicability in §115.112(e)(4) and (5) is based on annual throughput of condensate and total annual flash emissions of equal to or greater than the major source thresholds for the DFW and HGB areas.

The commission proposes new §115.170(5) to specify that fugitive emission components, defined in new §115.171, in VOC service at production well sites, natural gas processing plants, or natural gas gathering or boosting stations, would be subject to Subchapter B, Division 7.

For both the Subchapter D, Division 3 rules and the rules proposed in Subchapter B, Division 7, the types of operation are expected to be the same; however, the threshold at which the monitoring requirements are triggered would differ. The existing exemptions in Subchapter D, Division 3 specify that those plant sites covered by a single account number with less than 250 components in VOC service would be exempt from the requirements in that division except for recordkeeping. In proposed Subchapter B, new Division 7, a site is required to comply with monitoring and associated requirements regardless of the number of components at a single account. This was a recommendation in the EPA's oil and gas CTG, and it is determined to be both technologically and economically reasonable to ensure fugitive VOC emissions are minimized.

§115.171, Definitions

The commission proposes new §115.171 to define 14 terms used in Subchapter B, Division 7. Some of the terms are refinements of existing definitions in §115.10 or in 30 TAC §101.1 and would be specific to the proposed rules for implementation of RACT in Subchapter B, Division 7. All terms not defined in §115.171, §115.10, or §101.1 are intended to have the same meaning used in the oil and gas CTG, except where explicitly indicated.

The commission proposes new §115.171(1) to define centrifugal compressor as equipment that raises the pressure of natural gas using mechanical rotating vanes or impellers. Excluded from the definition would be axial, screw, sliding vane, and liquid ring compressors. The proposed definition is used to identify a category of equipment for which seal emissions would be regulated by the proposed new rule requirements.

The commission proposes new §115.171(2) to define closure device. The examples provided of closure devices include thief hatches, pressure relief valves, pressure-vacuum relief valves, access hatches, and other closures. This proposed definition mirrors the existing definition in §115.110 for VOC storage tanks. The definition in §115.110 does not apply universally to the other divisions within Chapter 115 and is therefore defined in Subchapter B, Division 7 to clearly convey what is meant by a closure device and to maintain consistent terminology for a smooth transition for the owners and operators currently subject to the Subchapter B, Division 1 rules but who would be subject to the Subchapter B, Division 7 rules no later than January 1, 2023.

The commission proposes new §115.171(3) to define difficult-to-monitor as equipment requiring that personnel be lifted off of a surface by more than two meters to perform an inspection. This definition would indicate the components intended to qualify for an alternative monitoring frequency in the fugitive emission component rules and in the monitoring and inspection rules. This term is described in the existing Subchapter D, Division 3 rules as it would be defined in proposed new paragraph (3). The oil and gas CTG also described difficult-to-inspect as difficult-to-monitor as described in paragraph (3). The commission uses "monitor" instead of "inspect" to be consistent with the existing Chapter 115 rules.

For the purposes of proposed Subchapter B, Division 7 only, the commission proposes new §115.171(4) to define fugitive emission components as specified components that may leak VOC at the locations specified in the applicability section of Subchapter B, Division 7. Vents and sampling systems are specifically excluded from consideration as fugitive emissions components because they are subject to specific rules. Proposed new §115.171(4)(A) would specify that one location is a natural gas processing plant and identify, with a non-exhaustive list, the types of equipment intended to be covered. Proposed new paragraph (4)(B) would specify that other locations are well sites or compressor stations and identify, with a non-exhaustive list, the types of equipment intended to be covered. The proposed definition would clarify that closed vent systems would not be required to conduct additional instrument monitoring as fugitive emission components because other annual instrument monitoring requirements would apply. The same reasoning would apply to thief hatches or other closure devices that would be subject to the storage tank requirements in §115.175. This definition, and thus the corresponding fugitive monitoring requirements in proposed new §115.178, would not apply to the equipment regulated in proposed new §§115.173 - 115.175 because those rules establish the RACT requirements for the equipment covered in those sections.

The commission proposes new §115.171(5) to define a gathering and boosting station as a combination of one or more compressors collecting natural gas from well sites and moving it into gathering pipelines supplying a natural gas processing plant or into a pipeline. This proposed definition provides clarification on the locations where the rules are applicable to certain equipment. This definition is recommended in the oil and gas CTG model rule language for fugitive emission component monitoring and specifies that compressors located at a well site or onshore natural gas processing plant are not considered a gathering and boosting station for purposes of those rules. The definition in proposed new §115.171(5) does not specify that the exclusion applies only to the §115.178 fugitive emission component monitoring rule. This term is used in other parts of this proposed new Subchapter B, Division 7 and is described in the oil and gas CTG for these other types of equipment consistent with the definition, but not explicitly defined in the other model rule language appendices. To ensure the term is applied as intended to all rules in this proposed Subchapter B, Division 7, the proposed definition would not specify that the exclusion only applies to fugitive emission component monitoring.

The commission proposes new §115.171(6) to define a pneumatic controller as an automated instrument activated by gas pressure and to characterize it primarily by its emission characteristics. Proposed new §115.171(6)(A) would specify that continuous bleed pneumatic controllers receive a continuous flow of natural gas that is vented continuously at a rate that may vary over time. Subparagraph (A) would further specify that these controllers are subdivided into two types based on their bleed rate. Proposed new §115.171(6)(A)(i) would indicate the bleed rate of low bleed controllers and proposed new §115.171(6)(A)(ii) would indicate the bleed rate of high bleed controllers. Proposed new §115.171(6)(B) would define intermittent bleed or snap-acting pneumatic controllers as releasing gas only when opening or closing a valve or when throttling gas flow. Proposed new §115.171(6)(C) would specify zero-bleed pneumatic controllers do not bleed natural gas to the atmosphere because they release gas to a downstream pipeline.

The commission proposes new §115.171(7) to define pneumatic pump as a diaphragm pump powered by pressurized natural gas. In general, pneumatic pumps are devices that use gas pressure to drive a fluid by raising or reducing the pressure of the fluid by means of a positive displacement, but only pneumatic pumps driven by natural gas under pressure are proposed for regulation under Subchapter B, Division 7.

The commission proposes new §115.171(8) to define a reciprocating compressor as operating by positive displacement, employing linear movement of the driveshaft. This is one of the types of compressors that is proposed for regulation in Subchapter B, Division 7.

The commission proposes new §115.171(9) to define rod packing as a specific type of seal to limit leaks or as other mechanisms that provide the same function. This definition would be needed to identify the specific reciprocating compressor component targeted by the control requirements for reciprocating compressors because the rod packing is the source of VOC emissions for this equipment type.

The commission proposes new §115.171(10) to define the term route to a process. This term is used to represent a control option used throughout Subchapter B, Division 7 for most of the equipment subject to Subchapter B, Division 7. The different forms of the verb "route" in this defined term vary when used throughout the proposed new division as needed for syntax, but the varying forms are not intended to change the meaning of the term in the rules.

The commission proposes new §115.171(11) to define a storage tank as a tank, stationary vessel, or a container accumulating crude oil, condensate, intermediate hydrocarbon liquids, or produced water that is constructed primarily of non-earthen materials. The proposed definition would be based on the oil and gas CTG definition and would be similar to the existing definition in §115.110 of "Storage tank;" however, the proposed definition would explicitly incorporate produced water. Although a produced water tank is not included in the definition in §115.110, the material is covered by those rules because it contains crude oil or condensate. Since the terms in §115.110 would not apply to the rules in Subchapter B, Division 7, defining "Storage tank" separately would be appropriate.

The commission proposes new §115.171(12) to define unsafe-to-monitor as equipment that would present an imminent or potential danger during monitoring. This definition would indicate the components intended to qualify for an alternative monitoring frequency in the fugitive emission component and inspection and monitoring rules. This term is consistent with the existing Subchapter D, Division 3 rules. The oil and gas CTG also described unsafe-to-inspect as unsafe-to-monitor is described in paragraph (12). The commission uses "monitor" instead of "inspect" to be consistent with the existing Chapter 115 rules.

The commission proposes new §115.171(13) to define vapor recovery unit. This term would be used throughout Subchapter B, Division 7 as a control requirement option available to an affected owner or operator. This term is defined in existing §115.110 and is intended to be used in the same manner as it is currently used for VOC storage tanks.

The commission proposes new §115.171(14) to define well site to establish one of the locations that meet the applicability to be subject to the requirements in Subchapter B, Division 7 for which equipment covered under this rule is located.

§115.172, Exemptions

Proposed new §115.172 lists the exemptions that apply to applicable equipment subject to Subchapter B, Division 7. Some of the proposed exemptions replicate those in existing §115.111 for storage tanks and in §115.137 for fugitive emission components. The proposed exemptions would add exemptions for storage tanks and fugitive emission components beyond the exemptions for this equipment in existing Chapter 115 rules, as well as provide exemptions for newly regulated equipment types in proposed Subchapter B, new Division 7. The proposed new exemptions are based on RACT recommendations in the oil and gas CTG and in the model rule language.

The commission seeks comment on whether the proposed exemptions are appropriate for the equipment subject to Subchapter B, Division 7 considering technological and economic feasibility.

The commission proposes new §115.172(a) to provide exemptions for certain equipment and to specify how records supporting the applicability of an exemption to a specific unit would need to be kept in accordance with the recordkeeping and reporting requirements developed in this proposed rulemaking. Additional recordkeeping requirements for some exemptions are listed in the paragraph of the specific exemption.

Proposed new §115.172(a)(1) would exempt certain boilers and process heaters that meet specified criteria from the testing and monitoring requirements of Subchapter B, Division 7, as recommended by the EPA's oil and gas CTG. Proposed new §115.172(a)(1)(A) specifies one group of boilers and process heaters that uses a vent gas stream from equipment subject to Subchapter B, Division 7 as the primary fuel or as a supplemental fuel. Proposed new subparagraph (B) specifies another group of boilers and process heaters as those with a design heat input capacity of 44 megawatts (149.6 million British thermal units per hour) or greater. This exemption is provided in the model rule language and is proposed for Subchapter B, Division 7 because the commission expects that these process heaters and boilers would be subject to testing and monitoring for regulated pollutants other than VOC and thus would not need to comply with the requirements in proposed Subchapter B, Division 7.

The commission proposes new §115.172(a)(2) to exempt pneumatic pumps located at well sites if they operate less than 90 days per calendar year. This proposed exemption is consistent with the RACT recommendation in the EPA's oil and gas CTG to not apply controls to these types of pumps. The commission expects that the VOC emissions from these pumps would be negligible and controlling them would not be reasonable.

The commission proposes new §115.172(a)(3) to exempt, except for the control requirements in proposed new §115.175(b) or (c), any storage tank that meets any of the parameters of proposed new §115.172(a)(3)(A) - (E). Proposed new subsection (a)(3)(A) would exempt storage tanks if the potential to emit (PTE) VOC is 6.0 tpy or less, as calculated in accordance with proposed §115.175(c)(2). Proposed new subsection (a)(3)(B) would exempt storage tanks if the actual VOC emissions without controls are 4.0 tpy or less, as calculated in accordance with §115.175(c)(1). The PTE limit of 6.0 tpy and the actual emission limit of 4.0 tpy are the thresholds for which RACT is recommended to apply to storage tanks in the oil and gas CTG. The CTG-recommended limits do not have decimal places, meaning the actual values could be rounded down to the recommended limits and still be in compliance with such limits. However, the commission proposes the VOC tpy thresholds proposed for storage tanks with two significant figures to maintain consistency with other Chapter 115 limits and previous, but still valid, EPA guidance. The EPA's guidance, a memo on Performance Test Calculation Guidelines regarding the NSPS and National Emissions Standards for Hazardous Air Pollutants (NESHAP) (June 6, 1990), recommends using two, but no more than three, significant figures for emission limits. This approach helps with the enforceability of a standard by eliminating ambiguity associated with only one significant figure.

Proposed new §115.172(a)(3)(C) would exempt process vessels such as surge control vessels, bottom receivers, or knockout vessels. Proposed new subsection (a)(3)(D) would exempt pressure vessels if they are designed to operate at pressures above 29.7 pounds per square inch absolute (psia) without emissions to the atmosphere. Proposed new subsection (a)(3)(E) would exempt movable vessels (either skid-mounted or permanently attached to trucks, railcars, barges, ships, or other mobile units) that are intended to be located at a site for 180 consecutive days or less. Such movable vessels are generally not considered part of the site but can be present for specific purposes (e.g., transporting products or other materials, used in maintenance or repair, etc.) at a site. These exceptions are recommended in the EPA's oil and gas CTG and would not interfere with the existing VOC storage tanks subject to the Subchapter B, Division 1 rules. These exemptions are proposed to make clear which tanks would not be affected.

Proposed new §115.172(a)(4) would exempt fugitive emission components at a natural gas processing plant that contact a process fluid that contains less than 1.0% VOC by weight. This is an existing exemption provided in the Subchapter D, Division 3 rules and would continue to be appropriate because minimal VOC emissions would be expected from these components.

The commission proposes new §115.172(a)(5) to exempt pumps and compressors from the fugitive monitoring requirements of §115.177 if they are not otherwise specified in §115.173 and §115.174 and if they are equipped with a shaft sealing system to detect or prevent emissions. The proposed exemption would cover seal systems including, but not limited to, dual pump seals with barrier fluid at higher pressure than the process pressure, seals degassing to vent control systems, and seals equipped with an automatic detection and alarm system for seal failures. This exemption mirrors an existing current Subchapter D, Division 3 exemption, except for the inclusion of the examples of sealless and submerged pumps that could qualify for the exemption. These examples would not affect the equipment being proposed for exemption and are unnecessary to include since the specific equipment provided exemption is already stated in the first sentence of that exemption as it exists in §115.357. The EPA's CTG recommended exempting any centrifugal compressor with a dual dry-shaft sealing system from control requirements, including the fugitive emission component monitoring requirements. A detection or prevention system specified in the exemption would be sufficient to provide at least an equivalent level of control as the §115.177 monitoring requirements would. Such a system provides an alert when vapors are emitted in real time whereas the §115.177 monitoring requirements specify a schedule of conducting a monitoring survey to detect leaks, which would likely not identify the leak as quickly. The proposed §115.172(a)(5) would also be expanded to include crude oil and natural gas well sites and natural gas gathering and boosting stations because the compressors detailed would be intended to be controlled and monitored in accordance with specified provisions.

The commission proposes new §115.172(a)(6) to exempt certain insulated components from the instrument monitoring requirements of §115.177 and §115.178 where insulation makes a component inaccessible to monitoring with a hydrocarbon gas analyzer. This is consistent with EPA's oil and gas CTG RACT recommendation and current Subchapter D, Division 3 natural gas processing plant regulations that exempt insulated and inaccessible fugitive emission components from instrument monitoring requirements. This exemption would mirror and be proposed as new subsection (a)(6) and would be expanded to crude oil and natural gas wells and natural gas gathering and boosting stations. The commission expects that there may be certain components or pieces of equipment regulated in proposed new §§115.173 - 115.175 for which monitoring may be difficult, but inspections via audio, visual, or olfactory means may reveal malfunctions resulting in the release of VOC emissions.

The commission proposes new §115.172(a)(7) to exempt certain sampling connection systems from the requirements of Subchapter B, Division 7 except in proposed new §115.180(2). The systems would have to be in compliance with 40 CFR §63.166(a) and (b) to qualify for this exemption. This is consistent with EPA's oil and gas CTG recommendation to implement

a "fugitive monitoring requirements equivalent" with a program under 40 CFR Part 60 Subpart VVa. The proposed language would closely mimic fugitive monitoring language for natural gas processing plants in existing §115.357(a)(11), which exempts closed-purge, closed-loop, or closed-vent sampling systems from fugitive emission component monitoring requirements. This exemption would mirror the exemption in §115.357(a)(11), proposed as new §115.172(a)(8), and expanded to include crude oil and natural gas wells and natural gas gathering and boosting stations.

Proposed new §115.172(a)(8) would exempt fugitive emission components located at a well site with one or more wells that produce, on average, 15 or less barrel equivalents or less per day. The EPA recommended in the oil and gas CTG that RACT not apply to these components, and the commission determined that the VOC emissions expected from these low producing wells would be minimal.

Proposed new §115.172(b) would exempt equipment used only for materials other than products from a well site, or after the point of custody transfer, from the division requirements.

Proposed §115.172(c) provides an exemption for centrifugal compressors when its wet seals are retrofitted with a dual mechanical or other equivalent dry seal control system. The exemption would apply to compressors that were subject to Subchapter B, Division 7 rules on or after the compliance date in §115.183. The commission recognizes, as discussed in the oil and gas CTG, that an owner or operator may retrofit the wet seals on a centrifugal compressor that would meet the applicability of Subchapter B, Division 7 before the seal retrofit. Once this change is made, the compressor would no longer meet the definition of a centrifugal compressor and would not meet applicability criteria. The owner or operator, therefore, would not be obligated to demonstrate compliance with the control requirements or any associated requirements. Because the RACT recommendation is controlling the VOC emissions from a centrifugal compressor with wet seals, the owner or operator would not be obligated to continue to comply with the provisions applicable to the compressor prior to the retrofit, after retrofit.

The commission proposes §115.172(d) exempting from Subchapter B, Division 7 a pneumatic pump or controller after the appropriate compliance date in §115.183, if changes are made such that the pump or controller does not meet the respective definitions in Subchapter B, Division 7. For example, a pneumatic controller converted to a solar-powered controller no longer meets the applicability of a pneumatic controller regulated by Subchapter B, Division 7. Like centrifugal compressors above, because the RACT recommendation is controlling the VOC emissions from pneumatic pumps and controllers, the unit would no longer be subject to any part of the division once the pump or controller no longer meets the appropriate definition in Subchapter B, Division 7.

§115.173, Compressor Control Requirements

The commission proposes new §115.173 to provide control requirements for centrifugal compressors and reciprocating compressors. The commission determined that the use of a control device with at least a 95% control efficiency is appropriate as the RACT level of control for centrifugal compressors with wet seals. Control devices with this level of control are readily available and can include some combustion equipment that could be used at oil and gas sites such that control also allows the use of emissions as fuel, offsetting part of the costs of control. The commission determined that maintaining rod packing through periodic replacements at set intervals, or routing VOC emissions to a process as an alternative to periodic replacements, is the RACT level of control for reciprocating compressors.

Proposed new §115.173(1) and (2) would describe requirements for routing VOC emissions to a process or to a control device using a closed vent system and would require that centrifugal compressors and reciprocating compressors be equipped with a seal cover that forms a continuous impermeable barrier over the entire liquid surface area and that is kept in a sealed position except when necessary work is done on the unit. The closed vent system must be designed and operated to route all gases, vapors, or fumes from the wet seal fluid degassing system or rod packing to the control device under normal operation. The term "Closed vent system" is defined in Chapter 101, Subchapter A, §101.1 and carries that definition as the intended meaning in proposed Subchapter B, Division 7.

Proposed new §115.173(3) would require that emissions from a centrifugal compressor or reciprocating compressor be controlled by using one of the methods proposed in new §115.173(3)(A) - (C). The use of a control device is a mechanism to achieve the 95% control efficiency, and an owner or operator could choose to install and operate any of a variety of control devices to demonstrate compliance. The control requirements that encompass the majority of control device options are proposed as paragraph (3)(A), establishing that control devices that are not otherwise specified in the subsequent subparagraphs must achieve a VOC control efficiency of at least 95% or a VOC concentration of equal to or less than 275 parts per million by volume (ppmv), as propane, on a wet basis corrected to 3% oxygen. To demonstrate compliance with these emission limits, the gas stream should be measured at the control device outlet. Proposed new §115.173(3)(A)(i) and (iv) specify conditions that apply to control devices under new paragraph (3). Proposed new clause (i) allows multiple vents to be routed to the same control device. For sites with such a setup, if there is a limit lower than 95% for a piece of equipment routed to such control device, the owner or operator would still be required to meet the 95% control efficiency for purposes of compliance with this control requirement unless otherwise specified in the rules. Proposed new clause (ii) would require that operation of the controls be required at all times a compressor vents to the control device to ensure the control device is serving its purpose to reduce VOC emissions. Proposed new clause (iii) would specify the use of a boiler or process heater as a control device. Finally, proposed new clause (iv) would specify that a control device under §115.173(3)(A) must operate with no visible emissions using EPA Method 22 in accordance with §115.179(e). With this test method, the owner or operator would detect visible emissions or smoke from the control device, which indicates the control device may not be controlling VOC emissions at the 95% control efficiency required in each section of control requirements proposed. Proposed new clauses (i) and (iii) are extracted from the oil and gas CTG model rule language and are intended to help address circumstances that could provide operational clarification for sites affected by this proposed rulemaking. Proposed new clauses (ii) and (iv) are recommendations in the oil and gas CTG.

Although the option to use a control device to demonstrate compliance with the control requirements is provided for both centrifugal compressors with wet seals and reciprocating compressors in proposed new §115.173(3), the EPA's CTG did not include it as an option to satisfy RACT for reciprocating compres-

sors. However, it is included in this proposed rulemaking because, as described in the CTG, routing to a process was determined to be equivalent to the 95% control efficiency required of a combustion control device. For this reason, the commission proposes to provide the flexibility for an owner or operator to choose a combustion control device that achieves a 95% control efficiency as the means of compliance because it is at least equivalent to the efficiency of EPA's recommendation to route VOC emissions to a process.

Proposed new §115.173(3)(B) would establish the requirements for flares and would require that a flare be designed and operated in accordance with 40 CFR §60.18(b) - (f), including that the flare must be lit at all times when VOC vapors are routed to the flare and that multiple vents may be routed to a flare. This control requirement for a flare mirrors existing Chapter 115 requirement specifications for flares used as control devices and is proposed for the control requirements in proposed new §115.174 and §115.175 identical to the content of proposed §115.173(3)(B). The use of a flare is expected to achieve greater than 95% control efficiency if the operating parameters are continuously met. Although not explicitly required, the requirements in 40 CFR §60.18(f) for flares incorporated by reference in this rulemaking reference the visible emissions test in EPA Method 22.

Proposed new §115.173(3)(C) provides routing to a process, as defined in proposed new §115.171(10), as a control option if the emissions are compatible with the process and would be retained within the process. Routing through a closed vent system to a process is accepted as achieving a 95% control efficiency. The commission considers routing VOC emissions to a process to be a control device, as defined in §101.1, and the requirements that would apply to a control device are intended to apply to routing to a process except where the rules are explicit about the exclusion of this option. Although there is no testing, there are monitoring requirements that apply to ensure the integrity of the closed vent system components and to determine if leaks are present.

The commission proposes new §115.173(3)(D) to specify that the reciprocating compressor rod packing may be replaced on or before the compressor has operated for 26,000 hours from the most recent rod packing replacement. The number of hours the compressor operates must be continuously recorded beginning on the appropriate compliance date in §115.183(a). Proposed new §115.173(3)(E) would require that the reciprocating compressor rod packing must be replaced within 36 months from the most recent rod packing replacement beginning from the appropriate compliance date in §115.183(a). The provisions in proposed new §115.173(3)(B)(D) and (E) are RACT for reciprocating compressors because replacement of rod packing is normal maintenance needed on these compressors and performing the maintenance at the specified interval is expected to control emissions from the packing. The alternatives in §115.173(3)(B)(A) - (C) are expected to achieve at least equivalent control as replacing the rod packing and would provide a compliance alternative where those options are conducive to an affected owner or operator's situation.

Proposed new §115.173(4) would provide requirements for a bypass on a closed vent system that could divert any part of the flow of emissions from the control device or process. Proposed new §115.173(4)(A) would require that a flow indicator be installed at the bypass inlet, that the indicator read the flow at least every 15 minutes and cause an alarm to be activated to notify operators to take prompt action to remediate any bypass that occurs, and that the flow indicator be calibrated and maintained. Proposed new §115.173(4)(B) would require that the valve for a bypass system be secured in the non-diverting position with a car-seal of lock-and-key type configuration. These proposed bypass requirements are recommended in the oil and gas CTG and are intended to acknowledge that there are instances in which bypassing the control device would be needed for specific reasons, including safety.

§115.174, Pneumatic Controller and Pump Control Requirements

The commission proposes new §115.174 to apply control requirements to pneumatic pumps and pneumatic controllers at the crude oil and natural gas industry locations specified in the applicability of §115.170. The commission determined that RACT levels of control are consistent with the oil and gas CTG RACT recommendations and are proposed as such for pneumatic equipment in the DFW and HGB areas.

The EPA's RACT recommendation in the oil and gas CTG is that the VOC emission limit for a pneumatic pump at a natural gas processing plant and bleed rates for pneumatic controllers subject to the rule requirements have no decimal places, meaning the actual values could be rounded down to the CTG recommended limits and be in compliance with such limits. However, the commission proposes the VOC emission limit and bleed rate requirements with two significant figures to maintain consistency with other Chapter 115 limits and previous EPA guidance as discussed elsewhere in the Section by Section Discussion of this preamble. This approach helps with the enforceability of a standard by eliminating ambiguity associated with only one significant figure.

Proposed new §115.174(a) would provide the control limits for pneumatic pumps and controllers at a natural gas processing plant. Proposed §115.174(a)(1) would specify that a pneumatic pump drive must not emit VOC emissions to the atmosphere and that a pump must have a seal cover that forms a continuous impermeable barrier over the entire liquid surface and that remains sealed at all times except when inspection, maintenance, repair, or replacement of equipment is needed. The commission proposes new §115.174(a)(2) to require the bleed rate of each single continuous-bleed pneumatic controller be 0.0 standard cubic feet per hour (scfh), based on the oil and gas CTG bleed rate recommendation of "0" scfh.

Proposed new §115.174(b) would provide the control limits for a pneumatic pump or controller at locations other than natural gas processing plants. The locations, depending on the type of equipment, that would fall under this subsection would include those between a wellhead and either a natural gas processing plant or point of custody transfer to a crude oil pipeline.

Proposed new §115.174(b)(1) would require that VOC emissions from each pneumatic pump be reduced by 95%. Proposed new §115.174(b)(2) would require that each pneumatic controller have a natural gas bleed rate of less than or equal to 6.0 scfh. The limit on bleed rate is recommended in the oil and gas CTG as "6" scfh. To achieve this bleed rate, owners or operators could choose to replace high-bleed controllers with low-bleed controllers, to use non-gas driven controllers, or to use enhanced maintenance techniques such as cleaning, tuning, and repairing devices.

The commission proposes new §115.174(c) to require that a control device under proposed new subsection (c) meet certain con-

ditions at all times when VOC vapors are routed to it and to allow multiple vents to be routed to the same control device or process. The conditions specified required that the VOC vapors be routed through a closed vent system, which is designed and operated to route all captured VOC vapor to the process or control device under normal operations, and that the control devices and closed vent systems meet the monitoring, inspection, and testing requirements of this proposed new division.

Proposed new §115.174(c)(1) would require that a control device, other than a flare or routing VOC emissions to a process, must maintain, as demonstrated by monitoring done in accordance with §115.178, a minimum control efficiency of at least 95% or a VOC concentration of equal to or less than 275 ppmv, as propane, on a wet basis corrected to 3% oxygen, with the control efficiency and VOC concentration calculated from the gas stream at the control device outlet. The use of a control device is a mechanism to achieve the 95% control efficiency, and an owner or operator could choose to install and operate any of a variety of control devices to demonstrate compliance. The control requirements that encompass the majority of control device options are in proposed new §115.174(c)(1). Proposed new §115.174(c)(2) would require that a flare used as a control device must be designed and operated as specified in 40 CFR §60.18(b) - (f) and must be lit at all times when VOC vapors are routed to it. Proposed new §115.174(c)(3) would allow routing to a process as a means of control. Routing to a process is considered equivalent to a 95% control efficiency. The closed vent system would need to be designed and operated to route all gases, vapors, or fumes from the pump or controller to the process. Proposed new §115.174(c)(4) would specify that a control device, other than a flare or routing to a process, must operate with no visible emissions using EPA Method 22 in accordance with §115.179(e). With this test method, the owner or operator observes the exhaust for smoke from the control device, which would indicate the control device may not be controlling VOC emissions such that the 95% control efficiency required in each section of control requirements proposed could be achieved. Although flares would not be explicitly stated as subject to the EPA Method 22 requirement, the requirements in 40 CFR §60.18(f) proposed to be incorporated in this rulemaking reference the EPA Method.

Proposed new §115.174(d) would provide requirements for a bypass on a closed vent system that could divert any part of the flow of emissions from the control device or process. Proposed §115.174(d)(1) would require that a flow indicator be installed at the bypass inlet, that the indicator read the flow at least every 15 minutes and cause an alarm to be activated to notify operators to take prompt action to remediate any bypass that occurs, and that the flow indicator be calibrated and maintained. Proposed new §115.174(d)(2) would require that the valve for a bypass system be secured in the non-diverting position with a car-seal of lock-and-key type configuration. These proposed bypass requirements are recommended in the oil and gas CTG and are intended to acknowledge that there are instances in which bypassing the control device would be needed for specific reasons, including safety.

Proposed new §115.174(e) would provide exceptions to the requirements to control emissions from pneumatic pumps or pneumatic controllers. These exceptions are provided in the EPA's oil and gas CTG recommendations to provide flexibility in situations where complying with the control requirements is not reasonable. Proposed new §115.174(e)(1) specifies that the owner or operator would not be required to install a control device or route to a process to control the VOC emissions from a pneumatic pump if the well site does not already have a control device onsite. The EPA's oil and gas CTG recommended only requiring controlling the VOC emissions from a pneumatic pump if there is a control device onsite, which would be expected for other regulatory purposes, or if there is no process onsite to which the emissions would be routed. The commission agrees with the EPA's RACT recommendation that requiring the installation of controls would not be reasonably available technology and would not be economically reasonable with a cost per ton of VOC reduced in excess of $20,000. Once a control device is brought on site for any reason, or if a process becomes available onsite to route the VOC emissions, the owner or operator would no longer qualify for the compliance option in §115.174(e)(1) and would need to comply with the appropriate proposed rule requirements in §115.174. If there are technical feasibility issues associated with controlling the VOC emissions after a control device or process were available, a demonstration in accordance with proposed new §115.174(e)(3) would be required. Proposed new §115.174(e)(2) would allow the use of a control device with less than 95% control efficiency, which is already located onsite, to control emissions from a pneumatic pump only if a control device with a 95% or higher control efficiency is not available. This only applies if VOC emissions from the pneumatic pump are technically feasible to control, and the available control device with the highest control efficiency would be required to be used. The same monitoring, testing, and recordkeeping requirements apply to such a control device that apply to control devices meeting the 95% control efficiency requirement. The commission determined that it is appropriate for purposes of RACT to include this exception to the 95% control efficiency since the costs to install new control devices to reduce VOC emissions would be unreasonable.

Proposed new §115.174(e)(3) would allow an owner or operator to demonstrate, as provided in proposed new §115.176(b), that it is technically infeasible to control emissions from a pneumatic pump. Proposed subsection (e)(3) would further specify that after it becomes technically feasible to control the emissions, the owner or operator must comply with the control requirements, must revise the initial report, and must maintain records documenting the change in compliance. These records would be stored in accordance with the recordkeeping requirements maintained on site or at the nearest field office. The EPA recommends allowing for owners and operators to make a demonstration of technical infeasibility at a well site where circumstances such as insufficient gas pressure or control device capacity exist, making it technically infeasible to capture and route pneumatic pump VOC emissions to a control device or process. The commission determined that it is appropriate to include this exception to the 95% control efficiency for pneumatic pumps at well sites for which there is no existing control device as of the appropriate compliance date in §115.183 and for which there is an existing control device that achieves VOC emissions reductions less than 95%.

Proposed new §115.174(e)(4) would require the owner or operator of a pneumatic controller with a functional need for a bleed rate exceeding control requirements proposed in §115.174(a) or (b) to make a determination of functional need as proposed in §115.176(c). Section 115.174(e)(4) would further specify that immediately after the determination is no longer true, the owner or operator must comply with the control requirements and must maintain records documenting the change in compliance. The commission agrees with the EPA's considerations of response

time, safety, and positive actuation as necessary instances warranting a bleed rate greater than the RACT recommended level of control. The owner or operator choosing to make this demonstration would need to follow the provisions in proposed new §115.176(b) and ensure the demonstration is complete, accurate, and certified by a professional engineer.

§115.175, Storage Tank Control Requirements

The commission proposes new §115.175(a) to require that crude oil or condensate not be placed into any storage tank unless it can maintain sufficient working pressure at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements in subsection (a). As discussed elsewhere in this section by section discussion, many of the proposed rule requirements mirror the control requirements in the existing Subchapter B, Division 1 rules. These existing rules are approved as RACT by the EPA for storage tanks, including for the storage tanks proposed for regulation in proposed Subchapter B, new Division 7. The commission determined that these existing control requirements continue to support the implementation of RACT in the EPA's oil and gas CTG.

Proposed §115.175(a)(1) would require that closure devices, maintained according to manufacturer's specifications and operated according to paragraph (1), be placed on all openings in a fixed roof storage tank except those openings through which vapors are routed to a vapor recovery unit or other control device. If manufacturer instructions are unavailable, the use of industry standards consistent with good engineering practice are proposed to be used. Proposed new §115.175(a)(1)(A) would require that closure devices always be closed unless they are normally actuated, needed for temporary access, or in use to relieve excess pressure or vacuum in accordance with the manufacturer's design and consistent with good air pollution control practices. Any opening, actuation, or use of the closure device would have to be limited to minimize vapor loss. Proposed §115.175(a)(1)(B) would require proper sealing to minimize the loss of vapors through each closure device such that the device and the roof of the tank form a continuous impermeable barrier over the entire surface area of the liquid in storage when the closure device is closed. These requirements are in the existing §115.112(e) control requirements.

Proposed new §115.175(a)(1)(C) would require that closure devices that are not designed to relieve pressure be latched closed and that those designed to relieve pressure be set to automatically open at a pressure sufficient to ensure all vapors are routed to the vapor recovery unit or other control device. The pressure relief devices should not open or remain open when gauging the tank or during sampling through an open thief hatch. Proposed new §115.175(a)(1)(D) would require that any VOC leak from a closure device not continue for more than 15 calendar days after the leak is detected--based on audio, visual, and olfactory means--unless delay of repair is allowed. Repairs can be delayed if parts are unavailable, but all parts needed for the repair must be ordered promptly and the repair must be completed within five days of receipt of required parts. If the repair would require a shutdown that would cause higher total emissions than the leak, repair may be delayed until the next shutdown, but the repair would be required to be completed by the end of the next shutdown. Proposed new subsection (a)(1) includes CTG-recommended practices and current-RACT approved §115.112(e) requirements. The requirements in proposed §115.175(a)(1) would be sufficient to ensure the 95% control efficiency RACT level of control is met and maintained by limiting the VOC emissions that escape from the tank.

The commission proposes new §115.175(a)(2) to require that a control device must always meet the specified conditions and to list the appropriate conditions for specific types of control devices that are provided in proposed §115.175(a)(2)(A) - (C) when VOC vapors are routed to the device. If routing to a control device, the VOC vapors would be required to be routed through a closed vent system that is designed and operated to route all captured VOC vapor under normal operations. Multiple vents would be allowed to be routed to the same control device. Control device and closed vent systems would be subject to the monitoring and inspection requirements of §115.178 and testing requirements of §115.179. The control device options provided in §115.175(a)(2) are consistent with the EPA's RACT-recommended controls. There are different options for an owner or operator to choose from to demonstrate that the 95% control efficiency, proposed as the RACT level of control, is met and maintained. The existing storage tank control requirements in §115.112(e) that apply to the storage tanks proposed for regulation in Subchapter B, Division 7 also require a 95% control efficiency when using a control device to comply. However, because these existing rules are not based on the same applicability criteria as the criteria proposed in Subchapter B, Division 7, not all storage tanks currently subject to the rules in Subchapter B, Division 1 would be controlled to 95%. The owners or operators of these tanks would need to assure compliance with the 95% control efficiency if this is the compliance option chosen by a newly affected owner or operator.

Proposed new §115.175(a)(2)(A) would require that a control device must maintain a control efficiency of at least 95% or a VOC concentration at its outlet of no more than 275 ppmv. The VOC concentration would be calculated relative to propane and on a wet basis corrected to 3% oxygen. The control efficiency or VOC concentration would be, as demonstrated by monitoring done per §115.178 at the control device outlet.

Proposed new §115.175(a)(2)(B) would establish the requirement that a flare used to comply with the control requirements be designed and operated in accordance with 40 CFR §60.18(b) - (f). The requirement would state that the flare must be lit at all times when VOC vapors are routed to the flare and that multiple vents may be routed to the flare.

Proposed new §115.175(a)(2)(C) would establish that a vapor recovery unit must be designed to process all vapor generated by the maximum liquid throughput of the storage tank or the aggregate of storage tanks in a tank battery and must transfer recovered vapors to a pipe or container that is vapor-tight, as defined in §115.10. This is an existing requirement for a vapor recovery unit and is consistent with the EPA's recommendation to allow the use of a vapor recovery unit as a viable control option.

Proposed new §115.175(a)(2)(D) would specify that a control device under subparagraph (D) must operate with no visible emissions using EPA Method 22 in accordance with §115.179(e). This proposed new subparagraph is a recommendation in the oil and gas CTG. With this test method, the owner or operator observes the exhaust for smoke from the control device, which would indicate the control device is not controlling VOC emissions such that the 95% control efficiency required in each section of control requirements proposed could be achieved. Although the Method 22 requirement in proposed new subparagraph (D) would not apply to flares, the requirements in 40 CFR

§60.18(f) proposed for incorporation by reference in this rulemaking, specify Method 22.

The commission proposes new §115.175(a)(3) requiring a storage tank currently using a submerged fill pipe for compliance with existing §115.112(e) to continue to use it once compliance with Subchapter B, Division 7 is required. The use of a submerged fill pipe is an existing control option in §115.112(e) for certain types of storage tanks and is retained in Subchapter B, Division 7 to ensure an affected owner or operator exercising this option maintains the same level of control that was required before the compliance date for the rules in Division 7. This requirement would prevent potential backsliding. Although a submerged fill pipe is an option in the existing control requirements of §115.112(e)(1) for storage tanks in crude oil or natural gas service meeting certain vapor pressure and storage capacity thresholds, the requirement to control to a 95% control efficiency is more stringent and would apply to all storage tanks subject to the new control requirements regardless of material being stored or the tank storage capacity. Therefore, any tank with a capacity of 40,000 gallons or more that both stores VOC with a vapor pressure of 11 pounds per square inch absolute or higher and currently uses a submerged fill pipe as the compliance option and that would be subject to the proposed control requirements would need to keep the submerged fill pipe and also install a control device.

Proposed new §115.175(a)(4) would provide requirements for a bypass on a closed vent system that could divert any part of the flow of emissions from the control device or process. Proposed new §115.175(a)(4)(A) would require that a flow indicator be installed at the bypass inlet, that the indicator read the flow at least every 15 minutes and cause an alarm to be activated to notify operators to take prompt action to remediate any bypass that occurs, and that the flow indicator be calibrated and maintained. Proposed §115.175(a)(4)(B) would require that the valve for a bypass system be secured in the non-diverting position with a car-seal of lock-and-key type configuration. These proposed bypass requirements are recommended in the EPA's oil and gas CTG and are intended to acknowledge that there are instances in which bypassing the control device would be needed for specific reasons, including safety.

The commission proposes new §115.175(b) to specify that certain storage tanks with limited PTE of VOC are not required to comply with the control requirements in §115.175(a) unless the tank was required to comply with a control requirement in existing §115.112(e) on or before December 31, 2022. These storage tanks are those with a PTE of less than 6.0 tpy of VOC and those with the PTE of at least 6.0 tpy of VOC emissions if it is demonstrated that the uncontrolled actual VOC emissions are less than 4.0 tpy. This provision would exempt certain tanks with low VOC emissions from the control requirements in new §115.175(a) but would also require maintaining emissions reductions that were required for those tanks under existing §115.112(e) prior to January 1, 2023. After a storage tank becomes subject to proposed Subchapter B, new Division 7, the owner or operator would be required to continue to comply with any control requirement in existing §115.112(e) that applied as of December 31, 2022. This requirement is needed to avoid any increase in emissions from tanks for which the VOC emissions are currently required to be controlled and ensures the VOC emissions reductions that are currently being achieved continue to be realized. There should be no additional installation costs for control equipment that is already in use, and any tank that was required to comply under §115.112(e) would not be relieved of those requirements.

Proposed new §115.175(c) would provide the methods for calculating uncontrolled actual VOC emissions. The provisions would match those in existing §115.112(e)(5) and (6) except that the tpy applicability limits in existing §115.112(e)(5) would not be retained. Proposed new §115.175(c)(1) would provide for estimating VOC emissions using the highest 12 consecutive months out of the last five years of production data. These methods of determining uncontrolled VOC emissions are not recommended explicitly in the oil and gas CTG but are in existing §115.112(e) and are provided to clarify how an owner or operator is expected to estimate emissions and the information that should be relied upon. The EPA recommended using 12 consecutive months of data but did not specify whether those data needed to be the most recent 12 months of data. The commission would require the highest production data because doing so eliminates potential bias due to market fluctuations.

Proposed new §115.175(c)(2) would provide the basis for calculating a tank's PTE of VOC emissions based on the maximum average daily throughput determined for a 30-day period of production prior to the appropriate compliance date listed in §115.183. The calculation approach is recommended in the oil and gas CTG. The commission agrees that roughly a month of throughput data to determine the PTE of a tank is reasonable. This approach of estimating VOC emissions using the highest valued data represents a conservative estimate and ensures storage tanks meeting the applicability thresholds triggering control are appropriately subject to the proposed rule requirements in Subchapter B, Division 7.

Proposed new §115.175(d) details the requirements for an external floating roof or internal floating roof storage tank. The commission expects that there are likely few VOC storage tanks in crude oil and natural gas service affected by the requirements in proposed Subchapter B, new Division 7 that would use a floating roof, but because the potential exists for an owner or operator to use such a tank, the corresponding requirements are included. These requirements mirror the existing floating roof requirements in §115.112(e) with no substantive changes intended. Proposed new §115.175(d)(1) - (9) would specify requirements for floating roofs and bleeder vents needed to satisfy RACT for storage tanks in the DFW and HGB areas.

§115.176, Alternative Control Requirements

The commission proposes new §115.176(a) to provide the option of alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in Subchapter B, Division 7 that may be approved by the executive director in accordance with §115.910 if emission reductions are demonstrated to be substantially equivalent. This is a standard option provided to many owners and operators in other Chapter 115 rules. Under §115.910, an owner or operator may apply for an alternate means of control and must meet the appropriate criteria, including demonstrating that the control strategy requested is demonstrated as at least equivalent to the applicable Chapter 115 control requirement. The alternate means of control does not become effective until the request is reviewed and approved by the executive director.

The requirements in proposed new §115.176(b) and (c) would not be submitted to the executive director for approval but would instead be maintained as records in the report. Proposed new §115.176(b) specifies the technical infeasibility requirements for the owner or operator of a pneumatic pump at a well site making a determination of technical infeasibility allowed in the pneumatic control requirements. The owner or operator must make

a clear demonstration that includes the information in proposed new §115.176(b)(1) and (2). Making a demonstration of technical infeasibility is an option provided in the EPA's oil and gas CTG, and the commission agrees that if there is a circumstance present that prevents the control of a pneumatic pump as technically infeasible, the control requirements proposed in §115.174 would not be RACT for such a pump. The commission would consider the technical infeasibility demonstration a requirement for each pneumatic pump at a well site. Such a demonstration would be different than the options available to the owner or operator of a pneumatic pump to make a declaration of no control device available on site and a control device available that achieves less than 95% control efficiency, although all of these circumstances for a pneumatic pump would be reasons for which applying the control requirements proposed in §115.174 would not be RACT.

The commission proposes new §115.176(b)(1) to outline the requirements of the assessment of technical infeasibility, which must include, but is not limited to the information in §115.176(1) - (3). Proposed new §115.176(b)(1) would require the specific equipment for which technical infeasibility exists. Proposed new §115.176(b)(2) would require that the reason such equipment cannot be controlled by any available control option, such as safety considerations, distance from the control device, pressure losses and differentials in the closed vent system, and the ability of the control device to handle the compressor emissions. Proposed new §115.176(b)(3) would require data to support reasoning in subsection (b)(2).

The commission proposes new §115.176(b)(4) to require that a certification be signed and dated by a qualified professional engineer certifying that the assessment of technical infeasibility prepared was true, accurate, and complete and that knowingly submitting false information is a violation of subsection (b).

Proposed §115.176(c) would require that the owner or operator of a pneumatic controller at a natural gas processing plant who makes a determination of a functional need, as specified in the pneumatic controller control requirements, must mark the controller and provide a reason. Proposed new subsection (c)(1) would require tagging the pneumatic controller with a weatherproof tag. Proposed new subsection (c)(2) would require providing the reason meeting the control requirements cannot be met due to the functional need.

§115.177, Fugitive Emission Component Monitoring Requirements

The commission proposes new §115.177 to establish the requirements that apply to the fugitive emission components located at a natural gas processing plant, well site, and gathering and boosting station. The EPA recommended implementing a leak detection and repair program similar to that in 40 CFR Part 60 Subpart VVa for natural gas processing plants. The proposed requirements are a mixture of the oil and gas CTG recommended model rule language and the existing fugitive emission control rules in Subchapter D, Division 3. The model rules in the oil and gas CTG applied rules to the fugitive emission components at natural gas processing plants separate from the rules that apply to fugitive emission components at well sites or gathering and boosting stations.

Although the recommended definition in the oil and gas CTG Appendix G (81 FR 74798) for "equipment" is equivalent to the part of the proposed definition of fugitive emission component for natural gas processing in Subchapter B, Division 7, the proposed definition would not include compressors. The existing rules for fugitive emissions in Subchapter D, Division 3 only apply to compressors that are uncontrolled. Because such compressors would be required to be controlled as part of this proposed rulemaking, a compressor would no longer be considered a fugitive emission component.

The commission proposes §115.177(a) to require an owner or operator of equipment with fugitive emission components to create a written plan and maintain it in accordance with §115.180, which details information about the site subject to Subchapter B, Division 7 including, but not limited to, the information listed in proposed §115.177(a)(1) - (5) to identify each component grouping required to be monitored and to list components designated as unsafe-to-monitor or difficult-to-monitor, applicable exemptions or exceptions, the method of monitoring, and the monitoring survey schedules.

Proposed new §115.177(b) would require that the owner or operator use the procedures specified by EPA Method 21 in 40 CFR Part 60, Appendix A-7 to monitor each affected fugitive emission component and to calibrate the hydrocarbon gas analyzer. Subsection (b) would further allow the use of alternative work practice (AWP) in existing §115.358 instead of the monitoring in §115.177(b). The monitoring required in the AWP is at least equivalent to the monitoring required in §115.177(b) and is an existing option for the fugitive emission components subject to the monitoring under Subchapter D, Division 3 at natural gas processing plants. In proposed §115.177(b), the AWP would also be an option for the fugitive emission components at well sites and gathering and boosting stations since it is accepted as at least equivalent to the monitoring requirements in §115.177. The option to use the AWP is recommended in the EPA's oil and gas CTG.

Proposed new §115.177(b)(1) would specify that a VOC leak would not be permitted for more than five calendar days without a first attempt at repair after the leak is detected and must be repaired no later than 15 calendar days after the leak is found. The VOC concentrations that constitute a leak are provided in subsections (b)(1)(A) and (B) and are consistent with the oil and gas CTG. This repair schedule also retains the existing repair requirements in §115.352(2) for natural gas processing plants.

Proposed new §115.177(b)(2) would specify similar repair requirements at well sites and gathering and boosting stations. Consistent with the oil and gas CTG model rule language, a first repair attempt must be made within five calendar days without a first attempt at repair after the leak is detected and must be repaired no later than 15 calendar days after the leak is found. The commission proposes 15 calendar days for repairs because facilities may not have the necessary parts on hand or the leak may be complex, requiring more time to repair after the first repair attempt. This repair schedule is consistent with the existing requirement in §115.352(2) for natural gas processing plants and would be appropriate to extend to well sites and gathering and boosting stations.

Proposed new §115.177(b)(3) would provide the required monitoring schedules in subsections (b)(3)(A) - (E). The frequency of monitoring varies from monthly to annually depending on the type of site and types of components and service, with an additional provision that pressure relief valves be monitored within 24 hours of a release event.

Proposed new §115.117(b)(4) would allow the monitoring of pumps and valves at a reduced frequency, detailed in the related

figure, if the unit operates less than 6,570 hours each year (i.e., 75% of the hours in a year).

Proposed new §115.177(b)(5) would require the marking of identified leaks using weatherproof and visible tags with an identification number and date the leak was detected. Tags would be required to remain in place, or be replaced if damaged, until repair is done. Reference tagging would be allowed of difficult-to-monitor components as close as possible to the leaking component.

The commission proposes new §115.177(b)(6) to require repairing leaks as soon as practicable and to provide a repair schedule to be followed, detailed in subsections (b)(6)(A) - (C).

Proposed new §115.177(b)(7) would allow an increase of scheduled monitoring at the direction of the executive director, based on a finding of an excessive number of leaks in a process area. The options in proposed new §115.177(b)(7) mirror the existing Subchapter D, Division 3 fugitive monitoring requirements and are necessary to ensure leaking components are minimized and promptly fixed to reduce the amount of resulting VOC emissions.

Proposed new §115.177(b)(8) would allow the submittal of a written request to the appropriate regional office that the valve monitoring schedule be revised based on the percentage of leaking valves. The request could only be made after two years of the required monitoring and must follow the guidelines in proposed new subsection (b)(8)(A) and (B). The revised monitoring schedule would not take effect until a reply is sent by the executive director. This option is provided in the existing Subchapter D, Division 3 rules and is appropriate to continue to allow as an option to encourage proper maintenance and upkeep of fugitive emission components to reduce the amount of VOC emissions leaked.

The commission proposes new §115.177(b)(9) to provide the option for alternate monitoring schedules to proposed new §115.177(b)(3) and (4) for natural gas processing plants approved before November 15, 1996. This is an existing option in Subchapter D, Division 3 and would be preserved for those owners and operators currently qualifying for this option. There would be an option in proposed new §115.177(b)(8) to allow alternative monitoring frequencies upon executive director approval.

The commission proposes new §115.177(b)(10) to require that monitoring occur when components are in contact with a process material whether or not the process unit is in service. Additionally, valves must be in gaseous or light liquid service to be considered in the total valve count for alternate valve monitoring schedules.

Except for monitoring done with an optical gas imaging instrument, proposed new §115.177(b)(11) would require the recording of monitor screening concentrations for each component in gaseous or light liquid service and provide instruction for readings and results.

Proposed new §115.177(b)(12) would require the inspection of all new connectors for leaks within 30 days of being placed in service using a hydrocarbon gas analyzer for components in gaseous and light liquid service and inspecting by audio, visual, and olfactory means for those in heavy liquid service. Components that are unsafe-to-monitor or unsafe-to-inspect would be exempt from the proposed requirement and would be monitored when safe to do so.

Proposed new §115.177(b)(13) would require following the monitoring provisions detailed in subsection (b)(13)(A) - (E), if using the AWP. The provisions would include requirements for monitoring frequency, schedules, and the determination of unsafe-to monitor or difficult-to-monitor components and would allow the executive director to increase the frequency of monitoring under AWPs if there is an excessive number of leaks in the given process area.

Proposed new §115.177(c) would provide monitoring frequency guidelines and classification restrictions for unsafe-to-monitor or difficult-to-monitor fugitive emission components, as detailed in proposed subsection (c)(1) - (5), including a maximum of five years for difficult-to-monitor components and as frequently as possible for unsafe-to-monitor components. Proposed new §115.177(c) also imposes restrictions on the number of components that can be designated difficult-to-monitor. The same restriction is not imposed on unsafe-to-monitor to prevent causing any safety issues if a site had more than a specified number of unsafe-to-monitor components.

§115.178, Monitoring and Inspection Requirements

The commission proposes new §115.178 to prescribe the new monitoring and inspection requirements for the equipment proposed for regulation in Subchapter B, Division 7. The proposed requirements in §115.178 are consistent with the oil and gas CTG recommendations and are similar to the model rule language. Where indicated, the proposed requirements mirror existing Chapter 115 requirements and were determined to be appropriate for monitoring and inspecting the compressors, pumps, and storage tanks regulated in Subchapter B, Division 7.

Proposed new §115.178(a) would require each owner or operator to conduct an annual auditory, visual, and olfactory inspection of each affected centrifugal and reciprocating compressor cover for defects, except a cover that is designated as unsafe-to-monitor or difficult-to-monitor, which may be monitored and inspected less frequently. Equipment with emissions or a defect detected would be required to be repaired. The goal of these inspections would be to identify leaking materials or defects such as visible cracks, holes, gaps, signs of excessive emissions or wear, missing materials, or other defects in and around covers, seals, gaskets, hatches, caps, or other devices that may result in VOC emissions. If leaks or defects are identified, the leak would have to be repaired or the leaking piece of equipment replaced according the procedure outlined in proposed new §115.178(e). This proposed new requirement is based on the EPA's oil and gas CTG recommendations, except the term "cover devices" is used in place of "closure devices," as used in the oil and gas CTG, because this is a defined term specific to a storage tank. The commission determined that requiring annual inspections is reasonable because this is not overly burdensome and is needed to detect potential or actual leaks and that repairs are needed to maintain the equipment that contains emissions.

Proposed new §115.178(b) would outline general requirements for each owner or operator using a closed vent system to monitor and inspect the system by January 1, 2023 and annually thereafter. However, those designated as unsafe-to-monitor or difficult-to-monitor would be allowed to be monitored and inspected less frequently, as provided in proposed §115.178(c). The inspections would look for evidence of visible cracks, holes, gaps, signs of excessive emissions or wear, missing gaskets or other defects that may result in VOC emissions, while instrument monitoring would be conducted at a 500 ppm leak definition in accordance with Method 21 in 40 CFR Part 60, Appendix A-7. Specific criteria for the inspections and monitoring would be provided. Any detected leaks or defects would have to be repaired

or the leaking equipment replaced according to the procedure outlined in proposed new §115.178(e). Requiring annual inspections, monitoring, and repairs consistent with the CTG recommendations are necessary and reasonable because those activities are needed to maintain assurance that closed vent systems are properly containing and routing VOC emissions to a control device.

For the instrument monitoring requirements, the EPA methods cited vary in the specific organic chemicals that would be detected. Some methods detect all combustible species of hydrocarbons while others differentiate between the different compounds present. For Chapter 115 purposes, the term VOC is used in the rules even though the results of some test methods may include non-VOC chemicals (principally methane and ethane). Although the emissions could be mixtures of different chemicals, including VOC, methane, and ethane, a VOC control device would normally destroy the methane and ethane as well. However, in new Division 7, the owner or operator is required to meet control requirements and emission limits for those constituents that are VOC, except where explicitly noted in the rules. An exception is for carbon adsorption systems that capture methane and ethane along with the VOC and require that the total hydrocarbon load be considered in the timing of regeneration of the carbon beds or replacement of canisters.

Proposed new §115.178(c) would allow an owner or operator of an affected closed vent system or compressor seal cover component to be designated as difficult-to-monitor or unsafe-to-monitor, terms defined in §115.171. The components assigned these designations are not subject to the same inspection and monitoring frequency in §115.178(b) as those components not designated as such. When the components are monitored and inspected according to the schedules in proposed new §115.178(c)(1) and (2), the methods that apply to the component in §115.178(a) and (b), when not designated as difficult-to-monitor or unsafe-to-monitor, apply. The commission proposes new subsection (c)(1) to identify the unsafe-to-monitor components in a list maintained in accordance with the recordkeeping requirements. If an unsafe-to-monitor component is not considered safe to monitor within a calendar year, then it must be inspected as soon as possible during times that are safe to monitor. The commission proposes new subsection (c)(2) to identify the difficult-to-monitor components in a list maintained in accordance with the recordkeeping requirements. If a difficult-to-monitor component is not considered safe to inspect within a calendar year, then it must be inspected at least once every five years.

The commission proposes §115.178(d) to require a weatherproof and readily visible tag bearing an identification number and the date the leak was detected to be placed on any affected fugitive emission component found leaking. This tag is required to be placed as close to the leaking component as possible and must remain in place until the leaking component is repaired. This is for identification and tracking purposes for the owner or operator and for any representative with jurisdiction conducting business at the regulated site.

The commission proposes §115.178(e) prescribing the repair schedule and considerations allowed when a repair is needed. Proposed subsection (e) would require that an owner or operator repair a leak or defect as soon as practicable and make a first attempt no later than five calendar days after the leak is found. The proposed requirement would require a leaking component to be repaired no later than 15 calendar days after the leak or defect is found except when a delay of repair is caused by required parts that are out of stock or circumstances beyond the owner's or operator's control. A delay of repair would be allowed under the proposed rules until the next shutdown if the owner or operator is able to demonstrate to the satisfaction of the executive director that repair of the component would require a shutdown that would create more emissions than the repair would eliminate. However, the proposed rule would require that any repair delayed because an immediate shutdown would create more emissions than waiting to the next scheduled shutdown must be completed by the end of the next scheduled shutdown. The proposed new §115.178(e) would require a successful EPA Method 21 monitoring survey or audio, visual, and olfactory inspection, whichever is required in the inspection and monitoring requirements in §115.178(a) and (b), showing no evidence of a leak or defect for the leak to be considered repaired.

Proposed new §115.178(f) would require an owner or operator to install and maintain monitors to measure operational parameters of the control devices installed to meet applicable control requirements. Such monitors would need to be sufficient to demonstrate proper functioning of the devices to design specifications. The parameters for monitoring of different types of control devices are specified in subsection (f)(1) - (6). These monitoring parameters are consistent with the control device monitoring prescribed in other Chapter 115 rules. The same control device options in these other Chapter 115 rules are available options to control the VOC emissions from the equipment subject to Subchapter B, Division 7, and the operating parameters are indicative of functioning regardless of the equipment being controlled. The data obtained from this monitoring verifies the operating parameters determined through testing, design analysis, or manufacturer testing are being met and indicate the control requirement level is met. The commission proposes new subsection (f)(6) allowing the owner or operator to use a control device not listed in subsection (f)(1) - (5) and to monitor one or more operation parameters sufficient to demonstrate proper functioning of the control device to design specifications.

Proposed §115.178(g) would specify the storage tank inspection requirements that apply to a storage tank. The floating roof inspection requirements listed in proposed new subsection (g)(1) - (4) and (6) mirror the existing inspection requirements and are not intended to change the requirements currently in the existing §115.114(a) except to update references to reflect the Subchapter B, new Division 7 rule citations. Proposed new subsection (g)(5) is from a recommendation in the EPA's oil and gas CTG and is proposed to ensure proper functioning of the control device; it would require an owner or operator to conduct an auditory, visual, and olfactory inspection at least once per month, separated by at least 14 calendar days, of control devices for storage tanks.

§115.179, Approved Test Methods and Testing Requirements

The commission proposes new §115.179(a) to specify that compliance with the control requirements in Subchapter B, Division 7 be determined by applying the test methods in subsection (a)(1) - (8) as appropriate. It is possible an owner or operator may not need to follow every test method. It is expected that the owner or operator would use only the test methods that are needed for determining and demonstrating compliance. Proposed new subsection (a)(1) - (8) lists the EPA test methods that may be used to conduct testing in §115.179. Proposed new paragraph (9) would allow minor modifications to the test methods in subsection (a)(1) - (8) to be approved by the executive director as well as other test

methods not listed in subsection (a)(1) - (8) if approved by the executive director and validated by EPA Method 301. This option for minor modifications and alternative test methods is consistent with the flexibility provided in other Chapter 115 rules.

The commission proposes new §115.179(b) to require the test methods and procedures listed in subsection (b)(1) - (4) be used to demonstrate compliance with the control requirements in Subchapter B, Division 7 for a closed vent system routed to a control device other than a flare. The owner or operator is expected to use the test methods and procedures that are appropriate out of the list in subsection (b) for their operation. The commission proposes new subsection (b)(1) requiring the owner or operator of a combustion control device tested to comply with the 275 ppmv outlet VOC limit to establish a correlation between firebox or combustion chamber temperature and the VOC performance level. Subsection (b)(1) would further require the owner or operator to also establish minimum and maximum temperatures or other operating parameters that would be continuously monitored to demonstrate compliance with the control device requirements in Subchapter B, Division 7.

The commission proposes new §115.179(b)(2) specifying that the owner or operator conduct an initial control device performance test by the appropriate compliance date in §115.183 for a control device used to demonstrate compliance with the control requirements in Subchapter B, Division 7. Each performance test must consist of a minimum of three test runs, and each run must be at least one hour long. Proposed new §115.179(b)(2)(A) would require the owner or operator to conduct a periodic performance test no later than 60 months after the previous performance test, unless the owner or operator chooses one of the alternatives to initial and periodic testing provided in this section. Proposed new subsection (b)(2)(B) would indicate that for any modification of a closed vent system, control device, or equipment regulated in Subchapter B, Division 7 that could reasonably be expected to decrease the control efficiency of the control device, such device must be retested within 60 days of the modification. The periodic testing requirement is recommended in the EPA's oil and gas CTG and in the model rule language to ensure that a control device would be maintained in good working condition and would continue to operate such that the control efficiency or emission limit specifications in proposed Subchapter B, Division 7 would be achieved.

The commission proposes new §115.179(b)(3) to provide the option for the owner or operator to complete a design analysis in lieu of periodic performance testing to satisfy compliance with control requirements for a control device used in Subchapter B, Division 7. The owner or operator would need to determine the monitoring parameters sufficient to determine that the proper functioning of the control device is met as required in the monitoring requirements in §115.178(f). The design analysis must be maintained with the report required in §115.180(8). The commission proposes new §115.179(b)(3)(A) - (D) to specify the design analysis criteria for a vapor recovery unit or condenser, regenerable carbon adsorption system, non-regenerable carbon adsorption system, and a control device other than a flare. The design analysis criteria evaluated must include an analysis of specific information sufficient to determine values to monitor to demonstrate the correct efficiency is achieved.

The commission proposes new §115.179(b)(4) to provide the option to use data from a performance test conducted by the manufacturer on the same control device model that is used to comply with control requirements in Subchapter B, Division 7 in lieu of initial and periodic performance testing and design analysis. The owner or operator choosing this alternative must comply with the monitoring requirements in §115.178. This proposed alternative to testing in proposed new §115.179(b)(2) is consistent with the oil and gas CTG Appendix F model rule language. Manufacturers are likely already conducting tests and providing reports in accordance with this NSPS. Deviating and specifying different testing or reporting content requirements may conflict with current manufacturer compliance with the NSPS and could impose an unnecessary burden on the manufacturer. While some sites subject to this proposed rulemaking may not currently be subject to the NSPS, the emission source categories for which a control device would be installed would be the same under this proposed rule and the NSPS. The control device manufacturers likely sell to owners and operators affected by one or both of these rules and perform testing in accordance with the NSPS on control devices regardless of which regulations the customer is subject. To be consistent with the CTG, which is based on the NSPS, and to streamline the testing requirements for manufacturers, the commission references the NSPS to satisfy this alternative to the testing requirements in proposed new paragraph (2). New subsection (b)(4)(A) would require that the manufacturer's guarantee must demonstrate that the specific model of control device meets the 95% control efficiency required in the control requirements of Subchapter B, Division 7. Proposed new subsection (b)(4)(B), would require that the control device be equipped with an inlet gas flow rate meter. Control devices, other than combustion control devices, must have a separate outlet gas flow rate meter. Proposed new subsection (b)(4)(C) would require that the owner or operator of a control device model tested by the manufacturer submit a detailed test report from the manufacturer for the opportunity of the executive director to review, verify, and replicate test results, including all calibration quality assurance and quality control data, calibration gas values, gas cylinder certification, and strip charts or other graphic presentations of the data annotated with test times and calibration values. The test report must be maintained in the report required in §115.180(8).

The commission proposes new §115.179(c) to describe the manner in which the efficiency of a control device would be determined. The provisions in subsection (c)(1) - (3) would include the test methods to be used and the calculations for determining control efficiencies. Where applicable, the need for simultaneous sampling would also be provided.

The commission proposes new §115.179(d) to include as a compliance option the use of a flare to comply with the control requirements in Subchapter B, Division 7 must meet 40 CFR §60.18(b). As with many of the other existing Chapter 115 rules, the requirements in 40 CFR §60.18(b) would be relied upon to satisfy the regulatory requirements in Subchapter B, Division 7, including the testing requirements. The destruction efficiency of a flare controlling a piece of equipment affected by proposed Subchapter B, new Division 7 is presumed through the monitoring of and calculations using specific operational parameters in accordance with §60.18.

The commission proposes new §115.179(e) to specify that an EPA Method 22 test, as prescribed in 40 CFR Part 60, Appendix A-7, Section 11, would be required every calendar quarter to determine the visibility emissions from each control device used to comply with the appropriate control requirements proposed in Subchapter B, Division 7. This testing requirement was recommended for compliance with RACT in the EPA's oil and gas CTG to ensure that a control device would be maintained in good working condition and would continue to operate such

that the control efficiency or emission limit specifications in proposed Subchapter B, new Division 7 would be achieved. The occurrence of the test and the results must be documented in accordance with the recordkeeping requirement in proposed new §115.180(3) to maintain records of all testing conducted. If the Method 22 visibility test finds the presence of smoke that "fails" the test, the owner or operator would need to follow the specifications in proposed new §115.179(e)(1) - (3). Proposed new subsection (e)(1) requires following the manufacturer's repair instructions, if available, or best combustion engineering practices for any necessary repairs. Proposed new subsection (e)(2) requires another Method 22, visual observation test. Proposed new subsection (e)(3) requires following good practices according to manufacturer's data and air pollution control practices.

The commission proposes new §115.179(f) to allow a control device for which a performance test is waived in accordance with 40 CFR §60.8(b) exemption from the testing requirements of §115.179. This waiver from control device testing is at the discretion of the executive director and requires technical vetting.

§115.180, Recordkeeping Requirements

The commission proposes new §115.180 to establish the recordkeeping requirements that would apply to the owners and operators of sites affected by the new rules of Subchapter B, Division 7. The records required in proposed new §115.180 are intended to be sufficient to document the operation of a site and to assist with other regulatory actions such as compliance investigations.

The commission proposes new §115.180 requiring records to be maintained onsite or at the nearest local field office for five years and made available upon request to representatives of the executive director, the EPA, or any local air pollution control agency having jurisdiction in the area. Records must be made available for review within 24 hours. Requiring records to be available within 24 hours upon request of a valid representative is an existing recordkeeping requirement in the Chapter 115, Subchapter B, Division 1 VOC storage tank rules. The commission proposes a five-year record retention schedule to ensure the documents needed for determination of regulatory compliance are available for a reasonable amount of time. This is consistent with other Chapter 115 rules. The commission solicits comments on an appropriate amount of time, other than 24 hours, that would be reasonable for a site to receive necessary records not kept onsite.

The commission proposes new §115.180(1) requiring the owner or operator to maintain records of any operational parameter monitoring required in §115.178(f). These records must be sufficient to demonstrate proper functioning of the devices to design specifications and must include, but are not limited to, the specific items in §115.180(1)(A) - (F). As with the monitoring of the control devices in proposed new §115.178(f), these recordkeeping requirements documenting operating conditions are consistent with recordkeeping in other Chapter 115 rules. The same control device options in other Chapter 115 rules are available options to control the VOC emissions from the equipment subject to Subchapter B, Division 7. Proposed new §115.180(1)(A) would specify direct-flame incinerator monitoring. Proposed new paragraph (1)(B) would establish monitoring for a condensation system. Proposed new paragraph (1)(C) would establish monitoring for a carbon adsorption system or carbon adsorber. Proposed new paragraph (1)(C)(i) and (ii) specify exhaust gas and date and time recording of carbon replacement intervals. The commission proposes new paragraph (1)(D) to establish monitoring for a catalytic incinerator. The commission proposes new paragraph (1)(E) to establish monitoring for a vapor recovery unit. The commission proposes new paragraph (1)(F) to establish monitoring for any other control device not explicitly listed.

The commission proposes new §115.180(2) requiring the owner or operator subject to Subchapter B, Division 7 claiming an exemption in §115.172 to maintain records sufficient to demonstrate continuous compliance with the applicable exemption criteria.

The commission proposes new §115.180(3) to require that the owner or operator maintain the results of any control device testing conducted in accordance with §115.179 including, at a minimum, the information in proposed new §115.180(3)(A) - (D). Proposed new paragraph (3)(A) specifies the date of each periodic performance test. Proposed new paragraph (3)(B) specifies the test method(s) used to conduct the test. Proposed new paragraph (3)(C) specifies the equipment type listed in §115.170 controlled by the device. Proposed new paragraph (3)(D) specifies the report showing the testing results of the control device. The information proposed to be maintained in proposed §115.180(3) is expected to be sufficient to confirm the testing was performed and ensure the testing results are available for review, when necessary, by a representative with jurisdiction.

Proposed new §115.180(4) would require that the owner or operator maintain records of the results of each inspection and repair required in Subchapter B, Division 7, except for inspections and repairs for fugitive emission components, including the items in proposed new §115.180(4)(A) - (J). Proposed new subparagraph (A) would specify the date of the inspection. Proposed new subparagraph (B) would specify an identifier of each piece of leaking equipment. Proposed new subparagraph (C) would specify the tag information required by the owner or operator in accordance with §115.178(d), if different than the information in subparagraph (A). Proposed new subparagraph (D) would specify the status of the cover or closure device during inspection. Proposed new subparagraph (E) would require documentation of the date on which attempts at repair, if necessary, were made and what repair was made. Proposed new subparagraph (F) would specify the equipment type and associated designation (e.g., difficult-to-monitor), if appropriate, listed in §115.170 controlled by the device. Proposed new subparagraph (G) would specify the amount of time a cover or closure device was open since the last inspection for reasons not allowed in the control requirements of §115.175. Proposed new subparagraph (H) would specify the date on which repair was attempted and completed and explanation if repair was delayed. Proposed new subparagraph (I) would specify the hydrocarbon analyzer monitoring results and proposed new subparagraph (J) would specify the results of monitoring following repair required in §115.178(e).

Proposed new §115.180(5) would require that the owner or operator of a reciprocating compressor subject to §115.174(a) document the information in §115.180(5)(A) and (B) to demonstrate compliance with the appropriate control requirement. Proposed new subparagraph (A) would require documenting the continuously recorded number of hours the reciprocating compressor operated between each rod packing replacement and restarting the number of hours after the date of each replacement. Proposed new subparagraph (B) would require documenting the date and time of each reciprocating compressor rod packing replacement in accordance with the control requirement in §115.174(a)(2) and the number of months between each replacement.

Proposed new §115.180(6) would require records be maintained of any instance in which a control device does not exist at a well site where an affected pneumatic pump resides. In this case, proposed §115.180(6) would not require the owner or operator to install a control device for purposes of RACT in response to the oil and gas CTG. The option in proposed new §115.174(a)(2) would be the control requirement an owner or operator would claim, and this §115.180(6) would require documentation of such control requirement.

Proposed new §115.180(7) would require an owner or operator to retain records of required audio, visual, and olfactory inspections and fugitive emission component monitoring surveys, including the items in proposed new §115.180(7)(A) - (G). Proposed new subparagraph (A) lists instrument monitoring survey dates. Proposed new subparagraph (B) lists monitoring results. Proposed new subparagraph (C) provides the list of repairs needed, delay of repair logs, and unit shutdowns. Proposed new subparagraph (D) lists the fugitive emission components that are difficult-to-monitor and unsafe-to-monitor. Proposed new subparagraph (E) lists required electronic photos to document optical gas imaging monitoring surveys. Proposed new subparagraph (F) lists the fugitive emissions monitoring plan. Proposed new subparagraph (G) lists documentation for wells with a gas/oil ratio of less than 300 scf per stock barrel of crude oil produced.

The commission proposes new §115.180(8) requiring a report containing specific information be maintained for five years. This report would be subject to the five-year record retention schedule like all the other records required in §115.180 to be kept and would need to be updated so that the information would be representative of current operational conditions. Revisions to information, such as a change to the option used to demonstrate compliance with a control requirement, would be information maintained, and updated as necessary. Proposed new §115.180(8) would not require that these reports be submitted to the TCEQ. The commission is not proposing reports be submitted because the information that would be required would include information in proposed new §115.180(8)(A) - (D) such as the RN for the site, the applicable rule requirements for the site, the means of complying with the respective rule requirements, and technical data related to the equipment and means of control. For a site without a regulated entity number (RN), the owner or operator would need to submit a core data form to the agency to obtain an RN and name that is assigned by the agency. The commission acknowledges that not all of the sources affected by the proposed rulemaking would have an RN and would need to obtain one so that the site is included in the agency's database of sites affected by an agency program. The core data form to obtain the RN should be submitted prior to the report completion date, and with enough time for the information to be processed, as specified in §115.183(b).

Regarding proposed new §115.180(8)(D) specifying that a professional engineer must certify the design of a closed vent system, the commission intends that the professional engineer conduct, or oversee, and certify the assessment to help ensure the closed vent system would be sufficient to handle the capacity of vent gases being routed through it to achieve the required control efficiencies specified in the proposed control requirements of Subchapter B, Division 7.

The requirement to submit initial and annual reports is recommended in the EPA's oil and gas CTG. The commission proposes to require maintaining a report with specific information, along with the other records required in proposed new §115.180, to document on a continuous basis to ensure the enforceability of the compliance status with the requirements in Subchapter B, Division 7. The reports are not proposed for submission to the executive director due to the unnecessary burden this would impose on both the regulated community and the TCEQ. As stated in the Fiscal Note Section of this preamble, over 18,000 affected sites are estimated to be affected by the reporting requirements. This amount of reports being submitted to the TCEQ would require a substantial effort to process and file. Further, requiring regulated companies to submit the reports recommended by the EPA's oil and gas CTG is not necessary for the TCEQ to enforce the rules. The information that would be available in a submitted report would be available by the affected owner and operator and would be provided for investigative purposes to any TCEQ representative or other entity with jurisdiction. Although the format is not specified, these revisions or updates should be kept in such a way clearly distinguishable to an investigator or other representative with jurisdiction.

§115.181, Reporting Requirements

The commission proposes new §115.181 to require notification of the appropriate TCEQ regional office at least 45 days before the testing of a control device to allow agency staff to witness the test. This proposed requirement is consistent with agency practice allowing a representative to attend any testing, although the commission recognizes that there will not be TCEQ presence at every test performed in accordance with the control device testing requirements in Subchapter B, Division 7.

§115.183, Compliance Schedules

The commission proposes new §115.183(a) to specify that the owner or operator of a piece of equipment that meets the applicability specifications in §115.170 and is subject to a requirement of Subchapter B, Division 7 is required to be in compliance as soon as practicable, but no later than January 1, 2023. The January 1, 2023 compliance date would provide affected owners and operators approximately 18 months after expected rule adoption, if adopted, which is both reasonable and consistent with prior RACT rulemakings. The commission anticipates that 18 months between expected adoption and the January 1, 2023 compliance deadline would be a sufficient amount of time for any necessary changes to be made, for necessary permit actions to be completed, and for demonstration of compliance with the proposed rule requirements.

The commission proposes new §115.183(b) specifying that for the owner or operator subject to Subchapter B, Division 7 as of January 1, 2023, the report required by §115.180(8) must be completed no later than March 31, 2023. March 31, 2023 is approximately 90 days after the initial compliance date of Subchapter B, Division 7 and is expected to be a sufficient amount of time to compile the appropriate information. The report would be subject to the five-year record retention schedule that all other records are subject to and would need to be updated every five years from the initial report completion date.

The commission proposes new §115.183(c) specifying that the owner or operator who becomes subject to the requirements of Subchapter B, Division 7 on or after the date specified in §115.183(a) shall comply with the requirements in Subchapter B, Division 7 no later than 60 days after becoming subject. The commission expects that an owner or operator who becomes subject to Subchapter B, Division 7 after the initial compliance date of January 1, 2023 should be able to comply with the divi-

sion within 60 days of triggering compliance. For example, an owner or operator who begins operation that meets the applicability of Subchapter B, Division 7 would be expected to be able to comply within 60 days of that commencement date. Additionally, the commission acknowledges that an owner or operator could trigger applicability on November 3, 2022, which is less than 60 days from the initial compliance date. In these instances, the same amount of time to come into compliance would be needed and would be afforded under this proposed compliance schedule. Finally, where there is a due date or compliance date specified in the rules other than the compliance schedules, that date supersedes the compliance schedule in §115.183(c). For example, the monitoring after a fugitive emission component is placed into VOC service is required to occur within 30 days, and this could apply to a situation of new applicability for a site.

The commission proposes new §115.183(d) to indicate that the owner or operator of a storage tank subject to the requirements in Chapter 115, Subchapter B, Division 1 should continue to comply with those requirements until compliance with the requirements in Subchapter B, Division 7 is achieved, but not later than January 1, 2023. This proposed compliance schedule would ensure that there is no gap in applicability or requirements that could affect the control of VOC emissions.

Similar to proposed new §115.183(d), the commission proposes new §115.183(e) to indicate that the owner or operator of a fugitive emission component, as is defined in proposed Subchapter B, new Division 7, should continue to comply with those requirements until compliance with the requirements in Division 7 are achieved, but not later than January 1, 2023. This proposed compliance schedule would ensure that there is no gap in applicability or requirements that could affect the control of VOC emissions.

The commission proposes new §115.183(f) to specify the owner or operator has 60 days to comply with the appropriate control requirement in §115.174 after the owner or operator can no longer claim one of the exceptions in §115.174(e). This would include making a demonstration of technical infeasibility if emissions from a pneumatic controller or pump cannot be captured for control.

SUBCHAPTER D: PETROLEUM REFINING, NATURAL GAS PROCESSING, AND PETROCHEMICAL PROCESSES

DIVISION 3: FUGITIVE EMISSION CONTROL IN PETROLEUM REFINING, NATURAL GAS/GASOLINE PROCESSING, AND PETROCHEMICAL PROCESSES IN OZONE NONATTAINMENT AREAS

§115.357, Exemptions

The commission proposes §115.357(15) to specify that beginning January 1, 2023, a natural gas processing plant, as defined in proposed new §115.171(11), that would meet the compliance requirements in the proposed Subchapter B, new Division 7 in the DFW and HGB areas would no longer be required to comply with the requirements in Subchapter D, Division 3. This exemption is intended to make clear that natural gas processing plants are not subject to Subchapter D, Division 3 on or after this date because these operations would be required to comply with the Subchapter B, Division 7 by then. This change in applicability from Subchapter D, Division 3 to Subchapter B, Division 7 would be necessary as a result of combining the proposed rules that address the oil and gas CTG into one division. The owner or operator should continue to comply with the applicable requirements in the Subchapter D, Division 3 rules until compliance with the Subchapter B, Division 7 rules is achieved, on or before January 1, 2023. There is not intended to be any gap in applicable requirements for those natural gas processing plants that are currently subject to these rules but that would be subject to the Subchapter B, Division 7 rules beginning January 1, 2023.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules would be in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

This rulemaking addresses necessary changes in order to comply with federal law and fulfill the state's obligation to address RACT for the oil and gas CTG.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules would be in effect, the public benefit anticipated would be improved air quality due to a reduction of VOC emissions in the DFW and HGB areas. The emission reductions would result from the installation of or improvements to emission control equipment.

The proposed rulemaking would require the owner or operator of the affected equipment types in the oil and natural gas production, processing, or transmission operations to comply with VOC control, monitoring, inspection, testing, and recordkeeping requirements in the DFW and HGB nonattainment areas. These proposed requirements may have a fiscal implication to these business owners or operators. They may need to install or upgrade control devices, perform initial and ongoing inspections and monitoring, conduct initial and periodic control device testing, prepare reports, and maintain records.

The agency estimates that the following equipment would be affected by the proposed rulemaking: 1,153 VOC storage tanks, 421 centrifugal compressors, 8,008 reciprocating compressors, 12,256 pneumatic controllers, 4,505 pneumatic pumps, and 18,731 sites with fugitive emissions.

Knowing that each situation may have a unique set of circumstances, the agency is unable to predict or estimate the exact cost to owners or operators to implement the proposed rulemaking. One variable is the difference between capital costs and annual operating costs within certain available options. However, the agency has provided the following general cost estimate examples based on control options that may be selected.

The proposed rulemaking provides various compliance options for centrifugal compressors. Sample costs range from $33,311 to $342,439 in the first year, with decreasing costs in the following five years. The option of converting wet seals to dry seals has the highest first year cost, but the agency projects the potential for savings of $103,884 per year in the first five years.

The proposed rules provide various compliance options for reciprocating compressors, regardless of the affected source and regulated site's classification. As an example, if an owner or operator selected more frequent rod packing changeout alternative, then the initial cost would be $6,431. This cost would repeat every three years for an annualized cost of $2,450 per year.

Regarding pneumatic pump controls, it is unlikely that new control devices would be required because existing control devices should be able to demonstrate compliance with the proposed rulemaking. However, if an installation was required, the esti-

mates range from $1,662 to $54,900 per year depending on the circumstance and options selected.

The proposed rules would require existing high-bleed pneumatic controllers to be replaced with low-bleed or no-bleed controllers. The cost in the first year is estimated to be $3,071 with an estimated savings of $1,008 per year from the recovery of previously vented natural gas product.

The proposed rules would allow for a variety of VOC emission control compliance options for storage tank controls. The agency estimates that many crude oil or condensate storage tanks located between the wellhead and point of custody transfer would not need additional attention; however, a limited number of them may require additional controls to comply with the proposed rules. These costs range from $58,073 to $61,230 in the first year and a net cost ranging from $38,073 to $41,320 for the following years, depending on the situation and decisions made by the owner or operator.

The proposed rules would impose new monitoring requirements on crude oil and natural gas production, including gathering and boosting stations. In addition, the rules impose more stringent monitoring provisions at natural gas processing plants and provide the option to substitute optical gas imaging for certain EPA Method 21 fugitive monitoring surveys. The cost estimate for conducting fugitive monitoring of a typical crude oil site is $1,758 per year. The cost estimate for conducting fugitive monitoring of a natural gas production well site is $8,105 per year.

Owners and operators of affected equipment may experience additional costs for control device testing, monitoring, feasibility studies, and environmental expertise.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking would not adversely affect a local economy in a material way for the first five years that the proposed rule would be in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules would be in effect.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rulemaking for the first five-year period the proposed rules would be in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rulemaking does not adversely affect a small or micro-business in a material way for the first five years the proposed rules would be in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking would not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking would create new requirements for centrifugal and reciprocating compressors, pneumatic pumps and controllers, fugitive emission components and storage tanks in the crude oil and natural gas industry. It expands existing regulations relating to control of VOC emissions and increases the number of regulated crude oil and natural gas production wells in the DFW and HGB nonattainment areas. During the first five years, the proposed rulemaking should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking would not meet the definition of a "Major environmental rule" as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis.

A "Major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks 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 the state or a sector of the state. The proposed new rules implement the EPA's RACT recommendations in the oil and gas CTG (81 FR 74798), that the commission has determined to represent RACT for the DFW and HGB areas. For nonattainment areas classified as moderate and above, FCAA, §172(b)(1) and §182(b)(2) requires the state to submit a SIP revision that implements RACT for all major stationary sources of VOC. The FCAA, §182(b)(2)(A) requires states with ozone nonattainment areas classified as moderate and above to address VOC RACT for sources covered by CTGs issued by the EPA between 1990 and the area's attainment date. On October 27, 2016, the EPA issued the oil and gas CTG that recommended VOC RACT requirements for existing oil and natural gas industry sources (81 FR 74798) and directed states to submit SIP revisions addressing VOC RACT for the emission sources addressed in the CTG by October 27, 2018. The proposed rulemaking revisions implement RACT for oil and natural gas source categories in the DFW and HGB 2008 ozone nonattainment areas, as required by the FCAA, §172(c)(1). Generally, the commission expects the proposed requirements to place minimal burden on affected owners and operators and that the proposed compliance date provides an adequate amount of time for these owners and operators to make all necessary installations and adjustments for compliance purposes. As discussed in the fiscal note portion of this preamble, the proposed amendments are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is already required to comply with these federal standards on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Additionally, these amendments do not meet any of the four applicability criteria for requiring a regulatory impact analysis for a "Major environmental rule", which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically

required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking would implement RACT for oil and natural gas source categories in the DFW and HGB areas. Implementation of RACT is a necessary and required component of developing the SIP for nonattainment areas as required by 42 USC, §7410.

The proposed rulemaking implements requirements of 42 USC, §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85, Air Pollution Prevention and Control). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule. The proposed rulemaking would revise rules in 30 TAC Chapter 115, to implement the requirements of EPA's Oil and Gas CTG, addressing VOC emissions from oil and natural gas source categories.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by SB 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a "Major environmental rule" that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." Central Power & Light Co. v. Sharp, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue,* 960 S.W.2d 617 (Tex. 1997); Bullock v. Marathon Oil Co., 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ). Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, pet. denied); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific purpose of the proposed rulemaking is to revise rules in 30 TAC Chapter 115, to implement the requirements of EPA's Oil and Gas CTG, addressing VOC emissions from oil and natural gas source categories. The proposed rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this proposed rulemaking. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because it does not meet the definition of a "Major environmental rule"; it also does not meet any of the four applicability criteria for a major environmental rule.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person

at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. For nonattainment areas classified as moderate and above, FCAA, §172(b)(1) and §182(b)(2) requires the state to submit a SIP revision that implements RACT for all major stationary sources of sources of VOC. The FCAA, §182(b)(2)(A) requires states with ozone nonattainment areas classified as moderate and above to address VOC RACT for sources covered by CTG issued by the EPA between 1990 and the area's attainment date. On October 27, 2016, the EPA issued the oil and gas CTG that recommended VOC RACT requirements for existing oil and natural gas industry sources (81 FR 74798) and directed states to submit SIP revisions addressing VOC RACT for the emission sources addressed in the CTG by October 27, 2018. The specific purpose of the proposed rulemaking is to revise rules in 30 TAC Chapter 115, to implement the requirements of EPA's Oil and Gas CTG, addressing VOC emissions from oil and natural gas source categories. Texas Government Code, §2007.003(b)(4), provides that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law.

In addition, the commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to these proposed rules because this is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). The proposed rules fulfill the FCAA requirement to implement RACT in nonattainment areas. These revisions would result in VOC emission reductions in ozone nonattainment areas which may contribute to the timely attainment of the ozone standard and reduced public exposure to VOCs. Consequently, the proposed rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The CMP policy applicable to the proposed rulemaking is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32). The proposed rulemaking would not increase emissions of air pollutants and is therefore consistent with the CMP goal in 31 TAC §501.12(1) and the CMP policy in 31 TAC §501.32.

Promulgation and enforcement of these rules would not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 115 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the proposed rules are adopted, owners or operators of affected sites subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 115 requirements.

Announcement of Virtual Hearing

The commission will hold a *virtual* public hearing on this proposal on February 23, 2021, at 10:00 a.m. Central Standard Time. The virtual hearing is structured for the receipt of oral comments by interested persons. Individuals who register may present oral statements when called upon in order of registration. Open discussion will not be permitted during the virtual hearing; however, agency staff members will be available to discuss the proposal 30 minutes prior to and after the virtual hearing via the Teams Live Event O&A chat function.

Persons who do not have internet access or who have special communication or other accommodation needs who are planning to participate in the virtual hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD) to register. Accommodation requests should be made as far in advance as possible.

Registration

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments or want their attendance on record must **register by February 19, 2021.** To register for the hearing, please email *Rules@tceq.texas.gov* and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on February 22, 2021 to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at: *https://teams.microsoft.com/l/meetup-join/19%3ameeting_MGUyZDA2MzQtMTAyOS00MD-VmLWJjOTctNjBlOWIwNGJkN2Qy%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%220ab3b264-6a49-48c6-afc8-8225e4a7b0ac%22%2c%22IsBroadcastMeeting%22%3atrue%7d*.

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2020-038-115-AI. The comment period closes on March 2, 2021. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Joseph Thomas, Air Quality Planning Section, at (512) 239-3934.

SUBCHAPTER B. GENERAL VOLATILE ORGANIC COMPOUND SOURCES

DIVISION 1. STORAGE OF VOLATILE ORGANIC COMPOUNDS

30 TAC §§115.111, 115.112, 115.119

Statutory Authority

The amended sections are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended sections are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amended sections are also proposed under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended sections are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit SIP revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The amended sections implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021, and FCAA, 42 USC, §§7401 *et seq.*

§115.111. Exemptions.

(a) The following exemptions apply in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), except as noted in paragraphs (2), (4), (6), (7), and (9) - (11) of this subsection.

(1) Except as provided in §115.118 of this title (relating to Recordkeeping Requirements), a storage tank storing volatile organic compounds (VOC) with a true vapor pressure less than 1.5 pounds per square inch absolute (psia) is exempt from the requirements of this division.

(2) A storage tank with storage capacity less than 210,000 gallons storing crude oil or condensate prior to custody transfer in the Beaumont-Port Arthur or El Paso areas is exempt from the requirements of this division. This exemption no longer applies in the Dallas-Fort Worth area beginning March 1, 2013.

(3) A storage tank with a storage capacity less than 25,000 gallons located at a motor vehicle fuel dispensing facility is exempt from the requirements of this division.

(4) A welded storage tank in the Beaumont-Port Arthur, El Paso, and Houston-Galveston-Brazoria areas with a mechanical shoe primary seal that has a secondary seal from the top of the shoe seal to the tank wall (a shoe-mounted secondary seal) is exempt from the requirement for retrofitting with a rim-mounted secondary seal if the shoe-mounted secondary seal was installed or scheduled for installation before August 22, 1980.

(5) An external floating roof storage tank storing waxy, high pour point crude oils is exempt from any secondary seal requirements of §115.112(a), (d), and (e) of this title (relating to Control Requirements).

(6) A welded storage tank in the Beaumont-Port Arthur, El Paso, and Houston-Galveston-Brazoria areas storing VOC with a true vapor pressure less than 4.0 psia is exempt from any external floating roof secondary seal requirement if any of the following types of primary seals were installed before August 22, 1980:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(7) A welded storage tank in the Beaumont-Port Arthur, El Paso, and Houston-Galveston-Brazoria areas storing crude oil with a true vapor pressure equal to or greater than 4.0 psia and less than 6.0 psia is exempt from any external floating roof secondary seal requirement if any of the following types of primary seals were installed before December 10, 1982:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(8) A storage tank with storage capacity less than or equal to 1,000 gallons is exempt from the requirements of this division.

(9) In the Houston-Galveston-Brazoria area, a storage tank or tank battery storing condensate, as defined in §101.1 of this title (relating to Definitions), prior to custody transfer with a condensate throughput exceeding 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(d)(4) or (e)(4)(A) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title (relating to Approved Test Methods), that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 25 tons per year on a rolling 12-month basis.

(10) In the Dallas-Fort Worth area, except Wise County, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(B)(i) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 50 tons per year on a rolling 12-month basis. This exemption no longer applies 15 months after the date the commission publishes notice in the *Texas Register* as specified in §115.119(b)(1)(C) of this title (relating to Compliance Schedules) that the Dallas-Fort Worth area has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard.

(11) In the Dallas-Fort Worth area, except in Wise County, on or after the date specified in §115.119(b)(1)(C) of this title, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(B)(ii) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 25 tons per year on a rolling 12-month basis.

(12) In Wise County, prior to July 20, 2021, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 6,000 barrels (252,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(C) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 100 tons per year on a rolling 12-month basis.

(13) In Wise County, on or after July 20, 2021, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(C) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 50 tons per year on a rolling 12-month basis.

(14) In the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, beginning when compliance is achieved with Division 7 of this subchapter (relating to Oil and Natural Gas Service in Ozone Nonattainment Areas) but no later than January 1, 2023, a storage tank storing crude oil or condensate that is subject to the compliance requirements of Division 7 of this subchapter is exempt from all requirements in this division.

(b) The following exemptions apply in Gregg, Nueces, and Victoria Counties.

(1) Except as provided in §115.118 of this title, a storage tank storing VOC with a true vapor pressure less than 1.5 psia is exempt from the requirements of this division.

(2) A storage tank with storage capacity less than 210,000 gallons storing crude oil or condensate prior to custody transfer is exempt from the requirements of this division.

(3) A storage tank with storage capacity less than 25,000 gallons located at a motor vehicle fuel dispensing facility is exempt from the requirements of this division.

(4) A welded storage tank with a mechanical shoe primary seal that has a secondary seal from the top of the shoe seal to the tank wall (a shoe-mounted secondary seal) is exempt from the requirement for retrofitting with a rim-mounted secondary seal if the shoe-mounted secondary seal was installed or scheduled for installation before August 22, 1980.

(5) An external floating roof storage tank storing waxy, high pour point crude oils is exempt from any secondary seal requirements of §115.112(b) of this title.

(6) A welded storage tank storing VOC with a true vapor pressure less than 4.0 psia is exempt from any external secondary seal requirement if any of the following types of primary seals were installed before August 22, 1980:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(7) A welded storage tank storing crude oil with a true vapor pressure equal to or greater than 4.0 psia and less than 6.0 psia is exempt from any external secondary seal requirement if any of the following types of primary seals were installed before December 10, 1982:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(8) A storage tank with storage capacity less than or equal to 1,000 gallons is exempt from the requirements of this division.

(c) The following exemptions apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties.

(1) A storage tank storing VOC with a true vapor pressure less than 1.5 psia is exempt from the requirements of this division.

(2) Slotted guidepoles installed in a floating roof storage tank are exempt from the provisions of §115.112(c) of this title.

(3) A storage tank with storage capacity between 1,000 gallons and 25,000 gallons is exempt from the requirements of §115.112(c)(1) of this title if construction began before May 12, 1973.

(4) A storage tank with storage capacity less than or equal to 420,000 gallons is exempt from the requirements of §115.112(c)(3) of this title.

(5) A storage tank with storage capacity less than or equal to 1,000 gallons is exempt from the requirements of this division.

§115.112. Control Requirements.

(a) The following requirements apply in the Beaumont-Port Arthur, Dallas-Fort Worth, and El Paso areas, as defined in §115.10 of this title (relating to Definitions). The control requirements in this subsection no longer apply in the Dallas-Fort Worth area beginning March 1, 2013.

(1) No person shall place, store, or hold in any storage tank any volatile organic compounds (VOC) unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in Table I(a) of this paragraph for VOC other than crude oil and condensate or Table II(a) of this paragraph for crude oil and condensate.

Figure: 30 TAC §115.112(a)(1) (No change.)

(2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating roof or external floating roof except for automatic bleeder vents (vacuum breaker vents) and rim space vents must provide a projection below the liquid surface or be equipped with a cover, seal, or lid. Any cover, seal, or lid must be in a closed (i.e., no visible gap) position at all times except when the device is in actual use.

(B) Automatic bleeder vents (vacuum breaker vents) must be closed at all times except when the roof is being floated off or landed on the roof leg supports.

(C) Rim vents, if provided, must be set to open only when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.

(D) Any roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening.

(E) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(F) For an external floating roof storage tank, secondary seals must be the rim-mounted type (the seal must be continuous from the floating roof to the tank wall). The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and storage tank wall may not be greater than 1.0 square inch per foot of tank diameter.

(3) Vapor control systems, as defined in §115.10 of this title, used as a control device on any storage tank must maintain a minimum control efficiency of 90%. If a flare is used, it must be designed and operated in accordance with 40 Code of Federal Regulations §60.18(b) - (f) (as amended through December 22, 2008 (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare.

(b) The following requirements apply in Gregg, Nueces, and Victoria Counties.

(1) No person shall place, store, or hold in any storage tank any VOC, unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in Table I(a) in subsection (a)(1) of this section for VOC other than crude oil and condensate or Table II(a) in subsection (a)(1) of this section for crude oil and condensate. If a flare is used as a vapor recovery system, as defined in §115.10 of this title, it must be designed and operated in accordance with 40 Code of Federal Regulations §60.18(b) - (f) (as amended through December 22, 2008 (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare.

(2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating roof or external floating roof, except for automatic bleeder vents (vacuum breaker vents) and rim space vents, must provide a projection below the liquid surface or be equipped with a cover, seal, or lid. Any cover, seal, or lid must be in a closed (i.e., no visible gap) position at all times, except when the device is in actual use.

(B) Automatic bleeder vents (vacuum breaker vents) must be closed at all times except when the roof is being floated off or landed on the roof leg supports.

(C) Rim vents, if provided, must be set to open only when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.

(D) Any roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening.

(E) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(F) For an external floating roof storage tank, secondary seals must be the rim-mounted type (the seal shall be continuous from the floating roof to the tank wall). The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and tank wall may not be greater than 1.0 square inch per foot of tank diameter.

(c) The following requirements apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties.

(1) No person may place, store, or hold in any storage tank any VOC, other than crude oil or condensate, unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in Table I(b) of this paragraph for VOC other than crude oil and condensate.
Figure: 30 TAC §115.112(c)(1) (No change.)

(2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(B) All tank gauging and sampling devices must be vapor-tight except when gauging and sampling is taking place.

(3) No person in Matagorda or San Patricio Counties shall place, store, or hold crude oil or condensate in any storage tank unless the storage tank is a pressure tank capable of maintaining working pressures sufficient at all times to prevent vapor or gas loss to the atmosphere or is equipped with one of the following control devices, properly maintained and operated:

(A) an internal floating roof or external floating roof, as defined in §115.10 of this title. These control devices will not be allowed if the VOC has a true vapor pressure of 11.0 pounds per square inch absolute (psia) or greater. All tank-gauging and tank-sampling devices must be vapor-tight, except when gauging or sampling is taking place; or

(B) a vapor control system as defined in §115.10 of this title.

(d) The following requirements apply in the Houston-Galveston-Brazoria area, as defined in §115.10 of this title. The requirements in this subsection no longer apply beginning March 1, 2013.

(1) No person shall place, store, or hold in any storage tank any VOC unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in either Table I(a) of subsection (a)(1) of this section for VOC other than crude oil and condensate or Table II(a) of subsection (a)(1) of this section for crude oil and condensate.

(2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating roof or external floating roof as defined in §115.10 of this title except for automatic bleeder vents (vacuum breaker vents), and rim space vents must provide a projection below the liquid surface. All openings in an internal floating roof or external floating roof except for automatic bleeder vents (vacuum breaker vents), rim space vents, leg sleeves, and roof drains must be equipped with a deck cover. The deck cover must be equipped with a gasket in good operating condition between the cover and the deck. The deck cover must be closed (i.e., no gap of more than 1/8 inch) at all times, except when the cover must be open for access.

(B) Automatic bleeder vents (vacuum breaker vents) and rim space vents must be equipped with a gasketed lid, pallet, flapper, or other closure device and must be closed (i.e., no gap of more than 1/8 inch) at all times except when required to be open to relieve excess pressure or vacuum in accordance with the manufacturer's design.

(C) Each opening into the internal floating roof for a fixed roof support column may be equipped with a flexible fabric sleeve seal instead of a deck cover.

(D) Any external floating roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening or an equivalent control that must be kept in a closed (i.e., no gap of more than 1/8 inch) position at all times except when the drain is in actual use. Stub drains on an internal floating roof storage tank are not subject to this requirement.

(E) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(F) For an external floating roof storage tank, secondary seals must be the rim-mounted type (the seal must be continuous from the floating roof to the tank wall with the exception of gaps that do not exceed the following specification). The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and storage tank wall may not be greater than 1.0 square inch per foot of storage tank diameter.

(G) Each opening for a slotted guidepole in an external floating roof storage tank must be equipped with one of the following control device configurations:

(i) a pole wiper and pole float that has a seal or wiper at or above the height of the pole wiper;

(ii) a pole wiper and a pole sleeve;

(iii) an internal sleeve emission control system;

(iv) a retrofit to a solid guidepole system;

(v) a flexible enclosure system; or

(vi) a cover on an external floating roof tank.

(H) The external floating roof or internal floating roof must be floating on the liquid surface at all times except as specified in this subparagraph. The external floating roof or internal floating roof may be supported by the leg supports or other support devices, such as hangers from the fixed roof, during the initial fill or refill after the storage tank has been cleaned or as allowed under the following circumstances:

(i) when necessary for maintenance or inspection;

(ii) when necessary for supporting a change in service to an incompatible liquid;

(iii) when the storage tank has a storage capacity less than 25,000 gallons or the vapor pressure of the material stored is less than 1.5 psia;

(iv) when the vapors are routed to a control device from the time the floating roof is landed until the floating roof is within ten percent by volume of being refloated;

(v) when all VOC emissions from the tank, including emissions from roof landings, have been included in a floating roof storage tank emissions limit or cap approved under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); or

(vi) when all VOC emissions from floating roof landings at the regulated entity, as defined in §101.1 of this title (relating to Definitions), are less than 25 tons per year.

(3) Vapor control systems, as defined in §115.10 of this title, used as a control device on any storage tank must maintain a minimum control efficiency of 90%.

(4) For a storage tank storing condensate, as defined in §101.1 of this title, prior to custody transfer, flashed gases must be routed to a vapor control system if the liquid throughput through an individual tank or the aggregate of tanks in a tank battery exceeds 1,500 barrels (63,000 gallons) per year.

(5) For a storage tank storing crude oil or condensate prior to custody transfer or at a pipeline breakout station, flashed gases must be routed to a vapor control system if the uncontrolled VOC emissions from an individual storage tank, or from the aggregate of storage tanks in a tank battery, equal or exceed 25 tons per year on a rolling 12-month basis. Uncontrolled emissions must be estimated by one of the following methods; however, if emissions determined using direct measurements or other methods approved by the executive director under subparagraph (A) or (D) of this paragraph are higher than emissions estimated using the default factors or charts in subparagraph (B) or (C) of this paragraph, the higher values must be used.

(A) The owner or operator may make direct measurements using the measuring instruments and methods specified in §115.117 of this title (relating to Approved Test Methods).

(B) The owner or operator may use a factor of 33.3 pounds of VOC per barrel (42 gallons) of condensate produced or 1.6 pounds of VOC per barrel (42 gallons) of oil produced.

(C) For crude oil storage only, the owner or operator may use the chart in Exhibit 2 of the United States Environmental Protection Agency publication *Lessons Learned from Natural Gas Star Partners: Installing Vapor Recovery Units on Crude Oil Storage Tanks,* October 2003, and assuming that the hydrocarbon vapors have a molecular weight of 34 pounds per pound mole and are 48% by weight VOC.

(D) Other test methods or computer simulations may be allowed if approved by the executive director.

(e) The control requirements in this subsection apply in the Houston-Galveston-Brazoria and Dallas-Fort Worth areas [~~beginning March 1, 2013~~], except as specified in §115.119 of this title (relating to Compliance Schedules) and in paragraph (3) of this subsection. Beginning January 1, 2023, the requirements in this subsection no longer apply to storage tanks storing crude oil or condensate that are subject to Division 7 of this subchapter (relating to Oil and Natural Gas Service in Ozone Nonattainment Areas).

(1) No person shall place, store, or hold VOC in any storage tank unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere

or is in compliance with the control requirements specified in Table 1 of this paragraph for VOC other than crude oil and condensate or Table 2 of this paragraph for crude oil and condensate.
Figure: 30 TAC §115.112(e)(1) (No change.)

(2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating roof or external floating roof must provide a projection below the liquid surface. Automatic bleeder vents (vacuum breaker vents) and rim space vents are not subject to this requirement.

(B) All openings in an internal floating roof or external floating roof must be equipped with a deck cover. The deck cover must be equipped with a gasket in good operating condition between the cover and the deck. The deck cover must be closed (i.e., no gap of more than 1/8 inch) at all times, except when the cover must be open for access. Automatic bleeder vents (vacuum breaker vents), rim space vents, leg sleeves, and roof drains are not subject to this requirement.

(C) Automatic bleeder vents (vacuum breaker vents) and rim space vents must be equipped with a gasketed lid, pallet, flapper, or other closure device and must be closed (i.e., no gap of more than 1/8 inch) at all times except when required to be open to relieve excess pressure or vacuum in accordance with the manufacturer's design.

(D) Each opening into the internal floating roof for a fixed roof support column may be equipped with a flexible fabric sleeve seal instead of a deck cover.

(E) Any external floating roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening or an equivalent control that must be kept in a closed (i.e., no gap of more than 1/8 inch) position at all times except when the drain is in actual use. Stub drains on an internal floating roof storage tank are not subject to this requirement.

(F) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(G) For an external floating roof storage tank, secondary seals must be the rim-mounted type. The seal must be continuous from the floating roof to the tank wall with the exception of gaps that do not exceed the following specification. The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and storage tank wall may not be greater than 1.0 square inch per foot of storage tank diameter.

(H) Each opening for a slotted guidepole in an external floating roof storage tank must be equipped with one of the following control device configurations:

(i) a pole wiper and pole float that has a seal or wiper at or above the height of the pole wiper;

(ii) a pole wiper and a pole sleeve;

(iii) an internal sleeve emission control system;

(iv) a retrofit to a solid guidepole system;

(v) a flexible enclosure system; or

(vi) a cover on an external floating roof tank.

(I) The external floating roof or internal floating roof must be floating on the liquid surface at all times except as allowed under the following circumstances:

(i) during the initial fill or refill after the storage tank has been cleaned;

(ii) when necessary for preventive maintenance, roof repair, primary seal inspection, or removal and installation of a secondary seal, if product is not transferred into or out of the storage tank, emissions are minimized, and the repair is completed within seven calendar days;

(iii) when necessary for supporting a change in service to an incompatible liquid;

(iv) when the storage tank has a storage capacity less than 25,000 gallons;

(v) when the vapors are routed to a control device from the time the storage tank has been emptied to the extent practical or the drain pump loses suction until the floating roof is within 10% by volume of being refloated;

(vi) when all VOC emissions from the storage tank, including emissions from floating roof landings, have been included in an emissions limit or cap approved under Chapter 116 of this title prior to March 1, 2013; or

(vii) when all VOC emissions from floating roof landings at the regulated entity are less than 25 tons per year.

(3) A control device used to comply with this subsection must meet one of the following conditions at all times when VOC vapors are routed to the device.

(A) A control device, other than a vapor recovery unit or a flare, must maintain the following minimum control efficiency:

(i) 90% in the Houston-Galveston-Brazoria area until the date specified in clause (ii) of this subparagraph;

(ii) 95% in the Houston-Galveston-Brazoria area beginning July 20, 2018; and

(iii) 95% in the Dallas-Fort Worth area.

(B) A vapor recovery unit must be designed to process all vapor generated by the maximum liquid throughput of the storage tank or the aggregate of storage tanks in a tank battery and must transfer recovered vapors to a pipe or container that is vapor-tight, as defined in §115.10 of this title.

(C) A flare must be designed and operated in accordance with 40 Code of Federal Regulations §60.18(b) - (f) (as amended through December 22, 2008 (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare.

(4) For a fixed roof storage tank storing condensate prior to custody transfer, flashed gases must be routed to a vapor control system if the condensate throughput of an individual tank or the aggregate of tanks in a tank battery exceeds:

(A) in the Houston-Galveston-Brazoria area, 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis;

(B) in the Dallas-Fort Worth area except Wise County:

(i) 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis; or

(ii) 15 months after the date the commission publishes notice in the *Texas Register* as specified in §115.119(b)(1)(C) of this title that the Dallas-Fort Worth area has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard, 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis; and

(C) in Wise County:

(i) 6,000 barrels (252,000 gallons) per year on a rolling 12-month basis, until the date specified in clause (ii) of this subparagraph; and

(ii) 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis beginning July 20, 2021, as specified in §115.119(f) of this title.

(5) For a fixed roof storage tank storing crude oil or condensate prior to custody transfer or at a pipeline breakout station, flashed gases must be routed to a vapor control system if the uncontrolled VOC emissions from an individual storage tank, or from the aggregate of storage tanks in a tank battery, or from the aggregate of storage tanks at a pipeline breakout station, equal or exceed:

(A) in the Houston-Galveston-Brazoria area, 25 tons per year on a rolling 12-month basis;

(B) in the Dallas-Fort Worth area, except Wise County:

(i) 50 tons per year on a rolling 12-month basis; or

(ii) 15 months after the date the commission publishes notice in the *Texas Register* as specified in §115.119(b)(1)(C) of this title that the Dallas-Fort Worth area has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard, 25 tons per year on a rolling 12-month basis; and

(C) in Wise County:

(i) 100 tons per year on a rolling 12-month basis, until the date specified in clause (ii) of this subparagraph; and

(ii) 50 tons per year on a rolling 12-month basis beginning July 20, 2021, as specified in §115.119(f) of this title.

(6) Uncontrolled emissions from a fixed roof storage tank or fixed roof storage tank battery storing crude oil or condensate prior to custody transfer or at a pipeline breakout station must be estimated by one of the following methods. However, if emissions determined using direct measurements or other methods approved by the executive director under subparagraph (A) or (B) of this paragraph are higher than emissions estimated using the default factors or charts in subparagraph (C) or (D) of this paragraph, the higher values must be used.

(A) The owner or operator may make direct measurements using the measuring instruments and methods specified in §115.117 of this title.

(B) The owner or operator may use other test methods or computer simulations approved by the executive director.

(C) The owner or operator may use a factor of 33.3 pounds of VOC per barrel (42 gallons) of condensate produced or 1.6 pounds of VOC per barrel (42 gallons) of oil produced.

(D) For crude oil storage only, the owner or operator may use the chart in Exhibit 2 of the United States Environmental Protection Agency publication *Lessons Learned from Natural Gas Star Partners: Installing Vapor Recovery Units on Crude Oil Storage Tanks,* October 2003, and assuming that the hydrocarbon vapors have a molecular weight of 34 pounds per pound mole and are 48% by weight VOC.

(7) Fixed roof storage tanks in the Dallas-Fort Worth area and Houston-Galveston-Brazoria area storing crude oil or condensate prior to custody transfer or at a pipeline breakout station for which the owner or operator is required by this subsection to control flashed gases must be maintained in accordance with manufacturer instructions. All openings in the fixed roof storage tank through which vapors are not routed to a vapor recovery unit or other vapor control device must be equipped with a closure device maintained according to the manufacturer's instructions [;] and operated according to this paragraph. If manufacturer instructions are unavailable, industry standards consistent with good engineering practice can be substituted.

(A) Each closure device must be closed at all times except when normally actuated or required to be open for temporary access or to relieve excess pressure or vacuum in accordance with the manufacturer's design and consistent with good air pollution control practices. Such opening, actuation, or use must be limited to minimize vapor loss.

(B) Each closure device must be properly sealed to minimize vapor loss when closed.

(C) Each closure device must either be latched closed or, if designed to relieve pressure, set to automatically open at a pressure that will ensure all vapors are routed to the vapor recovery unit or other vapor control device under normal operating conditions other than gauging the tank or taking a sample through an open thief hatch.

(D) No closure device may be allowed to have a VOC leak for more than 15 calendar days after the leak is found unless delay of repair is allowed. For the purposes of this subparagraph, a leak is the exuding of process gasses from a closed device based on sight, smell, or sound. If parts are unavailable, repair may be delayed. Parts must be ordered promptly and the repair must be completed within five days of receipt of required parts. Repair may be delayed until the next shutdown if the repair of the component would require a shutdown that would create more emissions than the repair would eliminate. Repair must be completed by the end of the next shutdown.

§115.119. Compliance Schedules.

(a) In Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, the compliance date has passed and the owner or operator of each storage tank in which any volatile organic compounds (VOC) are placed, stored, or held shall continue to comply with this division except as follows.

(1) The affected owner or operator shall comply with the requirements of §§115.112(d); 115.115(a)(1), (2), (3)(A), and (4); 115.117; and 115.118(a) of this title (relating to Control Requirements; Monitoring Requirements; Approved Test Methods; and Recordkeeping Requirements, respectively) no later than January 1, 2009. Section 115.112(d) of this title no longer applies in the Houston-Galveston-Brazoria area beginning March 1, 2013. Prior to March 1, 2013, the owner or operator of a storage tank subject to §115.112(d) of this title shall continue to comply with §115.112(d) of this title until compliance has been demonstrated with the requirements of §115.112(e)(1) - (6) of this title. Section 115.112(e)(3)(A)(i) of this title no longer applies beginning July 20, 2018.

(A) If compliance with these requirements would require emptying and degassing of the storage tank, compliance is not required until the next time the storage tank is emptied and degassed but no later than January 1, 2017.

(B) The owner or operator of each storage tank with a storage capacity less than 210,000 gallons storing crude oil and condensate prior to custody transfer shall comply with the requirements of this division no later than January 1, 2009, regardless if compliance with these requirements would require emptying and degassing of the storage tank.

(2) The affected owner or operator shall comply with §§115.112(e)(1) - (6), 115.115(a)(3)(B), (5), and (6), and 115.116 of this title (relating to Testing Requirements) as soon as practicable, but no later than March 1, 2013. Section 115.112(e)(3)(A)(i) of this title no longer applies beginning July 20, 2018. Prior to July 20, 2018, the

owner or operator of a storage tank subject to §115.112(e)(3)(A)(i) of this title shall continue to comply with §115.112(e)(3)(A)(i) of this title until compliance has been demonstrated with the requirements of §115.112(e)(3)(A)(ii) of this title. After July 20, 2018, the owner or operator of a storage tank is subject to §115.112(e)(3)(A)(ii) of this title.

(A) If compliance with these requirements would require emptying and degassing of the storage tank, compliance is not required until the next time the storage tank is emptied and degassed but no later than January 1, 2017.

(B) The owner or operator of each storage tank with a storage capacity less than 210,000 gallons storing crude oil and condensate prior to custody transfer shall comply with these requirements no later than March 1, 2013, regardless if compliance with these requirements would require emptying and degassing of the storage tank.

(3) The affected owner or operator shall comply with §§115.112(e)(3)(A)(ii), 115.112(e)(7), 115.118(a)(6)(D) and (E), and 115.114(a)(5) of this title (relating to Inspection and Repair Requirements) as soon as practicable, but no later than July 20, 2018.

(b) In Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division on or before March 1, 2009, and shall continue to comply with this division, except as follows.

(1) The affected owner or operator shall comply with §§115.112(e), 115.115(a)(3)(B), (5), and (6), 115.116, and 115.118(a)(6) of this title as soon as practicable, but no later than March 1, 2013.

(A) If compliance with §115.112(e) of this title would require emptying and degassing of the storage tank, compliance is not required until the next time the storage tank is emptied and degassed but no later than December 1, 2021.

(B) The owner or operator of a storage tank with a storage capacity less than 210,000 gallons storing crude oil and condensate prior to custody transfer shall comply with these requirements no later than March 1, 2013, regardless if compliance with these requirements would require emptying and degassing of the storage tank.

(C) As soon as practicable but no later than 15 months after the commission publishes notice in the *Texas Register* that the Dallas-Fort Worth area, except Wise County, has been reclassified as a severe nonattainment area for the 1997 Eight-Hour Ozone National Ambient Air Quality Standard the owner or operator of a storage tank storing crude oil or condensate prior to custody transfer or at a pipeline breakout station is required to be in compliance with the control requirements in §115.112(e)(4)(B)(ii) and (5)(B)(ii) of this title except as specified in §115.111(a)(11) of this title (relating to Exemptions).

~~[(2) The owner or operator is no longer required to comply with §115.112(a) of this title beginning March 1, 2013.]~~

(2) [~~(3)~~] The affected owner or operator in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties shall comply with §§115.112(e)(7), 115.114(a)(5), and 115.118(a)(6)(D) and (E) of this title as soon as practicable, but no later than January 1, 2017.

(c) In Hardin, Jefferson, and Orange Counties, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division by March 7, 1997, and shall continue to comply with this division, except that compliance with §115.115(a)(3)(B), (5), and (6), and §115.116 of this title is required as soon as practicable, but no later than March 1, 2013.

(d) In El Paso County, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division by January 1, 1996, and shall continue to comply with this division, except that compliance with §115.115(a)(3)(B), (5), and (6), and §115.116 of this title is required as soon as practicable, but no later than March 1, 2013.

(e) In Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division by July 31, 1993, and shall continue to comply with this division, except that compliance with §115.116(b) of this title is required as soon as practicable, but no later than March 1, 2013.

(f) In Wise County, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division by January 1, 2017, and shall continue to comply with this division, except that compliance with §115.111(a)(13) and §115.112(e)(4)(C)(ii) and (5)(C)(ii) of this title is required as soon as practicable, but no later than July 20, 2021.

(g) The owner or operator of each storage tank in which any VOC is placed, stored, or held that becomes subject to this division on or after the date specified in subsections (a) - (f) of this section, shall comply with the requirements in this division no later than 60 days after becoming subject.

(h) In Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, Waller, and Wise Counties, the owner or operator of a storage tank storing crude oil or condensate shall continue to comply with the requirements in this division until compliance with the requirements in Division 7 of this subchapter (relating to Oil and Natural Gas Service in Ozone Nonattainment Areas) is achieved or until December 31, 2022, whichever is sooner.

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 January 14, 2021.

TRD-202100223
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 239-1806

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DIVISION 2. VENT GAS CONTROL

30 TAC §115.121

Statutory Authority

The amended section is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning

Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amended section is also proposed under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended section is also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit SIP revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021, and FCAA, 42 USC, §§7401 *et seq.*

§115.121. Emission Specifications.

(a) For all persons in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), the following emission specifications shall apply.

(1) No person may allow a vent gas stream containing volatile organic compounds (VOC) to be emitted from any process vent, unless the vent gas stream is controlled properly in accordance with §115.122(a)(1) of this title (relating to Control Requirements). Vent gas streams include emissions from compressor rod packing that are contained and routed through a vent, except from compressors subject to Division 7 of this subchapter (relating to Oil and Natural Gas in Ozone Nonattainment Areas), and emissions from a glycol dehydrator still vent.

(2) No person may allow a vent gas stream to be emitted from the following processes unless the vent gas stream is controlled properly in accordance with §115.122(a)(2) of this title:

(A) any synthetic organic chemical manufacturing industry reactor process or distillation operation;

(B) any air oxidation synthetic organic chemical manufacturing process;

(C) any liquid phase polypropylene manufacturing process;

(D) any liquid phase slurry high-density polyethylene manufacturing process; or

(E) any continuous polystyrene manufacturing process.

(3) In the Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, VOC emissions from bakery ovens, as defined in §115.10 of this title, shall be controlled properly in accordance with §115.122(a)(3) of this title.

(4) Any vent gas stream in the Houston-Galveston-Brazoria area which includes a highly-reactive volatile organic compound, as defined in §115.10 of this title, is subject to the requirements of Subchapter H of this chapter (relating to Highly-Reactive Volatile Organic Compounds) in addition to the applicable requirements of this division.

(b) In Nueces and Victoria Counties, no person may allow a vent gas stream to be emitted from any process vent containing one or more of the following VOC or classes of VOC, unless the vent gas stream is controlled properly in accordance with §115.122(b) of this title:

(1) emissions of ethylene associated with the formation, handling, and storage of solidified low-density polyethylene;

(2) emissions of the following specific VOC: ethylene, butadiene, isobutylene, styrene, isoprene, propylene, methylstyrene; and

(3) emissions of specified classes of VOC, including aldehydes, alcohols, aromatics, ethers, olefins, peroxides, amines, acids, esters, ketones, sulfides, and branched chain hydrocarbons (C_8 and above).

(c) For persons in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, the following emission specifications shall apply.

(1) No person may allow a vent gas stream to be emitted from any process vent containing one or more of the following VOC or classes of VOC, unless the vent gas stream is controlled properly in accordance with §115.122(c)(1) of this title:

(A) emissions of ethylene associated with the formation, handling, and storage of solidified low-density polyethylene;

(B) emissions of the following specific VOC: ethylene, butadiene, isobutylene, styrene, isoprene, propylene, and methylstyrene; and

(C) emissions of specified classes of VOC, including aldehydes, alcohols, aromatics, ethers, olefins, peroxides, amines, acids, esters, ketones, sulfides, and branched chain hydrocarbons (C_8 and above).

(2) No person may allow a vent gas stream to be emitted from any catalyst regeneration of a petroleum or chemical process system, basic oxygen furnace, or fluid coking unit into the atmosphere, unless the vent gas stream is properly controlled in accordance with §115.122(c)(2) of this title.

(3) No person may allow a vent gas stream to be emitted from any iron cupola into the atmosphere, unless the vent gas stream is properly controlled in accordance with §115.122(c)(3) of this title.

(4) Vent gas streams from blast furnaces shall be controlled properly in accordance with §115.122(c)(4) of this title.

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 January 14, 2021.

TRD-202100224
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 28, 2021
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DIVISION 7. OIL AND NATURAL GAS SERVICE IN OZONE NONATTAINMENT AREAS

30 TAC §§115.170 - 115.181, 115.183

Statutory Authority

The new sections are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The new sections are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The new sections are also proposed under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The new sections are also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit SIP revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The new sections implement THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021, and FCAA, 42 USC, §§7401 *et seq.*

§115.170. Applicability.

The requirements in this division apply to the following equipment in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas as defined in §115.10 of this title (relating to Definitions):

(1) any centrifugal compressor with wet seals and any reciprocating compressor located between the wellhead and point of custody transfer to a natural gas transmission or storage operation;

(2) any pneumatic controller located from the wellhead to a natural gas processing plant, including the natural gas processing plant, or point of custody transfer to a crude oil pipeline;

(3) any pneumatic pump located at a well site or a natural gas processing plant;

(4) any storage tank located from the well site to the point of custody transfer to an oil pipeline or to the point of natural gas distribution; and

(5) any fugitive emission component in volatile organic compounds service located at a crude oil or natural gas production well site, natural gas processing plant, or gathering and boosting station.

§115.171. Definitions.

Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, or 115.10 of this title (relating to Definitions, respectively), the terms in this division have the meanings commonly used in the field of air pollution control. The following meanings apply in this division unless the context clearly indicates otherwise.

(1) Centrifugal compressor--A piece of equipment for raising the pressure of natural gas by drawing in low-pressure natural gas and discharging significantly higher-pressure natural gas by means of mechanical rotating vanes or impellers. Screw, sliding vane, and liquid ring compressors are not centrifugal compressors.

(2) Closure device--A piece of equipment that covers an opening in the roof of a fixed roof storage tank and either can be temporarily opened or has a component that provides a temporary opening. Examples of closure devices include, but are not limited to, thief hatches, pressure relief valves, pressure-vacuum relief valves, and access hatches.

(3) Difficult-to-monitor--Equipment that cannot be inspected without elevating the inspecting personnel more than two meters above a support surface.

(4) Fugitive emission components--Except for vents as defined in §101.1 of this title (relating to Definitions) and sampling systems, equipment as defined in subparagraphs (A) and (B) of this paragraph that has the potential to leak volatile organic compounds (VOC) emissions.

(A) At a natural gas processing plant, equipment considered fugitive components include, but are not limited to, any pump, pressure relief device, open-ended valve or line, valve, flange, or other connector that is in VOC service or wet gas service, and any closed vent system or control device not subject to another section in this division that specifies one or more instrument monitoring requirements for the system or device.

(B) At a well site or gathering and boosting station from equipment considered fugitive emissions components include, but are not limited to, valves, connectors, pressure relief devices, open-ended lines, flanges, instruments, meters, or other openings that are not on a storage tank subject to §115.175 of this title (relating to Storage Tank Control Requirements), and any closed vent system or control device not subject to another section in this division that specifies one or more instrument monitoring requirements for the system or device.

(5) Gathering and boosting station--Any permanent combination of one or more compressors that collects natural gas from well sites and moves the natural gas at increased pressure into gathering pipelines to a natural gas processing plant or into the pipeline. The combination of one or more compressors located at a well site, or located at an onshore natural gas processing plant, is not a gathering and boosting station.

(6) Pneumatic controller--An automated instrument that is actuated by a compressed gas and is used to maintain a process condition such as liquid level, pressure, pressure differential and temperature. When actuated by natural gas, pneumatic controllers are characterized primarily by their emission characteristics.

(A) Continuous bleed pneumatic controllers receive a continuous flow of pneumatic natural gas supply and are used to modulate flow, liquid level, or pressure. Gas is vented continuously at a

rate that may vary over time. Continuous bleed controllers are further subdivided into two types based on their bleed rate, which for the purposes of this section means the rate at which natural gas is continuously vented from a pneumatic controller and measured in standard cubic feet per hour (scfh):

(i) low bleed controllers have a bleed rate of less than or equal to 6.0 scfh; and

(ii) high bleed controllers have a bleed rate of greater than 6.0 scfh.

(B) Intermittent bleed or snap-acting pneumatic controllers release natural gas only when they open or close a valve or as they throttle the gas flow.

(C) Zero-bleed pneumatic controllers do not bleed natural gas to the atmosphere. These pneumatic controllers are self-contained devices that release gas to a downstream pipeline instead of to the atmosphere.

(7) Pneumatic pump--A positive displacement pump powered by pressurized natural gas that uses the reciprocating action of flexible diaphragms in conjunction with check valves to pump a fluid.

(8) Reciprocating compressor--A piece of equipment that increases the pressure of a natural gas by positive displacement, employing linear movement of the driveshaft.

(9) Rod packing--A series of flexible rings in machined metal cups that fit around the reciprocating compressor piston rod to create a seal limiting the amount of compressed natural gas that escapes to the atmosphere, or other mechanism that provides the same function.

(10) Route to a process--The emissions are:

(A) conveyed via a closed vent system to any enclosed portion of a process where it is predominantly recycled or consumed in the same manner as a material that fulfills the same function in the process or is transformed by chemical reaction into materials that are not regulated materials or incorporated into a product; or

(B) recovered.

(11) Storage tank--A tank, stationary vessel, or a container that contains an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water, and that is constructed primarily of non-earthen materials.

(12) Unsafe-to-monitor--Equipment that exposes monitoring personnel to an imminent or potential danger as a consequence of conducting an inspection.

(13) Vapor recovery unit--A device that transfers hydrocarbon vapors to a fuel liquid or gas system, a sales liquid or gas system, or a liquid storage tank.

(14) Well site--A parcel of land with one or more surface sites that are constructed for the drilling and subsequent operation of one or more oil, natural gas, or injection wells.

§115.172. Exemptions.

(a) The following exemptions apply to the equipment specified in §115.170 of this title (relating to Applicability) that is subject to this division. Records to support exemption qualification must be kept in accordance with the requirements in §115.180 of this title (relating to Recordkeeping Requirements). Additional requirements apply where specified.

(1) Boilers and process heaters are exempt from the testing requirements of §115.179 of this title (relating to Approved Test Methods and Testing Requirements) and the monitoring requirements of §115.178 of this title (relating to Monitoring and Inspection Requirements) if:

(A) a vent gas stream from equipment subject to this division is introduced with the primary fuel or is used as the primary fuel; or

(B) the boiler or process heater has a design heat input capacity equal to or greater than 44 megawatts or 149.6 million British thermal units per hour.

(2) Any pneumatic pump that operates fewer than 90 days per calendar year at a well site is exempt from the requirements of this division.

(3) Except for the control requirements in §115.175(b) or (c) of this title (relating to Storage Tank Control Requirements), any storage tank that meets one of the following conditions is exempt from the requirements in this division:

(A) a storage tank with the potential to emit of less than 6.0 tons per year of volatile organic compounds (VOC) emissions, which must be calculated in accordance with §115.175(c)(2) of this title;

(B) a storage tank with uncontrolled actual VOC emissions of less than 4.0 tons per year, which must be calculated in accordance with §115.175(c)(1) of this title;

(C) a process vessel such as a surge control vessel, bottom receiver, or knockout vessel;

(D) a pressure vessel designed to operate in excess of 29.7 pounds per square inch absolute and designed to operate without emissions to the atmosphere; and

(E) a vessel that is skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges, or ships) and is intended to be located at a site for less than 180 consecutive days.

(4) Fugitive emission components at a natural gas processing plant that contact a process fluid that contains less than 1.0% VOC by weight are exempt from the requirements of this division.

(5) All pumps and compressors, other than those specified in §115.173 and §115.174 of this title (relating to Compressor Control Requirements and Pneumatic Controller and Pump Controller Requirements, respectively), that are equipped with a shaft sealing system that prevents or detects emissions of VOC from the seal are exempt from the fugitive monitoring requirements of §115.177 of this title (relating to Fugitive Emission Component Requirements). These seal systems may include, but are not limited to, dual pump seals with barrier fluid at higher pressure than process pressure, seals degassing to vent control systems kept in good working order, or seals equipped with an automatic seal failure detection and alarm system.

(6) Components that are insulated, making them inaccessible to monitoring with a hydrocarbon gas analyzer, are exempt from the hydrocarbon gas analyzer monitoring requirements of §115.177 and §115.178 of this title. Inspections using audio, visual, and olfactory means must still be conducted in accordance with the appropriate requirements of §115.177 and §115.178 of this title.

(7) Sampling connection systems, as defined in 40 Code of Federal Regulations (CFR) §63.161 (as amended January 17, 1997 (62 FR 2788)), that meet the requirements of 40 CFR §63.166(a) and (b) (as amended June 20, 1996 (61 FR 31439)) are exempt from the requirements of this division, except from the recordkeeping requirement in §115.180(2) of this title.

(8) Fugitive emission components located at a well site with one or more wells that produce on average 15-barrel equivalents or less per day are exempt from the requirements of this division, except from the recordkeeping requirement in §115.180(2) of this title.

(b) Equipment used only for materials outside the product stream from a crude oil or natural gas production well or after the point of custody transfer to a crude oil or natural gas distribution or storage segment is exempt from the requirements of this division.

(c) After the appropriate compliance date in §115.183 of this title (relating to Compliance Schedules) and upon the date that the wet seals on a centrifugal compressor subject to subsection (a) of this section are retrofitted with a dual mechanical or other equivalent dry seal control system, the compressor no longer meets the applicability of this division.

(d) After the appropriate compliance date in §115.183 of this title, changes made to a pneumatic pump or controller are such that the pump or controller does not meet the appropriate definitions in this division, §115.174(a) or (b) of this title no longer apply. The change in applicability status must be documented in accordance with the recordkeeping requirements in §115.180 of this title. For example, a pneumatic controller converted to a solar-powered controller no longer meets the applicability of a pneumatic controller regulated by this division.

§115.173. Compressor Control Requirements.

The control requirements in this section apply to any centrifugal compressor and reciprocating compressor subject to this division.

(1) If routing to a control device or routing to a process, the volatile organic compounds (VOC) vapors must be routed from the wet seal fluid degassing system or rod packing through a closed vent system. The closed vent system must be designed and operated to route all gases, vapors, or fumes from the wet seal fluid degassing system or rod packing to the control device under normal operation. The closed vent system must operate under negative pressure at the inlet for vapors.

(2) A compressor must be equipped with a seal cover that forms a continuous impermeable barrier over the entire liquid surface area, and the cover must remain in a sealed position (e.g., covered by a gasketed lid or cap) except during periods necessary to inspect, maintain, repair, or replace equipment.

(3) The owner or operator shall control VOC emissions from a centrifugal compressor wet seal fluid degassing system or reciprocating compressor rod packing properly using one of the following controls.

(A) A control device, other than a device specified in subparagraphs (B) and (C) of this paragraph, may be used and must maintain a VOC control efficiency of at least 95% or a VOC concentration of equal to or less than 275 parts per million by volume (ppmv), as propane, on a wet basis corrected to 3% oxygen. The 95% VOC control efficiency and 275 ppmv VOC concentration are calculated from the gas stream at the control device outlet.

(i) The control device must be operated at all times when gases, vapors, or fumes are vented from the closed vent system to the control device. For a boiler or process heater used as the control device, the vent gas stream must be introduced into the flame zone of the boiler or process heater. Multiple vents may be routed to the same control device. Control devices and closed vent systems must be in compliance with §115.178 of this title (relating to Monitoring and Inspection Requirements) and §115.179 of this title (relating to Approved Test Methods and Testing Requirements).

(ii) Control devices must operate with no visible emissions, as determined through a visible emissions test conducted according to United States Environmental Protection Agency (EPA) Method 22, 40 Code of Federal Regulations (CFR) Part 60, Appendix A-7, Section 11, except for periods not to exceed a total of one minute during any 15-minute observation period.

(B) A flare may be used and must be designed and operated in accordance with 40 CFR §60.18(b) - (f) (as amended through December 22, 2008 (73 FR 78209)). The flare must be lit at all times when VOC vapors are routed to the flare. Multiple vents may be routed to the same control device.

(C) VOC emissions may be routed to a process if the emissions are compatible with the process and would be retained within the process. Routing to a process is considered equivalent to a 95% control efficiency.

(D) The reciprocating compressor rod packing may be replaced on or before the compressor has operated for 26,000 hours from the most recent rod packing replacement. The number of hours the compressor operates must be continuously recorded beginning on the appropriate compliance date in §115.183(a) of this title (relating to Compliance Schedule).

(E) The reciprocating compressor rod packing may be replaced within 36 months from the most recent rod packing replacement beginning from the appropriate compliance date in §115.183(a) of this title.

(4) The following requirements apply to a bypass installed on a closed vent system able to divert any portion of the flow from entering a control device or routing to a process.

(A) A flow indicator must be installed, calibrated, and maintained at the inlet of each bypass. The flow indicator must take a reading at least once every 15 minutes and initiate an alarm notifying operators to take prompt remedial action when bypass flows are present.

(B) Each bypass valve must be secured in the non-diverting position using a car-seal or a lock-and-key type configuration.

§115.174. Pneumatic Controller and Pump Control Requirements.

(a) The following control requirements apply to any pneumatic pump or pneumatic controller at a natural gas processing plant.

(1) The pneumatic pump drive must not emit volatile organic compounds (VOC) emissions to the atmosphere. The pump must also be equipped with a seal cover that forms a continuous impermeable barrier over the entire liquid surface area, and the cover must remain in a sealed position (e.g., covered by a gasketed lid or cap) except during periods necessary to inspect, maintain, repair, or replace equipment.

(2) Each single continuous-bleed pneumatic controller must have a natural gas bleed rate equal to 0.0 standard cubic feet per hour (scfh).

(b) The following control requirements apply to any pneumatic pump or pneumatic controller subject to this division at a location other than at a natural gas processing plant.

(1) VOC emissions from each pneumatic pump must be reduced by 95%.

(2) Each pneumatic controller must have a natural gas bleed rate of less than or equal to 6.0 scfh.

(c) A control device used to comply with this section must meet one of the following conditions at all times when VOC vapors are routed to the control device or to a process. Multiple vents may be

routed to the same control device or process. The VOC vapors must be routed through a closed vent system, which must be designed and operated to route all captured VOC vapors to a process or a control device under normal operations. Control devices and closed vent systems must be in compliance with §115.178 of this title (relating to Monitoring and Inspection Requirements) and §115.179 of this title (relating to Approved Test Methods and Testing Requirements).

(1) A control device, other than a device specified in paragraphs (2) and (3) of this subsection, may be used and must maintain a minimum control efficiency of at least 95% or a VOC concentration of equal to or less than 275 parts per million by volume (ppmv), as propane, on a wet basis corrected to 3% oxygen. The 95% VOC control efficiency and 275 ppmv VOC concentration are calculated from the gas stream at the control device outlet. For a boiler or process heater used as the control device, the vent gas stream must be introduced into the flame zone of the boiler or process heater.

(2) A flare may be used and must be designed and operated in accordance with 40 Code of Federal Regulations (CFR) §60.18(b) - (f) (as amended through December 22, 2008 (73 FR 78209)). The flare must be lit at all times when VOC vapors are routed to the flare.

(3) VOC emissions may be routed to a process if the emissions are compatible with the process and would be retained within the process. Routing to a process is considered equivalent to a 95% control efficiency.

(4) A control device used to comply with paragraph (1) of this subsection must operate with no visible emissions, as determined through a visible emissions test conducted according to United States Environmental Protection Agency (EPA) Method 22, 40 CFR Part 60, Appendix A-7, Section 11 (as amended March 16, 2015 (83 FR 13751)), except for periods not to exceed a total of one minute during any 15-minute observation period.

(d) The following requirements apply to a bypass installed on a closed vent system able to divert any portion of the flow from entering a control device or routing to a process.

(1) A flow indicator must be installed, calibrated, and maintained at the inlet of each bypass. The flow indicator must take a reading at least once every 15 minutes and initiate an alarm notifying operators to take prompt remedial action when bypass flows are present.

(2) Each bypass valve must be secured in the non-diverting position using a car-seal or a lock-and-key type configuration.

(e) The following exceptions apply, as specified, to the pneumatic controller or pneumatic pump control requirements in subsections (a) or (b) of this section.

(1) By the appropriate compliance date in §115.183 of this title (relating to Compliance Schedules), the VOC emissions from a pneumatic pump at a well site for which a control device does not exist and for which routing to a process is technically infeasible, as demonstrated in paragraph (3) of this subsection, are not required to be controlled in accordance with subsection (b) of this section. The owner or operator shall maintain records documenting that there is no control device available and whereupon this exclusion no longer applies, the owner or operator shall be in compliance with the control requirements of subsection (b) of this section and shall keep records documenting the change in compliance with the initial report as required in §115.180 of this title (relating to Recordkeeping Requirements).

(2) By the appropriate compliance date in §115.183 of this title, a control device located at the same site as a pneumatic pump, and with which controlling the VOC emissions from the pneumatic pump is technically feasible, that achieves a control efficiency less than 95% must be used if a control device achieving a 95% control efficiency is not available. If more than one control device with less than 95% control efficiency is available, the control device with the highest control efficiency must be used. The same monitoring, testing, and recordkeeping requirements apply to such a control device that apply to control devices in subsection (c) of this section.

(3) For a pneumatic pump located at a well site for which the control requirements in this section are technically infeasible, the owner or operator shall make a demonstration of technical infeasibility in accordance with §115.176(b) of this title (relating to Alternative Control Requirements). Upon the date the demonstration of technical infeasibility is no longer true, whereupon this exclusion no longer applies, the owner or operator shall comply with the control requirements of this section and shall keep records documenting the change in compliance with the initial report as required in §115.180 of this title.

(4) For a pneumatic controller for which there is a functional need for a bleed rate greater than the limits in subsection (a) of this section, the owner or operator shall make and maintain record of a determination of functional need in accordance with §115.176(c) of this title. Upon the date the determination of functional need is no longer true, the owner or operator shall comply with the control requirements of this section and shall keep records documenting the change in compliance with the initial report as required in §115.180 of this title.

§115.175. Storage Tank Control Requirements.

(a) No person shall place, store, or hold crude oil or condensate in any storage tank unless the tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the following controls.

(1) All openings in a fixed roof storage tank through which vapors are not routed to a vapor recovery unit or other control device specified in paragraph (2) of this subsection, must be equipped with a closure device maintained according to the manufacturer's instructions and operated according to this paragraph. If manufacturer instructions are unavailable, industry standards consistent with good engineering practice can be substituted.

(A) Each closure device must be closed at all times except when normally actuated or required to be open for temporary access or to relieve excess pressure or vacuum in accordance with the manufacturer's design and consistent with good air pollution control practices. Such opening, actuation, or use must be limited to minimize vapor loss.

(B) Each closure device must be properly sealed to minimize vapor loss and must form a continuous impermeable barrier over the entire surface area of the liquid in the storage tank when closed.

(C) Each closure device must either be latched closed or, if designed to relieve pressure, set to automatically open at a pressure that will ensure all vapors are routed to the vapor recovery unit or other control device under normal operating conditions other than gauging the tank or taking a sample through an open thief hatch.

(D) No closure device may be allowed to have a volatile organic compound (VOC) leak for more than 15 calendar days after the leak is found unless delay of repair is allowed. For the purposes of this subparagraph, a leak is the exuding of process gasses from a closed device detected by audio, visual, and olfactory means. If parts are unavailable, repair may be delayed. Parts must be ordered promptly, and the repair must be completed within five days of receipt of required parts. Repair may be delayed until the next shutdown if the repair of the component would require a shutdown that would create more emis-

sions than the repair would eliminate. Repair must be completed by the end of the next shutdown.

(2) A control device used to comply with this subsection must meet one of the following conditions at all times when VOC vapors are routed to the device. The VOC vapors must be routed through a closed vent system that must be designed and operated to route to a control device, including to route to a process, all captured VOC vapor under normal operations. Multiple vents may be routed to the same control device. Control devices and closed vent systems must comply with the requirements of §115.178 of this title (relating to Monitoring and Inspection Requirements) and §115.179 of this title (relating to Approved Test Methods and Testing Requirements).

(A) A control device, other than a device specified in subparagraphs (B) and (C) of this paragraph, to which VOC vapors are routed, must maintain a control efficiency of at least 95% or a VOC concentration of equal to or less than 275 parts per million by volume (ppmv), as propane, on a wet basis corrected to 3% oxygen. The 95% VOC control efficiency and 275 ppmv VOC concentration are calculated from the gas stream at the control device outlet. For a boiler or process heater used as the control device, the vent gas stream must be introduced into the flame zone of the boiler or process heater.

(B) A flare must be designed and operated in accordance with 40 Code of Federal Regulations (CFR) §60.18(b) - (f) (as amended through December 22, 2008 (73 FR 78209)). The flare must be lit at all times when VOC vapors are routed to the flare.

(C) A vapor recovery unit must be designed to process all vapor generated by the maximum liquid throughput of the storage tank or the aggregate of storage tanks in a tank battery and must transfer recovered vapors to a pipe or container that is vapor-tight, as defined in §115.10 of this title (relating to Definitions).

(D) A control device, used to comply with subparagraph (A) of this paragraph, must operate with no visible emissions, as determined through a visible emissions test conducted according to United States Environmental Protection Agency (EPA) Method 22, 40 CFR Part 60, Appendix A-7, Section 11 (as amended March 16, 2015 (83 FR 13751)), except for periods not to exceed a total of one minute during any 15-minute observation period.

(3) Beginning on the appropriate compliance date in §115.183 of this title (relating to Compliance Schedules), any storage tank that stores crude oil or condensate with a true vapor pressure of greater than or equal to 11 pounds per square inch absolute (psia) and a storage capacity of at least 40,000 gallons, and was required to use a submerged fill pipe under Table 2 in §115.112(e)(1) of this title (relating to Control Requirements), must continue to use a submerged fill pipe.

(4) The following requirements apply to a bypass installed on a closed vent system able to divert any portion of the flow from entering a control device or routing to a process.

(A) A flow indicator must be installed, calibrated, and maintained at the inlet of each bypass. The flow indicator must take a reading at least once every 15 minutes and initiate an alarm notifying operators to take prompt remedial action when bypass flows are present.

(B) Each bypass valve must be secured in the non-diverting position using a car-seal or a lock-and-key type configuration.

(b) Any storage tank with the potential to emit less than 6.0 tons per year of VOC, and any storage tank with the potential to emit at least 6.0 tons per year of VOC emissions but that demonstrates uncontrolled actual VOC emissions are less than 4.0 tons per year, is not required to be in compliance with the control requirements in subsection (a) of this section unless the tank was required to comply with a control requirement in §115.112(e) of this title on or before December 31, 2022. The owner or operator shall continue to comply with the control requirement that applied as of December 31, 2022 in the Table in §115.112(e) of this title.
Figure: 30 TAC §115.175(b)

(c) The owner or operator shall calculate VOC emissions as follows.

(1) Uncontrolled VOC emissions for a fixed roof storage tank must be estimated using the highest 12 consecutive months out of the last five years of production data and one of the following methods. However, if emissions determined using direct measurements or other methods approved by the executive director under subparagraph (A) or (B) of this paragraph are higher than emissions estimated using the default factors or charts in subparagraph (C) or (D) of this paragraph, the higher values must be used.

(A) The owner or operator may make direct measurements using the measuring instruments and methods specified in §115.179 of this title.

(B) The owner or operator may use other test methods or computer simulations approved by the executive director.

(C) The owner or operator may use a factor of 33.3 pounds of VOC per barrel (42 gallons) of condensate produced or 1.6 pounds of VOC per barrel (42 gallons) of oil produced.

(D) For crude oil storage only, the owner or operator may use the chart in Exhibit 2 of the EPA's Lessons Learned from Natural Gas Star Partners: Installing Vapor Recovery Units on Crude Oil Storage Tanks, October 2003, and assuming that the hydrocarbon vapors have a molecular weight of 34 pounds per pound mole and are 48% by weight VOC.

(2) The VOC potential to emit must be based on the maximum average daily throughput determined for a 30-day period of production prior to the appropriate compliance date listed in §115.183 of this title.

(d) For an external floating roof or internal floating roof storage tank, the following requirements apply.

(1) All openings in an internal floating roof or external floating roof must provide a projection below the liquid surface. Automatic bleeder vents (vacuum breaker vents) and rim space vents are not subject to this requirement.

(2) All openings in an internal floating roof or external floating roof must be equipped with a deck cover. The deck cover must be equipped with a gasket in good operating condition between the cover and the deck. The deck cover must be closed (i.e., no gap of more than 1/8 inch) at all times, except when the cover must be open for access. Automatic bleeder vents (vacuum breaker vents), rim space vents, leg sleeves, and roof drains are not subject to this requirement.

(3) Automatic bleeder vents (vacuum breaker vents) and rim space vents must be equipped with a gasketed lid, pallet, flapper, or other closure device and must be closed (i.e., no gap of more than 1/8 inch) at all times except when required to be open to relieve excess pressure or vacuum in accordance with the manufacturer's design.

(4) Each opening into the internal floating roof for a fixed roof support column may be equipped with a flexible fabric sleeve seal instead of a deck cover.

(5) Any external floating roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover

that covers at least 90% of the area of the opening or an equivalent control that must be kept in a closed (i.e., no gap of more than 1/8 inch) position at all times except when the drain is in actual use. Stub drains on an internal floating roof storage tank are not subject to this requirement.

(6) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(7) For an external floating roof storage tank, secondary seals must be the rim-mounted type. The seal must be continuous from the floating roof to the tank wall, with the exception of gaps that do not exceed the following specification. The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and storage tank wall may not be greater than 1.0 square inch per foot of storage tank diameter.

(8) Each opening for a slotted guide pole in an external floating roof storage tank must be equipped with one of the following control device configurations:

(A) a pole wiper and pole float that has a seal or wiper at or above the height of the pole wiper:

(B) a pole wiper and a pole sleeve;

(C) an internal sleeve emission control system;

(D) a retrofit to a solid guide pole system;

(E) a flexible enclosure system; or

(F) a cover on an external floating roof tank.

(9) The external floating roof or internal floating roof must be floating on the liquid surface at all times, except as allowed under the following circumstances:

(A) during the initial fill or refill after the storage tank has been cleaned;

(B) when necessary for preventive maintenance, roof repair, primary seal inspection, or removal and installation of a secondary seal, if product is not transferred into or out of the storage tank, emissions are minimized, and the repair is completed within seven calendar days;

(C) when the storage tank has a storage capacity less than 25,000 gallons;

(D) when the vapors are routed to a control device from the time the storage tank has been emptied to the extent practical or the drain pump loses suction until the floating roof is within 10% by volume of being refloated;

(E) when all VOC emissions from the storage tank, including emissions from floating roof landings, have been included in an emissions limit or cap approved under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) prior to March 1, 2013; or

(F) when all VOC emissions from floating roof landings at the regulated entity are less than 25 tons per year.

§115.176. Alternative Control Requirements.

(a) Alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

(b) The owner or operator of a pneumatic pump at a well site making a determination of technical infeasibility as provided in §115.174(e)(3) of this title (relating to Pneumatic Controller and Pump Control Requirements) make a clear demonstration that includes, but is not limited to, the following information:

(1) the specific equipment for which technical infeasibility exists;

(2) the reason such equipment cannot be controlled by any available control option, such as but is not limited to, safety considerations, distance from the control device, pressure losses and differentials in the closed vent system, and the ability of the control device to handle the pump emissions;

(3) data to support reasoning in paragraph (2) of this subsection; and

(4) a certification signed and dated by a qualified professional engineer certifying that the assessment of technical infeasibility prepared was true, accurate, and complete and that knowingly submitting false information is a violation of this subsection.

(c) The owner or operator of a pneumatic controller at a natural gas processing plant making a determination of a functional need as specified in §115.174(e)(4) of this title, must perform the following:

(1) tag the pneumatic controller with a weatherproof tag; and

(2) provide the reason meeting the control requirements cannot be met due to the functional need.

§115.177. Fugitive Emission Component Requirements.

(a) The owner or operator of equipment with fugitive emission components shall create a written plan and maintain such plan in accordance with §115.180 of this title (relating to Recordkeeping Requirements) that details information about the site subject to this section including, but not limited to, the following:

(1) the identification of each fugitive emission component grouping required to be monitored;

(2) the fugitive emission component designated as unsafe-to-monitor or difficult-to-monitor;

(3) the exemptions or exceptions that apply to any fugitive emission component;

(4) the method of monitoring; and

(5) the monitoring survey schedules of the fugitive emission components in paragraph (1) or (2) of this subsection.

(b) The owner or operator shall monitor each affected fugitive emission component and calibrate the hydrocarbon gas analyzer instrumentation in accordance with procedures specified by EPA Method 21 in 40 Code of Federal Regulations (CFR) Part 60, Appendix A-7. The owner or operator may elect to use the alternative work practice in §115.358 of this title (relating to Alternative Work Practice) for any fugitive emission component.

(1) Except as provided in paragraph (6)(C) of this subsection, no component at a natural gas processing plant is allowed to have a volatile organic compounds (VOC) leak for more than five calendar days without a first attempt at repair after the leak is detected and must be repaired no later than 15 calendar days after the leak is found that meets the following:

(A) for pump seals in light-liquid service, a leak definition of 5,000 parts per million by volume (ppmv) for a pump used for any polymerizing monomer and 2,000 ppmv for all other pumps; and

(B) for valves, flanges, connectors, pressure relief devices, pumps in heavy-liquid service, sampling connections, and process drains, a leak definition of 500 ppmv.

(2) Except as provided in paragraph (6)(C) of this subsection, no fugitive emission component at a well site or gathering and boosting station is allowed to have a VOC leak of equal to or greater than 500 ppmv for more than five calendar days without a first attempt at repair after the leak is detected and must be repaired no later than 15 calendar days after the leak is found.

(3) Except as specified in subsection (c) of this section, the owner or operator shall conduct monitoring according to the following schedules.

(A) The owner or operator shall monitor annually to detect leaks of VOC emissions from all connectors.

(B) Except as provided in subparagraphs (C), (D), and (E) of this paragraph, the owner or operator shall monitor to detect leaks of VOC emissions from all:

(i) fugitive emission components, other than connectors, semiannually; and

(ii) well site pressure relief valves semiannually.

(C) The owner or operator shall monitor quarterly to detect VOC emissions leaks from all:

(i) gathering and boosting station fugitive emission components, other than connectors;

(ii) gathering and boosting station pressure relief valves;

(iii) pump seals that are not in light-liquid service at a natural gas operation plant; and

(iv) fugitive emission components at a natural gas processing plant not specified elsewhere in this paragraph.

(D) The owner or operator shall monitor monthly to detect leaks of VOC emissions at a natural gas processing plant from all:

(i) pressure relief valves in gaseous service;

(ii) pump seals in light-liquid service; and

(iii) accessible fugitive emission components in gas/vapor and light-liquid service.

(E) In addition to monitoring in subparagraphs (B)(ii), (C)(ii), and (D)(i) of this paragraph, the owner or operator shall monitor pressure relief valves within 24 hours of a release.

(4) An owner or operator may elect to monitor at the reduced frequency in the Table in this paragraph, any pumps and valves that are part of a unit that operates less than 6,570 hours each year.
Figure: 30 TAC §115.177(b)(4)

(5) Upon the detection of a leaking component, the owner or operator shall affix to the leaking component a weatherproof and readily visible tag, bearing an identification number and the date the leak was detected. This tag must remain in place, or be replaced if damaged, until the leaking component is repaired. Tagging of difficult-to-monitor leaking components may be done by reference tagging. The reference tag should be located as close as possible to the leaking component and should clearly identify the leaking component and its location.

(6) When a leak or defect is detected from a fugitive emission component, the owner or operator shall repair the leak or defect as soon as practicable.

(A) A first attempt at repair must be made no later than five calendar days after the leak is detected.

(B) A repair must be completed no later than 15 calendar days after the leak is detected.

(C) If an owner or operator determines and documents that a repair is technically infeasible without a shutdown or that emissions resulting from immediate repair would be greater than the total fugitive emissions likely to result from a delay of repair, then the repair is not required to be completed until the end of the next shutdown.

(7) If the executive director determines that the number of leaks in a process area is excessive, the monitoring schedule in this subsection may be modified to require an increase in the frequency of monitoring in a given process area.

(8) After completion of the required monthly valve monitoring in this subsection for a period of at least two years, the owner or operator of a well site, natural gas processing plant or gathering and boosting station may request in writing to the appropriate regional office that the valve monitoring schedule be revised based on the percent of valves leaking. The percent of valves leaking must be determined by dividing the sum of valves leaking during the current monitoring period and valves for which repair has been delayed by the total number of valves subject to monitoring requirements. The revised monitoring schedule is not effective until a response is received from the executive director. This request must include all data that have been developed to justify the following modifications in the monitoring schedule.

(A) After two consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip one of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(B) After five consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0%, an owner or operator may begin to skip three of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(9) Alternate monitoring schedules for a natural gas processing plant approved before November 15, 1996 are approved monitoring schedules for the purposes of paragraph (3) or (4) of this subsection.

(10) All component monitoring must occur when the component is in contact with process material and the process unit is in service. If a unit is not operating during the required monitoring period but a component in that unit is in contact with process fluid that is circulating or under pressure, then that component is considered to be in service and is required to be monitored. Valves must be in gaseous or light liquid service to be considered in the total valve count for alternate valve monitoring schedules of paragraphs (3), (4), and (9) of this subsection.

(11) Monitored screening concentrations must be recorded for each component in gaseous or light liquid service. Notations such as "pegged," "off scale," "leaking," "not leaking," or "below leak definition" may not be substituted for hydrocarbon gas analyzer results. For readings that are higher than the upper end of the scale (i.e., pegged) even when using the highest scale setting or a dilution probe, a default pegged value of 100,000 ppmv must be recorded. This requirement does not apply to monitoring using an optical gas imaging instrument, which makes emissions visible that may otherwise be invisible to the naked eye, in accordance with §115.358 of this title.

(12) The owner or operator shall check all new connectors for leaks within 30 days of being placed in VOC service by monitoring with a hydrocarbon gas analyzer for components in light-liquid and gas

service and by using visual, audio, and/or olfactory means for components in heavy-liquid service. Components that are unsafe-to-monitor or inspect are exempt from this requirement if they are monitored or inspected as soon as possible during times that are safe to monitor.

(13) For any fugitive emission component for which the owner or operator elects to use the alternative work practice in §115.358 of this title, the following provisions apply.

(A) The frequency for monitoring components listed in this section must be the frequency determined according to §115.358 of this title, except as specified in subparagraph (C) of this paragraph.

(B) The alternative monitoring schedules allowed under paragraphs (8) and (9) of this subsection are not allowed.

(C) If the owner or operator elects to use the alternative work practice in §115.358(e) of this title in lieu of monitoring required in subparagraph (E) of this paragraph, the time limitations in these paragraphs continue to apply.

(D) The owner or operator may still classify a component as unsafe-to-monitor as allowed under subsection (c) of this section if the component cannot safely be monitored using either a hydrocarbon gas analyzer or the alternative work practice. The owner or operator may use either United States Environmental Protection Agency (EPA) Method 21 in 40 CFR Part 60, Appendix A-7or the alternative work practice at the monitoring frequency specified in paragraph (3) of this subsection. Any component classified as unsafe-to-monitor under the alternative work practice must be identified as such in the list required in §115.180(7) of this title.

(E) If the executive director determines that there is an excessive number of leaks in any given process area for which the alternative work practice in §115.358 of this title is used, the executive director may require an increase in the frequency of monitoring under the alternative work practice in that process area.

(c) An owner or operator is not required to comply with monitoring frequencies in subsection (b) of this section for any fugitive emission component designated as unsafe-to-monitor or difficult-to-monitor.

(1) Any component designated difficult-to-monitor must be monitored at least once every five years.

(2) Any component designated unsafe-to-monitor must be monitored as frequently as practicable during a time when it is safe-to-monitor, not to exceed the monitoring frequency in subsection (b) of this section.

(3) The number of components designated as difficult-to-monitor may not exceed 3% of total affected components in the same classification (e.g., pumps, valves, flanges, connectors etc.) at the site.

(4) The owner or operator shall inspect all flanges weekly by audio, visual, and olfactory means, excluding flanges that are monitored at least once each calendar year using EPA Method 21 in 40 CFR Part 60, Appendix A-7 and flanges that are difficult-to-monitor and unsafe-to-monitor. Flanges that are difficult-to-monitor and unsafe-to-monitor must be identified in a list made available upon request. If a difficult-to-monitor or an unsafe-to-monitor flange is not considered safe to inspect within the required weekly time frame, then it must be inspected as soon as possible during a time that it is safe to inspect.

(5) Relief valves that are designated as unsafe-to-monitor must be monitored as soon as possible during times that are safe to monitor after any release event. Relief valves that are designated as difficult-to-monitor must be monitored within 15 days after a release.

§115.178. Monitoring and Inspection Requirements.

(a) At least once each calendar year, an owner or operator shall conduct an audio, visual, and olfactory inspection of each compressor seal cover for defects that may result in air emissions, except as provided in subsection (c) of this section. Defects include, but are not limited to, visible cracks, holes, or gaps in the cover, or between the cover and the separator wall; broken, cracked, or otherwise damaged seals or gaskets on cover devices; and broken or missing hatches, access covers, caps, or other cover devices. Repairs must be made in accordance with subsection (e) of this section.

(b) The following monitoring and inspection requirements apply to closed vent systems routed to a control device, including routing to a process, used to demonstrate compliance with the control requirements of this division, except as specified in subsection (c) of this section. For the purpose of this subsection, a leak is a measured volatile organic compounds (VOC) concentration of equal to or greater than 500 parts per million by volume (ppmv). Defects that could result in air emissions include visible cracks, holes, or gaps in piping; loose connections; liquid leaks; or broken or missing cover devices. Repairs of equipment with a leak or detection of a defect in equipment must be made in accordance with subsection (e) of this section.

(1) The owner or operator shall conduct initial inspection and monitoring by the appropriate compliance date listed in §115.183 of this title (relating to Compliance Schedules), using United States Environmental Protection Agency (EPA) Method 21 in 40 Code of Federal Regulations (CFR) Part 60, Appendix A-7 on all closed vent system components to demonstrate that the closed vent system operates with no leaks. The instrument response factor criteria in EPA Method 21 in 40 CFR Part 60, Section 8.1.1 must be for the average composition of the stream and not for each individual VOC constituent.

(2) The owner or operator shall conduct annual monitoring and inspections following the initial inspection conducted in paragraph (1) of this subsection.

(A) The owner or operator shall conduct an audio, visual, and olfactory inspection on closed vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of hard piping or a bolted and gasketed ducting flange) for defects that could result in air emissions. For an inspection using EPA Method 21 in 40 CFR Part 60, Appendix A-7, monitoring must be performed to demonstrate that there are no leaks following any time a component is repaired or the closed vent system connection is unsealed.

(B) The owner or operator shall monitor the closed vent system components and connections using EPA Method 21 in 40 CFR Part 60, Appendix A-7, other than those subject to subparagraph (A) of this paragraph, to demonstrate that the closed vent system operates with no leaks.

(3) The owner or operator of a closed vent system routed to a control device, including routing to a process, used to demonstrate compliance with the control requirements of this division, must conduct monitoring using EPA Method 21 in 40 CFR Part 60, Appendix A-7 to demonstrate there are no leaks from the closed vent system.

(A) The instrument response factor criteria in EPA Method 21 in 40 CFR Part 60, Section 8.1.1 must be for the average composition of the stream and not for each individual VOC constituent. For process streams that contain nitrogen, air, or other inert gases that are not VOC, the average stream response factor is calculated on an inert-free basis.

(B) An owner or operator shall calibrate the detection instrument using the procedures specified in EPA Method 21 in 40 CFR Part 60, Appendix A-7 before use on each day the instrument is used.

(C) The following calibration gases must be used.

(i) Zero air must contain less than 10 ppmv hydrocarbon in air.

(ii) The other calibration gases must be mixtures of methane or n-hexane in air, one with a concentration either of less than 10,000 ppmv, and another with a concentration of no more than 2,000 ppmv greater than the leak definition concentration of the equipment monitored. If the design of the monitoring instrument allows for multiple calibration scales, then the lower scale shall be calibrated with a calibration gas that is no higher than 2,000 ppmv above the concentration specified as a leak, and the highest scale shall be calibrated with a calibration gas that is approximately equal to 10,000 ppmv. If only one scale on an instrument will be used during monitoring, the owner or operator is not required to calibrate the scales that will not be used during monitoring that day.

(D) The owner or operator shall follow EPA Method 21 in 40 CFR Part 60, Appendix A-7 to adjust instrument readings if choosing to account for the background VOC level.

(E) Using the following parameters, the owner or operator shall determine if a potential leak interface operates with no detectable emissions. A potential leak interface is determined to operate with no detectable VOC emissions if the organic concentration value is less than 500 ppmv.

(i) If an owner or operator chooses not to adjust the detection instrument readings for the background VOC concentration level, then the maximum organic concentration value measured by the detection instrument must be compared to the 500 ppmv value for the potential leak interface.

(ii) If an owner or operator chooses to adjust the detection instrument readings for the background VOC concentration level, an owner or operator shall compare the value of the arithmetic difference between the maximum organic concentration value measured by the instrument and the background organic concentration value with the 500 ppmv value for the potential leak interface.

(c) Closed vent system components and compressor seal covers that are designated as unsafe-to-monitor or difficult-to-monitor are not subject to the inspection and monitoring frequency in subsection (b) of this section. The monitoring methods of the components and covers that apply in subsections (a) and (b) of this section apply to the components in this subsection.

(1) Unsafe-to-monitor components must be identified in a list in accordance with the requirements in §115.180 of this title (relating to Recordkeeping Requirements). If an unsafe-to-monitor component is not considered safe to monitor within a calendar year, then it must be monitored as soon as possible during times that are safe to monitor.

(2) Difficult-to-monitor components must be identified in a list in accordance with the requirements in §115.180 of this title. A difficult-to-monitor component must be inspected at least once every five years.

(d) Upon the detection of a leak, the owner or operator shall affix to the leaking component a weatherproof and readily visible tag bearing an identification number and the date the leak was detected. This tag must remain in place, or be replaced if damaged, until the leaking component is repaired. Tagging of difficult-to-monitor leaking components may be done by reference tagging. The reference tag should be located as close as possible to the leaking component and should clearly identify the leaking component and its location.

(e) The owner or operator shall repair a leak or defect as soon as practicable and shall make a first attempt to repair a leak or defect no later than five calendar days after the leak or defect is found. The component must be repaired no later than 15 calendar days after the leak or defect is found, except if a delay of repair is needed. If parts are unavailable, repair may be delayed if parts are ordered promptly. The repair must be completed within five days of receipt of the required parts. Repair may be delayed until the next shutdown if the repair of the component would require a shutdown that would create more total VOC emissions than the repair would eliminate, but the repair must be completed by the end of the next shutdown. A repair is complete once an EPA Method 21 or audio, visual, and olfactory inspection, as appropriate, under subsection (b)(2) or (3) of this section is conducted showing no leak or defect.

(f) The owner or operator shall install and maintain monitors to measure operational parameters of any control device installed to meet applicable control requirements of this division. Such monitors must be sufficient to demonstrate proper functioning of those devices to design specifications.

(1) For a direct-flame incinerator, the owner or operator shall continuously monitor the exhaust gas temperature immediately downstream of the device.

(2) For a condensation system, the owner or operator shall continuously monitor the outlet gas temperature to ensure the temperature is below the manufacturer's recommended operating temperature for controlling the VOC vapors routed to the device.

(3) For a carbon adsorption system or carbon adsorber, as defined in §101.1 of this title (relating to Definitions), the owner or operator shall, as applicable:

(A) continuously monitor the exhaust gas VOC concentration of a carbon adsorption system that regenerates the carbon bed directly to determine breakthrough, which for the purpose of this paragraph, is defined as a measured VOC concentration exceeding 100 ppmv above background expressed as methane; or

(B) switch the vent gas flow to fresh carbon at a regular predetermined time interval for a carbon adsorber or carbon adsorption system that does not regenerate the carbon directly. The time interval must be less than the carbon replacement interval determined by the maximum design flow rate and the VOC concentration in the gas stream vented to the carbon adsorption system or carbon adsorber.

(4) For a catalytic incinerator, the owner or operator shall continuously monitor the inlet and outlet gas temperature.

(5) For a vapor recovery unit, the owner or operator shall continuously monitor at least one of the following operational parameters:

(A) run-time of the compressor or motor in a vapor recovery unit;

(B) total volume of recovered vapors; or

(C) other parameters sufficient to demonstrate proper functioning to design specifications.

(6) For a control device not listed in this subsection, the owner or operator shall continuously monitor one or more operational parameters sufficient to demonstrate proper functioning of the control device to design specifications.

(g) The following inspection requirements apply to storage tanks subject to the control requirements in this division.

(1) For an internal floating roof storage tank, the internal floating roof and the primary seal and the secondary seal (if one is in service) must be visually inspected through a fixed roof inspection hatch at least once every 12 months.

(A) If the internal floating roof is not resting on the surface of the VOC inside the storage tank and is not resting on the leg supports; if liquid has accumulated on the internal floating roof; if the seal is detached; if there are holes or tears in the seal fabric; or if there are visible gaps between the seal and the wall of the storage tank, within 60 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank in accordance with Subchapter F, Division 3 of this chapter (relating to Degassing of Storage Tanks, Transport Vessels, and Marine Vessels).

(B) If a failure identified in subparagraph (A) of this paragraph cannot be repaired within 60 days and the storage tank cannot be emptied within 60 days, the owner or operator may submit written requests for up to two extensions of up to 30 additional days each to the appropriate regional office. The owner or operator shall submit a copy to any local air pollution control program with jurisdiction. Each request for an extension must include a statement that alternate storage capacity is unavailable and a schedule that will assure that the repairs will be completed as soon as possible.

(2) For an external floating roof storage tank, the secondary seal gap must be physically measured at least once every 12 months to ensure compliance with §115.175 this title (relating to Storage Tank Control Requirements).

(A) If the secondary seal gap exceeds the limitations specified by §115.175(d) of this title, within 60 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank in accordance with Subchapter F, Division 3 of this chapter.

(B) If a failure identified in subparagraph (A) of this paragraph cannot be repaired within 60 days and the storage tank cannot be emptied within 60 days, the owner or operator may submit written requests for up to two extensions of up to 30 additional days each to the appropriate regional office. The owner or operator shall submit a copy to any local air pollution control program with jurisdiction. Each request for an extension must include a statement that alternate storage capacity is unavailable and a schedule that will assure that the repairs will be completed as soon as possible.

(3) If the storage tank is equipped with a mechanical shoe or liquid-mounted primary seal, compliance with §115.175 of this title can be determined by visual inspection.

(4) For an external floating roof storage tank, the secondary seal must be visually inspected at least once every six months to ensure compliance with §115.175 of this title.

(A) If the external floating roof is not resting on the surface of the VOC inside the storage tank and is not resting on the leg supports; if liquid has accumulated on the external floating roof; if the seal is detached; if there are holes or tears in the seal fabric; or if there are visible gaps between the seal and the wall of the storage tank, within 60 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank in accordance with Subchapter F, Division 3 of this chapter.

(B) If a failure identified in subparagraph (A) of this paragraph cannot be repaired within 60 days and the storage tank cannot be emptied within 60 days, the owner or operator may submit written requests for up to two extensions of up to 30 additional days each to the appropriate regional office. The owner or operator shall submit a copy to any local air pollution control program with jurisdiction. Each request for an extension must include a statement that alternate storage capacity is unavailable and a schedule that will assure that the repairs will be completed as soon as possible.

(5) The owner or operator shall conduct an audio, visual, and olfactory inspection at least once per month, separated by at least 14 calendar days, of a control device used to control the VOC emissions from a storage tank.

(6) The owner or operator shall inspect and repair all closure devices not connected to a control device according to the schedule in this paragraph.

(A) The owner or operator shall conduct an audio, visual, and olfactory inspection of each closure device not connected to a vapor recovery unit or other vapor control device to ensure compliance with §115.175(a)(1)(A) of this title. The inspection must occur when liquids are not being added to or unloaded from the tank. If the owner or operator finds the closure device open for reasons not allowed in §115.175(a)(1)(A) of this title, the owner or operator shall attempt to close the device during the inspection. The inspection must occur before the end of one business day after each opening of a thief or access hatch for sampling or gauging, and before the end of one business day after each unloading event. If multiple events occur on a single day, a single inspection within one business day after the last event is sufficient.

(B) Once per calendar quarter, the owner or operator shall conduct an audio, visual, and olfactory inspection of all gaskets and vapor sealing surfaces of each closure device not connected to a vapor recovery unit or other control device to ensure compliance with §115.175(a)(1)(B) of this title. If an improperly sealed closure device is found, the owner or operator shall follow repair requirements in accordance with §115.175(a)(1)(D) of this title. For the purpose of this subparagraph, a repair is complete if the closure device no longer exudes process gasses based on audio, visual, and olfactory means.

§115.179. Approved Test Methods and Testing Requirements.

(a) Compliance with the requirements in this division must be determined by applying the following test methods, as appropriate.

(1) United States Environmental Protection Agency (EPA) Method 1 or 1A in 40 Code of Federal Regulations (CFR) Part 60, Appendix A-1 must be used to select sampling sites. The references to particulate sampling do not apply for purposes of using these methods in this division.

(2) EPA Method 2, 2A, 2C, or 2D in 40 CFR Part 60, Appendix A-2 must be used to determine the gas volumetric flow rate.

(3) EPA Method 3A or 3B, in 40 CFR Part 60, Appendix A-2, ASTM D6522-00 (Reapproved 2005), or American National Standards Institute/American Society of Mechanical Engineers Performance Test Codes (ANSI/ASME PTC) 19.10-1981, Part 10 (manual portion only) must be used to determine the oxygen concentration.

(4) EPA Method 4 in 40 CFR Part 60, Appendix A-3 must be used for determining the stack gas moisture content.

(5) EPA Method 18 in 40 CFR Part 60, Appendix A-6 must be used for determining the concentrations of methane and ethane.

(6) EPA Method 21 in 40 CFR Part 60, Appendix A-7 must be used for determining volatile organic compound (VOC) leaks.

(7) EPA Method 22 in 40 CFR Part 60, Appendix A-7, Section 11 must be used for determining visible emissions.

(8) EPA Method 25A in 40 CFR Part 60, Appendix A-7 must be used for determining total gaseous organic concentrations using flame ionization.

(9) Minor modifications to either test methods or monitoring methods may be approved by the executive director. Test methods other than those specified in paragraphs (1) - (8) of this subsection may be used if approved by the executive director and validated by EPA Method 301 (40 CFR Part 63, Appendix A). For the purposes of this paragraph, substitute "executive director" each place that EPA Method 301 references "administrator."

(b) The following procedures must be used to demonstrate compliance with the control requirements in this division for a closed vent system routed to a control device, other than a flare and routing to a process, and as appropriate.

(1) The owner or operator of a combustion control device tested to comply with the 275 parts per million by volume (ppmv) outlet VOC limit shall establish a correlation between firebox or combustion chamber temperature and the VOC performance level. The owner or operator shall also establish minimum and maximum temperatures or other operating parameter that will be continuously monitored to demonstrate compliance with the control device requirements in this division.

(2) The following testing requirements apply to control devices used to demonstrate compliance with the control requirements of this division. Each performance test must consist of a minimum of three test runs, and each run must be at least one hour long.

(A) The owner or operator shall conduct an initial control device performance test by the compliance date in §115.183 of this title (relating to Compliance Schedules) using the test methods in this subsection.

(B) The owner or operator shall conduct a periodic performance test no later than 60 months after the previous performance test. For any modification of a closed vent system, control device, or equipment regulated in this division that could reasonably be expected to decrease the control efficiency of the control device, such device must be retested within 60 days of the modification.

(3) In lieu of periodic performance testing required in paragraph (2) of this subsection, the owner or operator may complete a design analysis to satisfy compliance with the control requirements of this division. The owner or operator shall determine through monitoring the parameters sufficient to determine proper functioning of the control device is met, as required in the monitoring requirements in §115.178(f) of this title (relating to Monitoring and Inspection Requirements).

(A) For a vapor recovery unit or condenser, the design analysis criteria evaluated must include an analysis of the vent stream composition, speciated VOC concentrations, flowrate, relative humidity, and temperature. In addition, the design analysis must establish the design outlet VOC concentration level, design average temperature of the vapor recovery unit or condenser exhaust vent stream, and the design inlet and outlet average temperatures of the coolant fluid.

(B) For a regenerable carbon adsorption system, a design analysis must include the design exhaust vent stream VOC concentration level, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for the carbon beds, design total regeneration stream flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of the carbon.

(C) For a non-regenerable carbon adsorption system (such as a carbon canister), the design analysis must include the vent stream composition, VOC constituent concentrations, flowrate, relative humidity, and temperature, and must establish the design exhaust vent stream VOC level, capacity of the carbon bed, type and working capacity of activated carbon used for the carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule. In addition, these systems must incorporate dual carbon canisters in case of emission breakthrough occurring in one canister.

(D) For a combustion control device, other than a flare, the design analysis must identify each existing, or derived, control device design parameter including waste stream and supplemental fuel flowrates, mixing characteristics, composition, net heating value, combustion zone temperature, residence time, excess oxygen and relative humidity. The analysis must compare these control device design parameters with actual control device operating data, for a minimum of the prior two years, to ensure the control device is being operated as designed. A physical inspection of the combustion device is required as part of this analysis to assess whether equipment wear is present that will result a significant reduction in operating efficiency or require prompt maintenance.

(4) In lieu of performing control device testing required in paragraph (2) of this subsection, the owner or operator may use data from a performance test conducted by the manufacturer on the same control device model that is used to comply with control requirements in this division. The owner or operator shall comply with the monitoring requirements in §115.178(f) of this title, and the data in the manufacturer's report must be sufficient to determine proper functioning of the control device as required in the monitoring requirements in §115.178(f) of this title.

(A) The manufacturer's guarantee must demonstrate that the specific model of control device meets the 95% control efficiency required in the control requirements of this division.

(B) The control device must be equipped with an inlet gas flow rate meter. Control devices, other than combustion control devices, must have a separate outlet gas flow rate meter.

(C) The owner or operator of a control device model tested under this paragraph shall maintain the test report in accordance with §115.180 of this title (relating to Recordkeeping Requirements). The test report must include, but is not limited to, all information required under 40 CFR §60.5413a(d)(12) (as amended September 15, 2020 (85 FR 57447)) that is applicable to the test conducted.

(c) The owner or operator shall calculate the control efficiency of a control device using the test results from subsection (b) of this section and the following procedure.

(1) The owner or operator shall use EPA methods specified in subsection (a)(1) or (2) of this section to determine the flow rate of the inlet to outlet to determine the mass rate; EPA Method 25A in 40 CFR Part 60, Appendix A-7; EPA Method 4 in 40 CFR Part 60, Appendix A-3 (to convert the EPA Method 25A results to a dry basis); and equations 1 and 2 to calculate percent reduction efficiency to determine compliance with control device VOC reduction efficiency limits in this division.

Figure: 30 TAC §115.179(c)(1)

(2) The owner or operator shall use EPA Method 25A in 40 CFR Part 60, Appendix A-7 to determine the exhaust gas concentration of total organic carbon in ppmv for the purpose of determining compliance with control device exhaust gas ppmv concentration limits in this division.

(A) The owner or operator may elect to conduct EPA Method 18 sampling simultaneously with EPA Method 25A in 40 CFR Part 60, Appendix A-7 sampling to quantify methane and ethane concentrations and subtract the combined values to derive a total VOC ppmv concentration. If using this option, the owner or operator shall take either an integrated sample or a minimum of four grab samples per hour at approximately equal intervals in time, such as 15-minute intervals during the run.

(B) The owner or operator shall use the emission rate correction factor for excess air, integrated sampling and analysis procedures of EPA Method 3A or 3B in 40 CFR Part 60, Appendix A-2; American Society for Testing and Materials (ASTM) D6522-00 (Reapproved 2005); or ANSI/ASME PTC 19.10-1981, Part 10 (manual portion only), to determine the oxygen concentration. The samples must be taken during the same time as the EPA Method 25A and EPA Method 18 samples. The owner or operator shall correct the VOC concentration for percent oxygen as provided in the following equation:
Figure: 30 TAC §115.179(c)(2)(B)

(3) The owner or operator of a combustion control device tested under subsection (b)(3)(C) of this section electing to comply with the 275 ppmv outlet limit in the control requirements of this division shall establish a correlation between firebox or combustion chamber temperature and the VOC emissions level. The owner or operator shall also establish minimum and maximum temperatures or other operating parameters that will be continuously monitored to demonstrate the VOC concentration is equal to or less than 275 ppmv as measured at the outlet of the device.

(d) A flare used to comply with the control requirements in this division must meet the requirements of 40 CFR §60.18(b) - (f) (as amended through December 22, 2008 (73 FR 78209)).

(e) The owner or operator of a control device, other than a flare or routing to a process, must perform a visible emissions test in accordance with EPA Method 22 in 40 CFR Part 60, Appendix A-7, Section 11 at least once every calendar quarter, separated by at least 45 days between each test. Devices failing the visible emissions test must comply with the following.

(1) The owner or operator shall follow the manufacturer's repair instructions, if available, or best combustion engineering practices for any necessary repairs.

(2) Upon returning to operation from maintenance or repair activity, each device must pass an EPA Method 22 visual observation as described in this subsection.

(3) The owner or operator shall operate a control device following the manufacturer's written operating instructions, procedures and maintenance schedule to ensure good air pollution control practices for minimizing emissions.

(f) A control device for which a performance test is waived in accordance with 40 CFR §60.8(b) (as amended August 30, 2016 (81 FR 59809)) is exempt from the testing requirements of this section.

§115.180. Recordkeeping Requirements.

Records required in this section must be maintained for five years onsite or at the nearest local field office and must be made available upon request to representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control agency having jurisdiction in the area. Results must be made available for review within 24 hours.

(1) The owner or operator shall maintain records of any operational parameter monitoring required in §115.178(f) of this title (relating to Monitoring and Inspection Requirements). Such records must be sufficient to demonstrate proper functioning of those devices to design specifications and must include, but are not limited to, the following.

(A) For a direct-flame incinerator, the owner or operator shall continuously record the exhaust gas temperature immediately downstream of the device.

(B) For a condensation system, the owner or operator shall continuously record the outlet gas temperature to ensure the temperature is below the manufacturer's recommended operating temperature for controlling the volatile organic compounds (VOC) vapors routed to the device.

(C) For a carbon adsorption system or carbon adsorber, the owner or operator shall:

(i) continuously record the exhaust gas VOC concentration of any carbon adsorption system monitored according to §115.178(f)(3)(A) of this title; or

(ii) record the date and time of each switch between carbon containers and the method of determining the carbon replacement interval if the carbon adsorption system or carbon adsorber is switched according to §115.178(f)(3)(B) of this title.

(D) For a catalytic incinerator, the owner or operator shall continuously record the inlet and outlet gas temperature.

(E) For a vapor recovery unit, the owner or operator shall maintain records of the continuous operational parameter monitoring required in §115.178(f)(5) of this title.

(F) For any other control device, the owner or operator shall maintain records of the continuous operational parameter monitoring required in §115.178(f)(6) of this title sufficient to demonstrate proper functioning of the control device to design specifications.

(2) The owner or operator claiming an exemption in §115.172 of this title (relating to Exemptions) shall maintain records sufficient to demonstrate continuous compliance with the applicable exemption criteria.

(3) The owner or operator shall maintain the results of any control device testing conducted in accordance with §115.179 of this title (relating to Approved Test Methods and Testing Requirements) including, at a minimum, the following information:

(A) the date of each periodic performance test;

(B) the test method(s) used to conduct the test;

(C) the equipment type listed in §115.170 of this title (relating to Applicability) controlled by the device; and

(D) the report showing the testing results of the control device.

(4) Except for fugitive emission components, the owner or operator shall maintain records of the results of each inspection, monitoring survey other than monitoring specified in §115.178(f) of this title, and repair required in this division, including the following items:

(A) the date of the inspection;

(B) an identifier of each piece of leaking equipment;

(C) the tag information required by the owner or operator in accordance with §115.178(d) of this title, if different than the information in subparagraph (B) of this paragraph;

(D) the status of the cover or closure device during inspection;

(E) the date on which attempts at repair, if necessary, were made and which repair was made;

(F) the equipment type and associated designation (e.g, difficult-to-monitor), if appropriate, listed in §115.170 of this title controlled by the device;

(G) the amount of time a cover or closure device was open since the last inspection for reasons not allowed in the control requirements of §115.175 of this title (relating to Storage Tank Control Requirements);

(H) the date repair was attempted and completed, and an explanation of the reasons, if repair was delayed;

(I) screening concentration results from monitoring using a hydrocarbon analyzer; and

(J) the results of monitoring following repair required in §115.178(b)(2)(A) or (e) of this title.

(5) The owner or operator of a reciprocating compressor subject to §115.173(a)(3)(D) or (E) of this title (relating to Compressor Control Requirements) shall document the following information to demonstrate compliance with the appropriate control requirement:

(A) the continuously recorded number of hours the reciprocating compressor operated between each rod packing replacement, restarting the number of hours after the date of each replacement, as necessary; and

(B) the date and time of each reciprocating compressor rod packing replacement and the number of months between each replacement, as necessary.

(6) The owner or operator complying with §115.174(e)(2) of this title (relating to Pneumatic Controller and Pump Control Requirements) shall maintain records documenting that a control device does not exist onsite as of the appropriate date of compliance in §115.183 of this title (relating to Compliance Schedules).

(7) The owner or operator shall maintain records of audio, visual, and olfactory inspections and monitoring surveys required for any fugitive emission component including the following:

(A) instrument monitoring survey dates;

(B) monitoring results;

(C) a list of repairs needed, delay of repair, and unit shutdowns;

(D) a list of fugitive emission components that are difficult-to-monitor and unsafe-to-monitor;

(E) required electronic photos to document optical gas imaging monitoring surveys;

(F) fugitive emission component monitoring plan required in §115.177(a) of this title (relating to Fugitive Emission Component Requirements); and

(G) documentation for wells with the volume of gas at standard temperature and pressure that is produced from a volume of oil when depressurized to standard temperature and pressure (i.e., a gas/oil ratio) of less than 300 standard cubic feet per stock barrel of crude oil produced.

(8) An owner or operator shall maintain a report with the information specified in this paragraph. Every five years from the previous completion date, the report information must be updated, as necessary, and maintained. The information must include, at a minimum, the following:

(A) the regulated entity name and number;

(B) a description of and the identity of, which may include a clearly labeled diagram, each piece of equipment and fugitive emission component groupings;

(C) the initial compliance status of each piece of equipment and fugitive emission component grouping, including functional needs for pneumatic controllers at a natural gas processing plant specified in §115.174(e)(4) of this title and technical infeasibility issues with controlling pneumatic pumps at a well site specified in §115.174(e)(5) of this title; and

(D) an assessment and certification by the owner or operator that any closed vent system used to route emissions to a control device, including routing to a process, is of sufficient design and capacity to ensure that volatile organic compounds emissions are routed to the control device.

§115.181. Reporting Requirements.

An owner or operator shall notify the appropriate Texas Commission on Environmental Quality regional office at least 45 days in advance and allow a representative of the executive director to witness the testing of a control device conducted in accordance with §115.179(c) of this title (relating to Approved Test Methods and Testing Requirements).

§115.183. Compliance Schedules.

(a) The owner or operator of a piece of equipment that meets the applicability in §115.170 of this title (relating to Applicability) and is subject to a requirement of this division shall be in compliance as soon as practicable, but no later than January 1, 2023.

(b) For an owner or operator subject to this division as of January 1, 2023, the recordkeeping required by §115.180(8) of this title (relating to Recordkeeping Requirements) must be completed no later than March 31, 2023.

(c) An owner or operator who becomes subject to the requirements of this division on or after the date specified in subsection (a) of this section shall comply with the requirements in this division no later than 60 days after becoming subject. Recordkeeping required under §115.180(8) of this title must be complied with no later than 30 days after compliance with the division is achieved.

(d) The owner or operator of a storage tank subject to the requirements in Division 1 of this subchapter (relating to the Storage of Volatile Organic Compounds) shall remain subject to that division until compliance with the requirements in this division are achieved, but not later than January 1, 2023.

(e) The owner or operator of a fugitive emission component at a natural gas processing plant as defined in §115.10 of this title (relating to Definitions), subject to the requirements of Subchapter D, Division 3 of this chapter (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas) shall remain subject to that division until compliance with the requirements in this division are achieved, but not later than January 1, 2023.

(f) Upon the date the owner or operator can no longer claim the exceptions in §115.174(e) of this title (relating to Pneumatic Controller and Pump Control Requirements), the owner or operator shall comply with the appropriate control requirement within 60 days.

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 January 14, 2021.

TRD-202100225
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 239-1806

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SUBCHAPTER D. PETROLEUM REFINING, NATURAL GAS PROCESSING, AND PETROCHEMICAL PROCESSES
DIVISION 3. FUGITIVE EMISSION CONTROL IN PETROLEUM REFINING, NATURAL GAS/GASOLINE PROCESSING, AND PETROCHEMICAL PROCESSES IN OZONE NONATTAINMENT AREAS

30 TAC §115.357

Statutory Authority

The amended section is proposed under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended section is also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. The amended section is also proposed under THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended section is also proposed under Federal Clean Air Act (FCAA), 42 United States Code (USC), §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the National Ambient Air Quality Standards will be achieved and maintained within each air quality control region of the state.

The amended section implements THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021, and FCAA, 42 USC, §§7401 *et seq.*

§115.357. Exemptions.

For all affected persons in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), the following exemptions apply.

(1) Components that contact a process fluid containing volatile organic compounds (VOC) having a true vapor pressure equal to or less than 0.044 pounds per square inch absolute (psia) (0.3 kilopascals [~~kiloPascals~~]) at 68 degrees Fahrenheit (20 degrees Celsius) are exempt from the instrument monitoring (with a hydrocarbon gas analyzer) requirements of §115.354(1) and (2) of this title (relating to Monitoring and Inspection Requirements) if the components are inspected by visual, audio, and/or olfactory means according to the inspection schedules specified in §115.354(1) and (2) of this title.

(2) Conservation vents or other devices on atmospheric storage tanks that are actuated either by a vacuum or a pressure of no more than 2.5 pounds per square inch gauge (psig), pressure relief valves equipped with a rupture disk or venting to a control device, components in continuous vacuum service, and valves that are not externally regulated (such as in-line check valves) are exempt from the requirements of this division, except that each pressure relief valve equipped with a rupture disk must comply with §115.352(9) and §115.356(3)(C) of this title (relating to Control Requirements and Recordkeeping Requirements).

(3) Compressors in hydrogen service are exempt from the requirements of §115.354 of this title if the owner or operator demonstrates that the percent hydrogen content can be reasonably expected to always exceed 50.0% by volume.

(4) All pumps and compressors that are equipped with a shaft sealing system that prevents or detects emissions of VOC from the seal are exempt from the monitoring requirement of §115.354 of this title. These seal systems may include, but are not limited to, dual pump seals with barrier fluid at higher pressure than process pressure, seals degassing to vent control systems kept in good working order, or seals equipped with an automatic seal failure detection and alarm system. Submerged pumps or sealless pumps (including, but not limited to, diaphragm, canned, or magnetic driven pumps) may be used to satisfy the requirements of this paragraph.

(5) Reciprocating compressors and positive displacement pumps used in natural gas/gasoline processing operations are exempt from the requirements of this division except §115.356(3)(C) of this title.

(6) Components at a petroleum refinery or synthetic organic chemical, polymer, resin, or methyl-tert-butyl ether manufacturing process, that contact a process fluid that contains less than 10% VOC by weight and components at a natural gas/gasoline processing operation that contact a process fluid that contains less than 1.0% VOC by weight are exempt from the requirements of this division except §115.356(3)(C) of this title.

(7) Plant sites covered by a single account number with less than 250 components in VOC service are exempt from the requirements of this division except §115.356(3)(C) of this title.

(8) Components in ethylene, propane, or propylene service, not to exceed 5.0% of the total components, may be classified as non-repairable beyond the second repair attempt at 500 parts per million by volume (ppmv). These components will remain in the fugitive monitoring program and be repaired no later than 15 calendar days after the concentration of VOC detected via Method 21 in 40 Code of Federal Regulations (CFR) Part 60, Appendix A-7 (October 17, 2000) exceeds 10,000 ppmv. For the purposes of this

division, components that contact a process fluid with greater than 85% ethylene, propane, or propylene by weight are considered in ethylene, propane, or propylene service, respectively. If the owner or operator elects to use the alternative work practice in §115.358 of this title (relating to Alternative Work Practice), this exemption may not be claimed for any component that is monitored according to the alternative work practice unless the owner or operator demonstrates the leak concentration does not exceed 10,000 ppmv using Method 21 and the owner or operator continues to monitor the component using both the alternative work practice and Method 21 according to the frequency specified in §115.358 of this title.

(9) The following valves are exempt from the requirements of §115.352(4) of this title:

(A) pressure relief valves;

(B) open-ended valves or lines in an emergency shutdown system that are designed to open automatically in the event of an emissions event;

(C) open-ended valves or lines containing materials that would autocatalytically polymerize or would present an explosion, serious overpressure, or other safety hazard if capped or equipped with a double block and bleed system; and

(D) valves rated greater than 10,000 psig.

(10) Instrumentation systems, as defined in 40 CFR §63.161 (January 17, 1997), that meet 40 CFR §63.169 (June 20, 1996) are exempt from the requirements of this division except §115.356(3)(C) of this title.

(11) Sampling connection systems, as defined in 40 CFR §63.161 (January 17, 1997), that meet the requirements of 40 CFR §63.166(a) and (b) (June 20, 1996) are exempt from the requirements of this division except §115.356(3)(C) of this title.

(12) Components that are insulated, making them inaccessible to monitoring with a hydrocarbon gas analyzer, are exempt from the monitoring requirements of §115.354(1), (2), and (4) of this title.

(13) Components/systems that contact a process fluid containing VOC having a true vapor pressure equal to or less than 0.002 psia at 68 degrees Fahrenheit are exempt from the requirements of this division except §115.356(3)(C) of this title.

(14) In the Houston-Galveston-Brazoria area, the requirements of Subchapter H of this chapter (relating to Highly-Reactive Volatile Organic Compounds) may apply to components that qualify for one or more of the exemptions in paragraphs (1) - (11) of this section at any petroleum refinery; synthetic organic chemical, polymer, resin, or methyl-tert-butyl ether manufacturing process; or natural gas/gasoline processing operation in which a highly-reactive volatile organic compound, as defined in §115.10 of this title (relating to Definitions), is a raw material, intermediate, final product, or in a waste stream.

(15) Beginning January 1, 2023, any natural gas/gasoline processing operation that is subject to the compliance requirements of Subchapter B, Division 7 of this chapter (relating to Oil and Natural Gas in Ozone Nonattainment Areas) in the Dallas-Fort Worth or Houston-Galveston-Brazoria area is exempt from all requirements in this division.

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 January 14, 2021.

TRD-202100226
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 239-1806

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES
SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.208

The Texas Forensic Science Commission ("Commission") proposes an amendment to 37 Texas Administrative Code §651.208 which describes the requirements for forensic analyst and forensic technician license renewal. The current provision inadvertently omits the requirement that analysts upgrading to a higher level of licensure at renewal must complete continuing forensic education requirements. The Commission amends the section to clarify continuing forensic education requirements are required of all analysts biennially, whether renewing or upgrading a license. The amendments are necessary to reflect adoptions made by the Commission at its October 23, 2020, quarterly meeting. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Article 38.01 §4-a, which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license and the Commission's rulemaking authority under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure Article 38.01.

Fiscal Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendment is in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal. The amendment does not expand any forensic analyst licensing requirement under the current program, but rather closes a loophole that permits an analyst upgrading his or her license to avoid continuing forensic education requirements. The amendment clarifies all forensic analysts are required to complete continuing forensic education requirements.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendment does not impose any direct costs or fees on municipalities in rural communities.

Public Benefit/Cost Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission has also determined that for each year of the first five years the proposed

amendment is in effect, the anticipated public benefit will be the clear establishment of expectations with respect to the requirements for continuing forensic education and renewal of a forensic analyst or technician license.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f). Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that the proposed amendment will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person or laboratory who is required to comply with the rule as proposed.

Takings Impact Assessment. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, 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 and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Government Growth Impact Statement. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for the first five-year period, implementation of the proposed amendment will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. Pursuant to the analysis required by Government Code §2001.221(b), 1) the proposed rule does not create or eliminate a government program; 2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; 3) implementation of the proposed rule does not increase or decrease future legislative appropriations to the agency; 4) the proposed rule does not require an increase or decrease in fees paid to the agency; 5) the proposed rule does not create a new regulation; 6) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and 7) the proposed rule has a neutral effect on the state's economy. The amendment does not expand any forensic analyst licensing requirement under the current program, but rather clarifies that all forensic analysts are required to complete continuing forensic education requirements biennially.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Tomlin, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or *leigh@fsc.texas.gov.* Comments must be received by March 1, 2021, to be considered by the Commission.

Statutory Authority. The amendment is proposed under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-a(d), which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license.

Cross reference to statute. The amendment affects 37 Texas Administrative Code §651.208.

§651.208. Forensic Analyst and Forensic Technician License Renewal.

(a) Renewal. The Commission may renew an individual's Forensic Analyst or Forensic Technician License up to 90 days before to the expiration of the individual's two-year license term.

(b) Expiration. A Forensic Analyst or Forensic Technician License or renewed Forensic Analyst or Forensic Technician License expires two years from the date the initial application was granted.

(c) Effective date. A renewed Forensic Analyst or Forensic Technician License takes effect on the date the licensee's previous license expires.

(d) Application. An applicant for a Forensic Analyst or Forensic Technician License renewal shall complete and submit to the Commission a current Forensic Analyst or Forensic Technician License Renewal Application provided by the Commission, pay the required fee, attach documentation of fulfillment of Continuing Forensic Education requirements set forth in this section, provide an updated copy of the Commission's Proficiency Testing Certification form signed by the licensee's authorized laboratory representative, and complete the mandatory online legal and professional responsibility update described in this section.

(e) Continuing Forensic Education Including Mandatory Legal and Professional Responsibility Update:

(1) Forensic Analyst and Forensic Technician Licensees must complete a Commission-sponsored mandatory legal and professional responsibility update by the expiration of each two-year license cycle as provided by the Commission. Forensic Technicians are not required to complete any other continuing forensic education requirements listed in this section.

(2) Mandatory legal and professional responsibility training topics may include training on current and past criminal forensic legal issues, professional responsibility and human factors, courtroom testimony, disclosure and discovery requirements under state and federal law, and other relevant topics as designated by the Commission.

(3) All forensic analysts shall be required to satisfy the following Continuing Forensic Education Requirements by the expiration of each two-year license cycle:

(A) Completion of twenty-four (24) continuing forensic education hours per 2-year license cycle.

(B) Sixteen (16) hours of the twenty-four (24) must be discipline-specific training, peer-reviewed journal articles, and/or conference education hours. [;] If [if] a licensee is licensed in multiple forensic disciplines, at least eight (8) [8] hours of discipline-specific training in each forensic discipline are required, subject to the provisions set forth in subsection (f) of this section.

(C) The remaining eight (8) hours may be general forensic training, peer-reviewed journal articles, and/or conference education hours that include hours credited for the mandatory legal and professional responsibility training.

(4) Continuing forensic education programs will be offered and/or designated by the Commission and will consist of independent, online trainings, readings, and participation in recognized state, regional, and national forensic conferences and workshops.

(5) Approved continuing forensic education hours are applied for credit on the date the program and/or training is delivered.

(f) Timeline for Exemption from Supplemental Continuing Forensic Education Requirements. Where a current licensee adds a forensic discipline to the scope of his or her license, the following continuing forensic education requirements apply for the supplemental forensic discipline:

(1) Timeline for Exemption from Supplemental Continuing Forensic Education Requirements. Where a current licensee adds a forensic discipline to the scope of his or her license, the following

continuing forensic education requirements apply for the supplemental forensic discipline:

(2) If the supplemental forensic discipline is added six (6) months or more but less than eighteen (18) months prior to the expiration of the analyst's current license, four (4) additional discipline-specific training hours are required for the supplemental forensic discipline.

(3) If the supplemental forensic discipline is added eighteen (18) months or more prior to the expiration of the analyst's current license, eight (8) additional discipline-specific training hours are required for the supplemental forensic discipline.

(g) If an applicant fails to fulfill any or all of the requirements pertaining to license renewal, continuing forensic education and the mandatory legal and professional responsibility update, the applicant may apply to the Commission for special dispensation on a form to be provided on the Commission's website. Upon approval by the Commission, the applicant may be allowed an extension of time to fulfill remaining continuing forensic education requirements.

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 January 12, 2021.

TRD-202100178
Leigh Tomlin
Associate General Counsel
Texas Forensic Science Commission
Earliest possible date of adoption: February 28, 2021
For further information, please call: (512) 784-0037

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 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 518. UNAUTHORIZED PRACTICE OF PUBLIC ACCOUNTANCY

22 TAC §518.5

The Texas State Board of Public Accountancy adopts an amendment to §518.5 concerning Unlicensed Entities without changes to the proposed text as published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8463). The rules will not be republished.

CPA firms not licensed in Texas may practice in Texas if the firm is licensed in another state and the firm does not establish and maintain an office in the state. This is referred to as the "practice privilege" provided for in 901.461 of the Texas Public Accountancy Act.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

Filed with the Office of the Secretary of State on January 14, 2021.

TRD-202100199
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 3, 2021
Proposal publication date: November 27, 2020
For further information, please call: (512) 305-7842

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22 TAC §518.6

The Texas State Board of Public Accountancy adopts an amendment to §518.6 concerning Administrative Penalty Guidelines for the Unauthorized Practice of Public Accountancy without changes to the proposed text as published in the November 27, 2020 issue of the *Texas Register* (45 TexReg 8464). The rules will not be republished.

The amendment addresses the fact that the Board is not required to assess an administrative penalty and but if so the Board determines the amount of the penalty for every Board rule violation.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

Filed with the Office of the Secretary of State on January 14, 2021.

TRD-202100200
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 3, 2021
Proposal publication date: November 27, 2020
For further information, please call: (512) 305-7842

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CHAPTER 519. PRACTICE AND PROCEDURE
SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §519.4

The Texas State Board of Public Accountancy adopts an amendment to §519.4 concerning Conduct and Decorum without changes to the proposed text as published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8465). The rules will not be republished.

The amendment is a grammatical change to revise the word from singular to plural verb.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

Filed with the Office of the Secretary of State on January 14, 2021.

TRD-202100201
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 3, 2021
Proposal publication date: November 27, 2020
For further information, please call: (512) 305-7842

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22 TAC §519.7

The Texas State Board of Public Accountancy adopts an amendment to §519.7 concerning Criminal Offenses that May Subject a Licensee or Certificate Holder to Discipline or Disqualify a Person from Receiving a License without changes to the proposed text as published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8466). The rules will not be republished.

The amendment adds the misdemeanor offense of evading arrest to the list of criminal offenses that could result in a disciplinary action by the Board against a licensee.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

Filed with the Office of the Secretary of State on January 14, 2021.

TRD-202100202
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 3, 2021
Proposal publication date: November 27, 2020
For further information, please call: (512) 305-7842

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SUBCHAPTER C. PROCEEDINGS AT SOAH

22 TAC §519.40

The Texas State Board of Public Accountancy adopts an amendment to §519.40 concerning General Provisions without changes to the proposed text as published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8469). The rules will not be republished.

Occasionally licensees fail to respond to the public and/or fail to respond to the Board. When this occurs, the Board will seek a default judgment against the licensee. In those cases where this occurs regulatory expenses can be minimized by having the hearing conducted by the Executive Director. This amendment helps to put licensees and the public on notice that the Board may authorize the Executive Director to conduct hearings when the licensee fails to respond to Board communications.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

Filed with the Office of the Secretary of State on January 14, 2021.

TRD-202100203
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: February 3, 2021
Proposal publication date: November 27, 2020
For further information, please call: (512) 305-7842

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PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §781.102

The Texas Behavioral Health Executive Council adopts amended §781.102, relating to Definitions. Section 781.102 is adopted without changes to the proposed text as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8707) and will not be republished.

Reasoned Justification.

The amended rule, in conjunction with other rule amendments adopted in this edition of the *Texas Register,* will no longer require the preapproval of a supervision plan in order to accrue supervised experience required for the issuance of a license as a clinical social worker (LCSW) or for independent practice recognition for a baccalaureate social worker (LBSW) or a master social worker (LMSW). Supervised experience will still be required, at the same requisite level that is currently in place, but documentation of the required supervised experience will now only be submitted to the Executive Council when the applicant is applying for either the LCSW or independent practice recognition. The Executive Council anticipates the amended rule will address a backlog of applications and expedite future applications received.

If a rule will pertain to the qualifications necessary to obtain a license then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The amended rule pertains to supervised experience requirements for licensure as an LCSW or for independent practice recognition for an LBSW or LMSW; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule

to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter opined that this rule change will cause a backlog in two to four years when supervision plans are completed by supervisees, and believes the rule change puts too much pressure and liability onto clinical supervisors. The commenter requests this rule change not be made.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Commenters voiced their support for this change to the licensing process for required supervised experience for independent practice or clinical practice.

Agency Response.

The Executive Council declines to amend the rule or make any changes as requested. The Executive Council is already reviewing applications after an applicant completes a supervision plan, and the pre-approval of a supervision plan has not made the application process any more efficient for the review of applications. Therefore any potential influx of future applications for licensure will not be negatively impacted by supervision plans no longer being pre-approved. The purpose of a supervisor is to aid a supervisee in obtaining the requisite knowledge, skill, and experience to competently practice independently or provide clinical services. A supervisor has always been responsible for the acts or omissions of a supervisee, therefore no additional pressure or liability is placed on supervisors by this rule amendment as the commenter suggests.

The Executive Council appreciates the commenters' supportive comments.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this 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 January 15, 2021.

TRD-202100235
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Effective date: February 4, 2021
Proposal publication date: December 4, 2020
For further information, please call: (512) 305-7706

SUBCHAPTER B. RULES OF PRACTICE

22 TAC §781.302

The Texas Behavioral Health Executive Council adopts amended §781.302, relating to the Practice of Social Work. Section 781.302 is adopted without changes to the proposed text as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8711) and will not be republished.

Reasoned Justification.

The amended rule, in conjunction with other rule amendments adopted in this edition of the *Texas Register,* will no longer require the preapproval of a supervision plan in order to accrue supervised experience required for the issuance of a license as a clinical social worker (LCSW) or for independent practice recognition for a baccalaureate social worker (LBSW) or a master social worker (LMSW). Supervised experience will still be required, at the same requisite level that is currently in place, but documentation of the required supervised experience will now only be submitted to the Executive Council when the applicant is applying for either the LCSW or independent practice recognition. The Executive Council anticipates the amended rule will address a backlog of applications and expedite future applications received.

If a rule will pertain to the qualifications necessary to obtain a license then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The amended rule pertains to supervised experience requirements for licensure as an LCSW or for independent practice recognition for an LBSW or LMSW; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule

to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter opined that this rule change will cause a backlog in two to four years when supervision plans are completed by supervisees, and believes the rule change puts too much pressure and liability onto clinical supervisors. The commenter requests this rule change not be made.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Commenters voiced their support for this change to the licensing process for required supervised experience for independent practice or clinical practice.

Agency Response.

The Executive Council declines to amend the rule or make any changes as requested. The Executive Council is already reviewing applications after an applicant completes a supervision plan, and the pre-approval of a supervision plan has not made the application process any more efficient for the review of applications. Therefore any potential influx of future applications for licensure will not be negatively impacted by supervision plans no longer being pre-approved. The purpose of a supervisor is to aid a supervisee in obtaining the requisite knowledge, skill, and experience to competently practice independently or provide clinical services. A supervisor has always been responsible for the acts or omissions of a supervisee, therefore no additional pressure or liability is placed on supervisors by this rule amendment as the commenter suggests.

The Executive Council appreciates the commenters' supportive comments.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 January 15, 2021.

TRD-202100236
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Effective date: February 4, 2021
Proposal publication date: December 4, 2020
For further information, please call: (512) 305-7706

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SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §781.401

The Texas Behavioral Health Executive Council adopts amended §781.401, relating to Qualifications for Licensure. Section 781.401 is adopted without changes to the proposed text as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8713) and will not be republished.

Reasoned Justification.

The amended rule, in conjunction with other rule amendments adopted in this edition of the *Texas Register,* will no longer require the preapproval of a supervision plan in order to accrue supervised experience required for the issuance of a license as a clinical social worker (LCSW) or for independent practice recognition for a baccalaureate social worker (LBSW) or a master social worker (LMSW). Supervised experience will still be required, at the same requisite level that is currently in place, but documentation of the required supervised experience will now only be submitted to the Executive Council when the applicant is applying for either the LCSW or independent practice recognition. The Executive Council anticipates the amended rule will address a backlog of applications and expedite future applications received.

If a rule will pertain to the qualifications necessary to obtain a license then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The amended rule pertains to supervised

experience requirements for licensure as an LCSW or for independent practice recognition for an LBSW or LMSW; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter opined that this rule change will cause a backlog in two to four years when supervision plans are completed by supervisees, and believes the rule change puts too much pressure and liability onto clinical supervisors. The commenter requests this rule change not be made.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Commenters voiced their support for this change to the licensing process for required supervised experience for independent practice or clinical practice.

Agency Response.

The Executive Council declines to amend the rule or make any changes as requested. The Executive Council is already reviewing applications after an applicant completes a supervision plan, and the pre-approval of a supervision plan has not made the application process any more efficient for the review of applications. Therefore any potential influx of future applications for licensure will not be negatively impacted by supervision plans no longer being pre-approved. The purpose of a supervisor is to aid a supervisee in obtaining the requisite knowledge, skill, and experience to competently practice independently or provide clinical services. A supervisor has always been responsible for the acts or omissions of a supervisee, therefore no additional pressure or liability is placed on supervisors by this rule amendment as the commenter suggests.

The Executive Council appreciates the commenters' supportive comments.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 January 15, 2021.

TRD-202100237
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Effective date: February 4, 2021
Proposal publication date: December 4, 2020
For further information, please call: (512) 305-7706

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22 TAC §781.402

The Texas Behavioral Health Executive Council adopts amended §781.402, relating to Clinical Supervision for LCSW and Non-Clinical Supervision for Independent Practice recognition. Section 781.402 is adopted without changes to the proposed text as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8715) and will not be republished.

Reasoned Justification.

The amended rule, in conjunction with other rule amendments adopted in this edition of the *Texas Register,* will no longer require the preapproval of a supervision plan in order to accrue supervised experience required for the issuance of a license as a clinical social worker (LCSW) or for independent practice recognition for a baccalaureate social worker (LBSW) or a master social worker (LMSW). Supervised experience will still be required, at the same requisite level that is currently in place, but documentation of the required supervised experience will now only be submitted to the Executive Council when the applicant is applying for either the LCSW or independent practice recognition. The Executive Council anticipates the amended rule will address a backlog of applications and expedite future applications received.

If a rule will pertain to the qualifications necessary to obtain a license then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The amended rule pertains to supervised experience requirements for licensure as an LCSW or for independent practice recognition for an LBSW or LMSW; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter opined that this rule change will cause a backlog in two to four years when supervision plans are completed by supervisees, and believes the rule change puts too much pressure and liability onto clinical supervisors. The commenter requests this rule change not be made.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Commenters voiced their support for this change to the licensing process for required supervised experience for independent practice or clinical practice.

Agency Response.

The Executive Council declines to amend the rule or make any changes as requested. The Executive Council is already reviewing applications after an applicant completes a supervision plan, and the pre-approval of a supervision plan has not made the application process any more efficient for the review of applications. Therefore any potential influx of future applications for licensure will not be negatively impacted by supervision plans no longer being pre-approved. The purpose of a supervisor is to aid a supervisee in obtaining the requisite knowledge, skill, and experience to competently practice independently or provide clinical services. A supervisor has always been responsible for the acts or omissions of a supervisee, therefore no additional pressure or liability is placed on supervisors by this rule amendment as the commenter suggests.

The Executive Council appreciates the commenters' supportive comments.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 January 15, 2021.

TRD-202100238
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Effective date: February 4, 2021
Proposal publication date: December 4, 2020
For further information, please call: (512) 305-7706

22 TAC §781.403

The Texas Behavioral Health Executive Council adopts amended §781.403, relating to Independent Practice Recognition (Non-Clinical). Section 781.403 is adopted without changes to the proposed text as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8718) and will not be republished.

Reasoned Justification.

The amended rule, in conjunction with other rule amendments adopted in this edition of the *Texas Register,* will no longer require the preapproval of a supervision plan in order to accrue supervised experience required for the issuance of a license as a clinical social worker (LCSW) or for independent practice recognition for a baccalaureate social worker (LBSW) or a master social worker (LMSW). Supervised experience will still be required, at the same requisite level that is currently in place, but documentation of the required supervised experience will now only be submitted to the Executive Council when the applicant is applying for either the LCSW or independent practice recog-

nition. The Executive Council anticipates the amended rule will address a backlog of applications and expedite future applications received.

If a rule will pertain to the qualifications necessary to obtain a license then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The amended rule pertains to supervised experience requirements for licensure as an LCSW or for independent practice recognition for an LBSW or LMSW; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter opined that this rule change will cause a backlog in two to four years when supervision plans are completed by supervisees, and believes the rule change puts too much pressure and liability onto clinical supervisors. The commenter requests this rule change not be made.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Commenters voiced their support for this change to the licensing process for required supervised experience for independent practice or clinical practice.

Agency Response.

The Executive Council declines to amend the rule or make any changes as requested. The Executive Council is already reviewing applications after an applicant completes a supervision plan, and the pre-approval of a supervision plan has not made the application process any more efficient for the review of applications. Therefore any potential influx of future applications for licensure will not be negatively impacted by supervision plans no longer being pre-approved. The purpose of a supervisor is to aid a supervisee in obtaining the requisite knowledge, skill, and experience to competently practice independently or provide clinical services. A supervisor has always been responsible for the acts or omissions of a supervisee, therefore no additional pressure or liability is placed on supervisors by this rule amendment as the commenter suggests.

The Executive Council appreciates the commenters' supportive comments.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 January 15, 2021.

TRD-202100239
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Effective date: February 4, 2021
Proposal publication date: December 4, 2020
For further information, please call: (512) 305-7706

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22 TAC §781.404

The Texas Behavioral Health Executive Council adopts amended §781.404, relating to Recognition as a Council-approved Supervisor and the Supervision Process. Section 781.404 is adopted without changes to the proposed text as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8720) and will not be republished.

Reasoned Justification.

The amended rule, in conjunction with other rule amendments adopted in this edition of the *Texas Register,* will no longer require the preapproval of a supervision plan in order to accrue supervised experience required for the issuance of a license as a clinical social worker (LCSW) or for independent practice recognition for a baccalaureate social worker (LBSW) or a mas-

ter social worker (LMSW). Supervised experience will still be required, at the same requisite level that is currently in place, but documentation of the required supervised experience will now only be submitted to the Executive Council when the applicant is applying for either the LCSW or independent practice recognition. The Executive Council anticipates the amended rule will address a backlog of applications and expedite future applications received.

If a rule will pertain to the qualifications necessary to obtain a license then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The amended rule pertains to supervised experience requirements for licensure as an LCSW or for independent practice recognition for an LBSW or LMSW; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter opined that this rule change will cause a backlog in two to four years when supervision plans are completed by supervisees, and believes the rule change puts too much pressure and liability onto clinical supervisors. The commenter requests this rule change not be made.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Commenters voiced their support for this change to the licensing process for required supervised experience for independent practice or clinical practice.

Agency Response.

The Executive Council declines to amend the rule or make any changes as requested. The Executive Council is already reviewing applications after an applicant completes a supervision plan, and the pre-approval of a supervision plan has not made the application process any more efficient for the review of applications. Therefore any potential influx of future applications for licensure will not be negatively impacted by supervision plans no longer being pre-approved. The purpose of a supervisor is to aid a supervisee in obtaining the requisite knowledge, skill, and experience to competently practice independently or provide clinical services. A supervisor has always been responsible for the acts or omissions of a supervisee, therefore no additional pressure or liability is placed on supervisors by this rule amendment as the commenter suggests.

The Executive Council appreciates the commenters' supportive comments.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 January 15, 2021.

TRD-202100240
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Effective date: February 4, 2021
Proposal publication date: December 4, 2020
For further information, please call: (512) 305-7706

22 TAC §781.406

The Texas Behavioral Health Executive Council adopts amended §781.406, relating to Required Documentation of Qualifications for Licensure. Section 781.406 is adopted without changes to the proposed text as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8724) and will not be republished.

Reasoned Justification.

The amended rule, in conjunction with other rule amendments adopted in this edition of the *Texas Register,* will no longer re-

quire the preapproval of a supervision plan in order to accrue supervised experience required for the issuance of a license as a clinical social worker (LCSW) or for independent practice recognition for a baccalaureate social worker (LBSW) or a master social worker (LMSW). Supervised experience will still be required, at the same requisite level that is currently in place, but documentation of the required supervised experience will now only be submitted to the Executive Council when the applicant is applying for either the LCSW or independent practice recognition. The Executive Council anticipates the amended rule will address a backlog of applications and expedite future applications received.

If a rule will pertain to the qualifications necessary to obtain a license then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code. The amended rule pertains to supervised experience requirements for licensure as an LCSW or for independent practice recognition for an LBSW or LMSW; therefore, this rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter opined that this rule change will cause a backlog in two to four years when supervision plans are completed by supervisees, and believes the rule change puts too much pressure and liability onto clinical supervisors. The commenter requests this rule change not be made.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Commenters voiced their support for this change to the licensing process for required supervised experience for independent practice or clinical practice.

Agency Response.

The Executive Council declines to amend the rule or make any changes as requested. The Executive Council is already reviewing applications after an applicant completes a supervision plan, and the pre-approval of a supervision plan has not made the application process any more efficient for the review of applications. Therefore any potential influx of future applications for licensure will not be negatively impacted by supervision plans no longer being pre-approved. The purpose of a supervisor is to aid a supervisee in obtaining the requisite knowledge, skill, and experience to competently practice independently or provide clinical services. A supervisor has always been responsible for the acts or omissions of a supervisee, therefore no additional pressure or liability is placed on supervisors by this rule amendment as the commenter suggests.

The Executive Council appreciates the commenters' supportive comments.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 January 15, 2021.

TRD-202100241
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Effective date: February 4, 2021
Proposal publication date: December 4, 2020
For further information, please call: (512) 305-7706

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22 TAC §781.420

The Texas Behavioral Health Executive Council adopts new §781.420, relating to Licensing of Persons with Criminal Convictions. Section 781.420 is adopted with changes to the proposed text as published in the November 13, 2020, issue of the *Texas Register* (45 TexReg 8097) and will be republished.

Reasoned Justification.

The new rule is needed to implement Tex. H.B. 1501, 86th Leg., R.S. (2019). This legislation created the Texas Behavioral Health Executive Council and authorized the Executive Council to regulate marriage and family therapists, professional counselors, psychologists, and social workers. Sections 507.151 and 507.152 of the Tex. Occ. Code authorizes the Executive Council to administer and enforce Chapters 501, 502, 503, 505, and 507 of the Tex. Occ. Code, as well as adopt rules as necessary to perform the Executive Council's duties and implement Chapter 507.

If a rule will pertain to the qualifications necessary to obtain a license; the scope of practice, standards of care, or ethical practice for a profession; continuing education requirements; or a schedule of sanctions then the rule must first be proposed to the Executive Council by the applicable board for the profession before the Executive Council may propose or adopt such a rule, see §507.153 of the Tex. Occ. Code.

The new rule pertains to licensing persons with criminal convictions as a social worker. Therefore, the rule is covered by §507.153 of the Tex. Occ. Code.

The Texas State Board of Social Worker Examiners, in accordance with §505.2015 of the Tex. Occ. Code, previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Tex. Occ. Code and may adopt this rule.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter opined that this rule appeared to be in line with accepted previous practices for the profession.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Board previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§781.420. Licensing of Persons with Criminal Convictions

The following felonies and misdemeanors directly relate to the duties and responsibilities of a licensee:

(1) offenses listed in Article 42A.054 of the Code of Criminal Procedure;

(2) a sexually violent offense, as defined by Article 62.001 of the Code of Criminal Procedure;

(3) any felony offense wherein the judgment reflects an affirmative finding regarding the use or exhibition of a deadly weapon;

(4) any criminal violation of Chapter 505 (Social Work Practice Act) of the Occupations Code;

(5) any criminal violation of Chapter 35 (Insurance Fraud) or Chapter 35A (Medicaid Fraud) of the Penal Code;

(6) any criminal violation involving a federal health care program, including 42 USC Section 1320a-7b (Criminal penalties for acts involving Federal health care programs);

(7) any offense involving the failure to report abuse or neglect;

(8) any state or federal offense not otherwise listed herein, committed by a licensee while engaged in the practice of social work;

(9) any criminal violation of Section 22.041 (abandoning or endangering a child) of the Penal Code;

(10) any criminal violation of Section 21.15 (invasive visual recording) of the Penal Code;

(11) any criminal violation of Section 43.26 (possession of child pornography) of the Penal Code;

(12) any criminal violation of Section 22.04 (injury to a child, elderly individual, or disabled individual) of the Penal Code;

(13) three or more drug or alcohol related convictions within the last 10 years, evidencing possible addiction that will have an effect on the licensee's ability to provide competent services; and

(14) any attempt, solicitation, or conspiracy to commit an offense listed herein.

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 January 15, 2021.

TRD-202100242
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Effective date: February 4, 2021
Proposal publication date: November 13, 2020
For further information, please call: (512) 305-7706

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

The Commissioner of Insurance adopts new 28 TAC §7.508 and amendments to 28 TAC §7.1301, concerning a biographical affidavit form for foreign insurers and fees imposed on insurers regulated by TDI, respectively. New §7.508 is adopted without changes and will not be republished. The amendments to §7.1301 are adopted with a nonsubstantive change to the proposed text published in the November 6, 2020, issue of the *Texas Register* (45 TexReg 7980). This rule will be republished.

REASONED JUSTIFICATION. New §7.508 specifies that the biographical affidavit form for foreign insurers is only required on request from TDI. Currently, foreign insurers submit the biographical affidavit form adopted in 28 TAC §7.507, for each officer and director on admission to Texas and any time there is a change in officer or director. Foreign insurers' domiciliary regulators evaluate and monitor officers and directors and any changes to them, making TDI's review duplicative.

Section 7.1301 is amended to reduce most of the fees imposed on insurers regulated by TDI to $0. The costs incurred to process many of these fees is greater than the fees collected, so eliminating these fees will effectively reduce the cost on TDI for enforcing this section.

New §7.508 and the amendments to §7.1301 are described in the following paragraphs.

Section 7.508. New §7.508 specifies that the biographical affidavit form for foreign insurers, adopted in 28 TAC §7.507, is only required on request from TDI.

Section 7.1301. Section 7.1301(a) is amended to delete the word "shall" and to replace "shall" with "will" in two places for consistency with agency rule-drafting style. Section 7.1301(a) is also amended to add the parenthetical "(department)" to show that term means "Texas Department of Insurance" when used in the section; to update the reference to pre-codified Insurance Code Chapters 1 - 3, 6 - 20, 20A, and 23 to current Insurance Code Titles 2 and 6 - 12; and to replace a reference to the previous rule adoption's effective date with the amended rule's effective date. The text of subsection (a) as proposed has been changed by deleting a superfluous comma.

Section 7.1301(b) is amended to update the reference to pre-codified Insurance Code Article 4.07 and "the article" with current Insurance Code §202.004 and "Insurance Code Chapter 202," respectively. Section 7.1301(b) is also amended to replace "shall be" with "is" for consistency with agency grammar and rule-drafting style; and to replace "Texas Department of Insurance" with "department" for conciseness.

Section 7.1301(c) is amended to update the references to pre-codified Insurance Code Article 3.42 with current Insurance Code Chapter 1701 and to clarify the second sentence by adding "and governed by" before "Chapter 3" and deleting "and shall be governed thereby" at the end of that sentence.

Section 7.1301(d) is amended to update the references to pre-codified Insurance Code Chapters 1 - 3, 6 - 20, 20A, and 23 to current Insurance Code Titles 2 and 6 - 12, and to replace "which" with "that," and "shall be" with "are," for consistency with agency grammar and rule-drafting style. Subsection (d)(1) - (20) and (22) - (24) is amended to replace "shall be" with "is" for consistency with agency rule-drafting style. The fees set in subsection (d)(2) - (24) are reduced to $0. Subsection (d)(12) is amended to update the reference to pre-codified Insurance Code Article 22.19 with current Insurance Code Chapter 884, Subchapter K. Subsection (d)(13) is amended to update the reference to pre-codified Insurance Code Article 21.26 with current Insurance Code Chapter 828. Subsection (d)(14) is amended to update the reference to pre-codified Insurance Code Article 21.25 with current Insurance Code Chapter 824. Subsection (d)(15) and (16) are amended to update the references to pre-codified Insurance Code Article 3.16 with current Insurance Code §425.002. Subsection (d)(18) is amended to update the reference to pre-codified Insurance Code Article 1.28 with current Insurance Code Chapter 803. Subsection (d)(20) and (21) is amended to update the references to pre-codified Insurance Code Article 21.49-1, §5, with current Insurance Code Chapter 823, Subchapters D and E. Subsection (d)(22) is amended to update the reference to pre-codified Insurance Code Article 21.49, §3, with current Insurance Code Chapter 823, Subchapter B. Subsection (d)(23) is amended to update the reference to pre-codified Insurance Code Article 21.49, §4, and Article 22.15 with current Insurance Code Chapter 823, Subchapter C, and Chapter 884, Subchapter L, respectively. Subsection (d)(24) is amended to update the reference to pre-codified Insurance Code Article 21.49, §5(e), with current Insurance Code Chapter 823.164.

Section 7.1301(e) is amended to update the reference to pre-codified Insurance Code Article 4.07 with current Insurance Code Chapter 202, and to replace "shall be" with "is," for consistency with agency rule-drafting style. Subsection (e)(1) - (3) is amended to replace "shall be" with "is" for consistency with agency rule-drafting style and to reduce the fees set by the provision to $0.

Section 7.1301(f)(1) is amended to replace "Texas Department of Insurance" with "department" for conciseness; to correct the reference to §7.1301(d)(11) - (15) with a reference to §7.1301(d)(10) - (14) to account for the renumbering of subsection (d) when amendments to §7.1301 were adopted effective April 23, 1996, (21 TexReg 3190); and to clarify the sentence by adding "the appropriate fee will be determined based on" before "the ceding or merged company" and deleting "will be the company upon which the determination of the appropriate fee to be

assessed will be based." Subsection (f)(2) is amended to update the reference to pre-codified Insurance Code Article 21.49-1, §4, with current Insurance Code Chapter 823, Subchapter C; to replace "shall" with "will" for consistency with agency rule-drafting style; to correct the reference to §7.1301(d)(24) with a reference to §7.1301(d)(23) to account for the renumbering of subsection (d) when amendments to §7.1301 were adopted effective April 23, 1996, (21 TexReg 3190); and to clarify the sentence by adding "based on" after "determined" and deleting "using" and "as a basis for such a fee." Subsection (f)(3) is amended to replace "Texas Department of Insurance" with "department" for conciseness; and to clarify the sentence by adding "the appropriate fee will be based on" before "the ceding company" and deleting "will be the insurer upon which the determination of the appropriate fee to be charged will be based." Subsection (f)(5) is amended to replace "shall" with "will" for consistency with agency rule-drafting style. Subsection (f)(6) is amended to update the reference to pre-codified Insurance Code Article 21.49-1, §5, with current Insurance Code Chapter 823, Subchapters D and E; to correct the reference to §7.1301(d)(21) and (d)(22) with a reference to §7.1301(d)(20) and (21) to account for the renumbering of subsection (d) when amendments to §7.1301 were adopted effective April 23, 1996 (21 TexReg 3190); and to replace "shall" with "will" for consistency with agency rule-drafting style.

Section 7.1301(g) is amended to update the reference to pre-codified Texas Health Maintenance Organization Act, §32, with current Insurance Code §843.154, and to replace "shall be" with "are," for consistency with agency rule-drafting style. Subsection (g)(1) is amended to replace "shall be" with "is" for consistency with agency rule-drafting style and to reduce the fee set by the provision to $0. Subsection (g)(2) is amended to replace "shall be" with "is" for consistency with agency rule-drafting style. Subsection (g)(3) is amended to replace "Texas Department of Insurance" with "department" for conciseness, and to replace "shall be in such amounts as" with "will be an amount" and "shall certify" with "certifies" for clarity and consistency with agency rule-drafting style. Subsection (g)(4) is amended to replace "shall be" with "is" for consistency with agency rule-drafting style. Subsection (g)(5) is amended to replace "do" with "does" to correct the grammar of the sentence and to replace "shall be" with "is" for consistency with agency rule-drafting style.

The previous §7.1301(h) is deleted because Senate Bill 1623, 86th Legislature, 2019, repealed Insurance Code §961.212, which authorized the fees established by subsection (h). The previous subsections (i) and (j) have been redesignated as subsections (h) and (i), respectively, to account for the deletion of subsection (h).

Redesignated 7.1301(h) is amended to update the references to pre-codified Insurance Code Article 3.53 with current Insurance Code Chapter 1153 and to clarify the second sentence by adding "and governed by" before "Chapter 3" and deleting "and shall be governed thereby."

Redesignated §7.1301(i) is amended to update the reference to pre-codified Insurance Code Chapter 3 with current Insurance Code Chapter 841. Paragraphs (1) and (2) in redesignated subsection (i) are deleted because House Bill 1849, 80th Legislature, 2007, repealed the fee for valuing life insurance policies in Insurance Code §202.052(a)(1). The existing fee set for the filing of an annual statement in the previous subsection (j)(2) is added as the second sentence in redesignated (i) and the word "fees" is replaced with "fee for filing an annual statement" in the first sentence.

In addition to the amendments previously noted, amendments are made throughout the section to remove the word "the" before "Insurance Code" where appropriate for consistency with agency rule-drafting style.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed new section and amendments.

SUBCHAPTER E. ADMISSION PROCEDURES FOR FOREIGN INSURANCE COMPANIES

28 TAC §7.508

STATUTORY AUTHORITY. TDI adopts new §7.508 under Insurance Code §§801.056, 801.101, and 36.001.

Insurance Code §801.056 allows TDI to request fingerprints from an applicant or a corporate officer of an applicant for an authorization issued by the department under Chapter 801.

Insurance Code §801.101 allows TDI to inquire into the competence, fitness, or reputation of an officer or director of an insurer or a person having control of an insurer.

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.

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 January 13, 2021.

TRD-202100194
James Person
General Counsel
Texas Department of Insurance
Effective date: February 2, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 676-6584

SUBCHAPTER M. REGULATORY FEES

28 TAC §7.1301

STATUTORY AUTHORITY. TDI adopts §7.1301 under Insurance Code §§202.002, 202.051, 843.154, and 36.001.

Insurance Code §202.002 authorizes TDI to set the amount of the fees imposed under Insurance Code Chapter 202, subject to certain limits.

Insurance Code §202.051 authorizes TDI to impose 26 specified fees on each authorized insurer writing insurance in Texas, subject to certain limits.

Insurance Code §843.154 authorizes the Commissioner to impose certain fees on health maintenance organizations.

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.

§7.1301. Regulatory Fees.

(a) Regulated entities subject to fees. The regulated entities subject to the fees imposed by this section include all authorized insurers writing any class of insurance in this state which are regulated by Insurance Code Titles 2 and 6 - 12. For filings and other actions received by the department on and after the effective date of this section, the Texas Department of Insurance (department) will charge these entities fees in amounts in accordance with the provisions of this section. Filings or other actions received by the department before the effective date of this section will be governed by this subchapter as it existed immediately prior to that date.

(b) Fees for insurers with annual gross premium receipts less than $450,000. As provided in Insurance Code §202.004, any insurer to which Insurance Code Chapter 202 applies and whose gross premium receipts are less than $450,000 according to its annual statement for the preceding year ending December 31, is required to pay only one-half the amount of the fees required to be paid under subsection (d) or subsection (e) of this section. The fees will be collected at the higher rate unless the applicant can provide the department with satisfactory documentation that gross premium receipts were less than $450,000.

(c) Fees for specified filings pursuant to Insurance Code Chapter 1701. Fees for specified filings pursuant to Insurance Code Chapter 1701 are set forth in and governed by Chapter 3, Subchapter A of this title (relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings).

(d) Fees for authorized insurers writing classes of insurance in this state that are regulated by Insurance Code Titles 2 and 6 - 12. For the following filings and actions, the fees are as follows.

(1) For classes of insurance for which statutory authority exists for collecting annual statement fees, the fee for filing annual statements is $250 unless otherwise specified.

(2) For filing amendments to certificate of authority if charter is not amended, the fee is $0.

(3) For reservation of name, the fee is $0.

(4) For renewal of reservation of name, the fee is $0.

(5) For filing application for admission of a foreign or alien insurance company, including issuance of certificate of authority, the fee is $0.

(6) For filing original charter, including issuance of certificate of authority, the fee is $0.

(7) For filing amendment to charter, including issuance of certificate of authority, if a hearing is held, the fee is $0.

(8) For filing amendment to charter, including issuance of certificate of authority, if a hearing is not held, the fee is $0.

(9) For filing designation of attorney for service of process or amendment thereto, the fee is $0.

(10) For filing a total reinsurance agreement, the fee is $0.

(11) For filing a partial reinsurance agreement, the fee is $0.

(12) For filing a direct reinsurance agreement pursuant to Insurance Code Chapter 884, Subchapter K, the fee is $0.

(13) For filing for approval of reinsurance agreement pursuant to Insurance Code Chapter 828, the fee is $0.

(14) For filing for approval of merger pursuant to Insurance Code Chapter 824, the fee is $0.

(15) For accepting a security deposit, excluding deposits made pursuant to Insurance Code §425.002, the fee is $0.

(16) For substitution/amendment of a security deposit, excluding deposits made pursuant to Insurance Code §425.002, the fee is $0.

(17) For certification of statutory deposit, the fee is $0.

(18) For filing notice of intent to relocate the books/records pursuant to Insurance Code Chapter 803, the fee is $0.

(19) For filing restated articles of incorporation for domestic/foreign companies, the fee is $0.

(20) For filing a statement pursuant to Insurance Code Chapter 823, Subchapters D and E, for the first $9,900,000 of the purchase price or consideration, the fee is $0.

(21) For filing a statement pursuant to Insurance Code Chapter 823, Subchapters D and E, if the purchase price or consideration exceeds $9,900,000, the fee is $0.

(22) For filing registration statement pursuant to Insurance Code Chapter 823, Subchapter B, the fee is $0.

(23) For filing for review pursuant to Insurance Code Chapter 823, Subchapter C, or Chapter 884, Subchapter L, the fee is $0.

(24) For filing for an exemption pursuant to Insurance Code §823.164, the fee is $0.

(e) Other fees established by Insurance Code Chapter 202. For the following filings, the fee is as follows.

(1) For filing joint control agreement, the fee is $0.

(2) For filing substitution/amendment to the joint control agreement, the fee is $0.

(3) For filing a change in attorney in fact, the fee is $0.

(f) Administrative procedures.

(1) When a reinsurance agreement or merger agreement is filed with the department, as enumerated in subsection (d)(10) - (14) of this section, the appropriate fee will be determined based on the ceding or merged company.

(2) The fee relating to reinsurance transactions entered into pursuant to Insurance Code Chapter 823, Subchapter C, and subsection (d)(23) of this section will be determined based on the ceding company.

(3) When an amendment to a reinsurance agreement between affiliated insurers is filed with the department, as mentioned in paragraph (1) of this subsection, the appropriate fee will be based on the ceding company.

(4) An amendment to the charter would constitute any change in the original charter, including, but not limited to, name change, home office change, increase in capital, conversion, and increase in lines.

(5) The fee relating to affixing the official seal and certifying to the seal will be applied to all requests for certification, irrespective of requesting party.

(6) The fees for filing an acquisition statement pursuant to Insurance Code Chapter 823, Subchapters D and E, and subsection (d)(20) and (21) of this section will apply to and be collected from the applicant whenever:

(A) the applicant is a regulated entity subject to this section; or

(B) the company being acquired is a regulated entity subject to this section.

(g) Fees pursuant to the Texas Health Maintenance Organization Act, Insurance Code Chapter 843. For the following filings and actions, the fees are as follows.

(1) For filing original application for certificate of authority, the fee is $0.

(2) For filing annual report, the fee is $250.

(3) For all examinations made on behalf of the State of Texas by the department or under its authority, the fee will be an amount the commissioner certifies to be just and reasonable.

(4) For filing evidence of coverage which requires approval, the fee is $100.

(5) For filing required by rule but which does not require approval, the fee is $50.

(h) Fees for filings pursuant to Insurance Code Chapter 1153. Fees for filings pursuant to Insurance Code Chapter 1153 are set forth in and governed by Chapter 3, Subchapter A of this title.

(i) Fee for filing an annual statement under Insurance Code Chapter 841. The fee for filing an annual statement is $250.

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 January 13, 2021.

TRD-202100195
James Person
General Counsel
Texas Department of Insurance
Effective date: February 2, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 676-6584

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CHAPTER 9. TITLE INSURANCE
SUBCHAPTER A. BASIC MANUAL OF RULES, RATES AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

28 TAC §9.1

The Commissioner of Insurance adopts amended 28 TAC §9.1, relating to adoption by reference of an amended version of the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* (Basic Manual). The amendment to the Basic Manual updates Form T-51, Purchaser/Seller Insured Closing Service Letter (Form T-51) to implement House Bill 1614, 86th Legislature, 2019. The Texas Department of Insurance (TDI) adopts the amendment with nonsubstantive changes to the proposed text published in the October 23, 2020, issue of the *Texas Register* (45 TexReg 7524). The rule will be republished.

No changes were made to the amended version of the Basic Manual proposed to be adopted by reference.

REASONED JUSTIFICATION. Form T-51, which is part of the Basic Manual, is an insured closing letter that protects the buyer or seller if escrow funds are lost because of fraud or dishonesty by a title agent. Under Insurance Code §2702.002, Form T-51 can only be used if the sales price of real estate is more than the maximum amount of a covered claim under the Texas Title Insurance Guaranty Act (Guaranty Act).

The amendment to Form T-51 updates the minimum sales price that can be covered under the form. The update is necessary to implement a change made by HB 1614. HB 1614 increased the maximum amount under the Guaranty Act from $250,000 to $500,000. The rule amendment updates Form T-51 to show $500,000 as the new threshold amount for coverage.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed amendment.

STATUTORY AUTHORITY. The Commissioner adopts the amendment to 28 TAC §9.1 under Insurance Code §§2702.002, 2703.208, 2551.003, and 36.001.

Insurance Code §2702.002 requires that insured closing and settlement letters be issued in the form and manner prescribed by the Commissioner.

Insurance Code §2703.208 allows additions or amendments to the Basic Manual to be proposed and adopted by reference by publishing notice of the proposal or adoption in the *Texas Register.*

Insurance Code §2551.003 authorizes the Commissioner to adopt rules that are necessary for the business of title insurance.

Insurance Code §36.001 authorizes the Commissioner to adopt any rules necessary to implement the powers and duties of TDI under the Insurance Code and laws of this state.

§9.1. Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

The Texas Department of Insurance adopts by reference the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* (Basic Manual) as amended, effective February 1, 2021. The Basic Manual is available from the Texas Department of Insurance, Mail Code 104-PC, P.O. Box 149104, Austin, TX 78711-2040. The Basic Manual is also available on the TDI website at www.tdi.texas.gov, and by email from ChiefClerk@tdi.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 January 11, 2021.

TRD-202100129
Allison Eberhart
Assistant General Counsel
Texas Department of Insurance
Effective date: February 1, 2021
Proposal publication date: October 23, 2020
For further information, please call: (512) 676-6584

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PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 133. GENERAL MEDICAL PROVISIONS

SUBCHAPTER D. DISPUTE OF MEDICAL BILLS

28 TAC §133.307

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC or division) adopts amendments to 28 TAC §133.307 (concerning MDR of Fee Disputes) to allow health care providers and pharmacy processing agents to electronically submit requests for medical fee dispute resolution (MFDR). The amendments are adopted with one change to the proposed text published in the October 9, 2020, issue of the *Texas Register* (45 TexReg 7207). The rule will be republished. The effective date of these amendments, as described in §133.307(a)(4), will be February 22, 2021.

REASONED JUSTIFICATION. Section 133.307 applies to a request to DWC for MFDR as authorized by the Texas Workers' Compensation Act. It was last amended in 2012. Currently, requestors can submit MFDR requests by mail and hand-delivery. Injured employees may also submit requests by fax. The amendments are necessary to allow electronic transmission in the form and manner described in 28 TAC §102.5 (concerning General Rules for Written Communications to and from the Commission) to increase convenience and reduce costs associated with fee disputes. As provided by §102.5(h), "Electronic transmission is defined as transmission of information by facsimile, electronic mail, electronic data interchange or any other similar method and does not include telephonic communication."

Under these amendments, electronic filing will be accepted through fax, secure file transfer protocol (SFTP), or encrypted email. About 70% of the MFDR requests DWC receives are submitted by 15 entities. Moving those requests to electronic transmission should significantly reduce the time and costs spent managing paper mail.

Under the federal Health Insurance Portability and Accountability Act (HIPAA), health care providers are required to maintain the confidentiality of protected health information. 45 CFR §§160.103, 164.102-164.318, 164.500 - 164.534; *see, e.g.,* 22 TAC §165.2 and §322.4. Health care providers are required to follow requirements or guidance from their licensing boards on protected health information. Health care providers can protect the security and privacy of injured employees' confidential information by using secure or encrypted email when submitting requests.

The amendments to subsection (a) update the description of the rule's applicability and will go into effect on February 22, 2021. Requests received on or after that date will need to comply with these amended rules. The amendments retain the general rule that a dispute resolution request must be resolved in accordance with the statutes and rules in effect at the time the request was filed. The adopted amendments also delete a specific reference to filings before the last amendment of this rule in 2012. This deletion does not change the effect that a dispute resolution request filed before June 1, 2012, will be resolved in accordance with the statutes and rules in effect at the time the request was filed. Similarly, requests filed between June 1, 2012, and February 22, 2021, will be resolved in accordance with the statutes and rules in effect at the time the request was filed. A new subsection (a)(4) provides that these amendments will go into effect on February 22, 2021. This is a change from the effective date of February 1 provided in the proposed rule. As the Administrative Procedures Act, Texas Government Code §2001.036, requires that a rule must go into effect at least 20 days after it is filed with the Secretary of State and as February 1 would now be less than 20 days from filing, DWC has changed the effective date of these amendments to February 22.

Amendments to subsection (c)(1) provide that a request will be filed on the date DWC receives the request. Currently, a request is determined to have been received when the MFDR Section receives the request. This change will remove potential uncertainties and delays if a request received by mail is not promptly forwarded from DWC's mailroom to the MFDR Section. This change also will establish a uniform filing date, regardless of whether a request is submitted electronically or by mail or personal delivery.

Amendments to subsections (c), (c)(2)(J) - (K), (d)(2)(B) - (D), and (d)(2)(H) - (I) delete requirements for filing paper copies. Adopted amendments to subsections (c)(2), (c)(4), and (d)(1) provide for electronic transmission of medical bills in a form and manner as described in 28 TAC §133.10(b) (concerning Required Billing Forms/Formats) or 28 TAC §133.500 (concerning Electronic Formats for Electronic Medical Bill Processing).

Amendments to subsection (c)(2)(K) clarify that an MFDR request filed by a health care provider or pharmacy processing agent must include each explanation of benefits or e-remittance related to a dispute, these are collectively referred to as "EOBs" in this rule.

Amendments to subsection (c)(3) remove repetitive language and divide the existing language into subparagraphs.

In addition, the amendments to §133.307 include nonsubstantive editorial and formatting changes to conform to DWC's current style and improve the rule's clarity.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received two written comments. Commenters in support of the proposal were submitted by the Office of Injured Employee Council and jointly from the Texas Medical Association and Texas Orthopaedic Association.

Agency Response: DWC appreciates the comments.

STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to §133.307 under Labor Code §§402.00128, 402.021, 402.061, and 413.031.

Section 402.00128 describes the general powers and duties of the commissioner, including to hold hearings; take testimony directly or by deposition or interrogatory; and prescribe the form, manner, and procedure for the transmission of information to the division.

Section 402.021 provides that it is a basic goal of the Texas workers' compensation system that each injured employee shall have access to a fair and accessible dispute resolution process, and it is the Legislature's intent that DWC take maximum advantage of technological advances to provide the highest levels of service possible to system participants.

Section 402.061 provides that the commissioner shall adopt rules as necessary to implement the Labor Code Title 5, Subtitle A.

Section 413.031 provides for medical dispute resolution and mandates that the commissioner adopt rules to notify claimants of their rights and to specify the appropriate dispute resolution

process for disputes in which a claimant has paid for medical services and seeks reimbursement. This section also authorizes the commissioner to prescribe by rule an alternative dispute resolution process to resolve disputes on medical services costing less than the cost of a review of the medical necessity of a health care service by an independent review organization.

§133.307. Medical Fee Dispute Resolution.

(a) Applicability. This section applies to a request to the division for medical fee dispute resolution (MFDR) as authorized by the Texas Workers' Compensation Act.

(1) Dispute resolution requests must be resolved in accordance with the statutes and rules in effect at the time the request was filed.

(2) In resolving disputes regarding the amount of payment due for health care determined to be medically necessary and appropriate for treatment of a compensable injury, the role of the division is to adjudicate the payment, given the relevant statutory provisions and division rules.

(3) In accordance with Labor Code §504.055 a request for medical fee dispute resolution that involves a first responder's request for reimbursement of medical expenses paid by the first responder will be accelerated by the division and given priority. The first responder shall provide notice to the division that the request involves a first responder.

(4) The 2020 amendments regarding electronic submission of dispute requests are effective February 22, 2021.

(b) Requestors. The following parties may be requestors in medical fee disputes:

(1) the health care provider, or a qualified pharmacy processing agent, as described in Labor Code §413.0111, in a dispute over the reimbursement of a medical bill(s);

(2) the health care provider in a dispute about the results of a division or insurance carrier audit or review which requires the health care provider to refund an amount for health care services previously paid by the insurance carrier;

(3) the injured employee in a dispute involving an injured employee's request for reimbursement from the insurance carrier of medical expenses paid by the injured employee;

(4) the injured employee when requesting a refund of the amount the injured employee paid to the health care provider in excess of a division fee guideline; or

(5) a subclaimant in accordance with §140.6 of this title (relating to Subclaimant Status: Establishment, Rights, and Procedures), §140.7 of this title (relating to Health Care Insurer Reimbursement under Labor Code §409.0091), or §140.8 of this title (relating to Procedures for Health Care Insurers to Pursue Reimbursement of Medical Benefits under Labor Code §409.0091), as applicable.

(c) Requests. Requests for MFDR must be legible and filed in the form and manner prescribed by the division.

(1) Timeliness. A requestor must timely file the request with the division or waive the right to MFDR. The division will deem a request to be filed on the date the division receives the request. A decision by the division that a request was not timely filed is not a dismissal and may be appealed pursuant to subsection (g) of this section.

(A) A request for MFDR that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later than one year after the date(s) of service in dispute.

(B) A request may be filed later than one year after the date(s) of service if:

(i) a related compensability, extent of injury, or liability dispute under Labor Code Chapter 410 has been filed, the medical fee dispute shall be filed not later than 60 days after the date the requestor receives the final decision, inclusive of all appeals, on compensability, extent of injury, or liability;

(ii) a medical dispute regarding medical necessity has been filed, the medical fee dispute must be filed not later than 60 days after the date the requestor received the final decision on medical necessity, inclusive of all appeals, related to the health care in dispute and for which the insurance carrier previously denied payment based on medical necessity; or

(iii) the dispute relates to a refund notice issued pursuant to a division audit or review, the medical fee dispute must be filed not later than 60 days after the date of the receipt of a refund notice.

(2) Health Care Provider or Pharmacy Processing Agent Request. The requestor must send the request to the division in the form and manner prescribed by the division by any mail service, personal delivery, or electronic transmission as described in §102.5 of this title. The request must include:

(A) the name, address, and contact information of the requestor;

(B) the name of the injured employee;

(C) the date of the injury;

(D) the date(s) of the service(s) in dispute;

(E) the place of service;

(F) the treatment or service code(s) in dispute;

(G) the amount billed by the health care provider for the treatment(s) or service(s) in dispute;

(H) the amount paid by the workers' compensation insurance carrier for the treatment(s) or service(s) in dispute;

(I) the disputed amount for each treatment or service in dispute;

(J) a copy of all medical bills related to the dispute, as described in §133.10 of this chapter (concerning Required Billing Forms/Formats) or §133.500 (concerning Electronic Formats for Electronic Medical Bill Processing) as originally submitted to the insurance carrier in accordance with this chapter, and a copy of all medical bills submitted to the insurance carrier for an appeal in accordance with §133.250 of this chapter (concerning Reconsideration for Payment of Medical Bills);

(K) each explanation of benefits or e-remittance (collectively "EOB") related to the dispute as originally submitted to the health care provider in accordance with this chapter or, if no EOB was received, convincing documentation providing evidence of insurance carrier receipt of the request for an EOB;

(L) when applicable, a copy of the final decision regarding compensability, extent of injury, liability and/or medical necessity for the health care related to the dispute;

(M) a copy of all applicable medical records related to the dates of service in dispute;

(N) a position statement of the disputed issue(s) that shall include:

(i) the requestor's reasoning for why the disputed fees should be paid or refunded,

(ii) how the Labor Code and division rules, including fee guidelines, impact the disputed fee issues, and

(iii) how the submitted documentation supports the requestor's position for each disputed fee issue;

(O) documentation that discusses, demonstrates, and justifies that the payment amount being sought is a fair and reasonable rate of reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement) or §134.503 of this title (relating to Pharmacy Fee Guideline) when the dispute involves health care for which the division has not established a maximum allowable reimbursement (MAR) or reimbursement rate, as applicable;

(P) if the requestor is a pharmacy processing agent, a signed and dated copy of an agreement between the processing agent and the pharmacy clearly demonstrating the dates of service covered by the contract and a clear assignment of the pharmacy's right to participate in the MFDR process. The pharmacy processing agent may redact any proprietary information contained within the agreement; and

(Q) any other documentation that the requestor deems applicable to the medical fee dispute.

(3) Subclaimant Dispute Request.

(A) A request made by a subclaimant under Labor Code §409.009 (relating to Subclaims) must comply with §140.6 of this title (concerning Subclaimant Status: Establishment, Rights, and Procedures) and submit the required documents to the division.

(B) A request made by a subclaimant under Labor Code §409.0091 (relating to Reimbursement Procedures for Certain Entities) must comply with the document requirements of §140.8 of this title (concerning Procedures for Health Care Insurers to Pursue Reimbursement of Medical Benefits under Labor Code §409.0091) and submit the required documents to the division.

(4) Injured Employee Dispute Request. An injured employee who has paid for health care may request MFDR of a refund or reimbursement request that has been denied. The injured employee must send the request to the division in the form and manner prescribed by the division by mail service, personal delivery, or electronic transmission as described in §102.5 of this title and must include:

(A) the name, address, and contact information of the injured employee;

(B) the date of the injury;

(C) the date(s) of the service(s) in dispute;

(D) a description of the services paid;

(E) the amount paid by the injured employee;

(F) the amount of the medical fee in dispute;

(G) an explanation of why the disputed amount should be refunded or reimbursed, and how the submitted documentation supports the explanation for each disputed amount;

(H) proof of employee payment (including copies of receipts, health care provider billing statements, or similar documents); and

(I) a copy of the insurance carrier's or health care provider's denial of reimbursement or refund relevant to the dispute, or if no denial was received, convincing evidence of the injured employee's attempt to obtain reimbursement or refund from the insurance carrier or health care provider.

(5) Division Response to Request. The division will forward a copy of the request and the documentation submitted in accordance with paragraph (2), (3), or (4) of this subsection to the respondent. The respondent shall be deemed to have received the request on the acknowledgment date as defined in §102.5 of this title (relating to General Rules for Written Communications to and from the Commission).

(d) Responses. Responses to a request for MFDR must be legible and submitted to the division and to the requestor in the form and manner prescribed by the division.

(1) Timeliness. The response will be deemed timely if received by the division through mail service, personal delivery, or electronic transmission, as described in §102.5 of this title, within 14 calendar days after the date the respondent received the copy of the requestor's dispute. If the division does not receive the response information within 14 calendar days of the dispute notification, then the division may base its decision on the available information.

(2) Response. On receipt of the request, the respondent must provide any missing information not provided by the requestor and known to the respondent. The respondent must also provide the following information and records:

(A) the name, address, and contact information of the respondent;

(B) all initial and appeal EOBs related to the dispute as originally submitted to the health care provider in accordance with this chapter, related to the health care in dispute not submitted by the requester, or a statement certifying that the respondent did not receive the health care provider's disputed billing before the dispute request;

(C) all medical bill(s) related to the dispute, submitted in accordance with this chapter if different from that originally submitted to the insurance carrier for reimbursement;

(D) any pertinent medical records or other documents relevant to the fee dispute not already provided by the requestor;

(E) a statement of the disputed fee issue(s), which includes:

(i) a description of the health care in dispute;

(ii) a position statement of reasons why the disputed medical fees should not be paid;

(iii) a discussion of how the Labor Code and division rules, including fee guidelines, impact the disputed fee issues;

(iv) a discussion regarding how the submitted documentation supports the respondent's position for each disputed fee issues;

(v) documentation that discusses, demonstrates, and justifies that the amount the respondent paid is a fair and reasonable reimbursement in accordance with Labor Code §413.011 and §134.1 or §134.503 of this title if the dispute involves health care for which the division has not established a MAR or reimbursement rate, as applicable.

(F) The responses shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review. If the response includes unresolved issues of compensability, extent of injury, liability,

or medical necessity, the request for MFDR will be dismissed in accordance with subsection (f)(3)(B) or (C) of this section.

(G) If the respondent did not receive the health care provider's disputed billing or the employee's reimbursement request relevant to the dispute prior to the request, the respondent shall include that information in a written statement.

(H) If the medical fee dispute involves compensability, extent of injury, or liability, the insurance carrier must attach any related Plain Language Notice in accordance with §124.2 of this title (concerning Insurance Carrier Reporting and Notification Requirements).

(I) If the medical fee dispute involves medical necessity issues, the insurance carrier must attach documentation that supports an adverse determination in accordance with §19.2005 of this title (concerning General Standards of Utilization Review).

(e) Withdrawal. The requestor may withdraw its request for MFDR by notifying the division prior to a decision.

(f) MFDR Action. The division will review the completed request and response to determine appropriate MFDR action.

(1) Request for Additional Information. The division may request additional information from either party to review the medical fee issues in dispute. The additional information must be received by the division no later than 14 days after receipt of this request. If the division does not receive the requested additional information within 14 days after receipt of the request, then the division may base its decision on the information available. The party providing the additional information shall forward a copy of the additional information to all other parties at the time it is submitted to the division.

(2) Issues Raised by the Division. The division may raise issues in the MFDR process when it determines such an action to be appropriate to administer the dispute process consistent with the provisions of the Labor Code and division rules.

(3) Dismissal. A dismissal is not a final decision by the division. The medical fee dispute may be submitted for review as a new dispute that is subject to the requirements of this section. The division may dismiss a request for MFDR if:

(A) the division determines that the medical bills in the dispute have not been submitted to the insurance carrier for an appeal, when required;

(B) the request contains an unresolved adverse determination of medical necessity;

(C) the request contains an unresolved compensability, extent of injury, or liability dispute for the claim; or

(D) the division determines that good cause exists to dismiss the request, including a party's failure to comply with the provisions of this section.

(4) Decision. The division shall send a decision to the disputing parties or to representatives of record for the parties, if any, and post the decision on the department's website.

(5) Division Fee. The division may assess a fee in accordance with §133.305 of this subchapter (relating to MDR--General).

(g) Appeal of MFDR Decision. A party to a medical fee dispute may seek review of the decision. Parties are deemed to have received the MFDR decision as provided in §102.5 of this title. The MFDR decision is final if the request for the benefit review conference is not timely made. If a party provides the benefit review officer or administrative law judge with documentation listed in subsection (d)(2)(H) or (I) of this section that shows unresolved issues regarding compensability, extent of injury, liability, or medical necessity for the same service subject to the fee dispute, then the benefit review officer or administrative law judge shall abate the proceedings until those issues have been resolved.

(1) A party seeking review of an MFDR decision must request a benefit review conference no later than 20 days from the date the MFDR decision is received by the party. The party that requests a review of the MFDR decision must mediate the dispute in the manner required by Labor Code, Chapter 410, Subchapter B and request a benefit review conference under Chapter 141 of this title (relating to Dispute Resolution--Benefit Review Conference). A party may appear at a benefit review conference via telephone. The benefit review conference will be conducted in accordance with Chapter 141 of this title.

(A) Notwithstanding §141.1(b) of this title (relating to Requesting and Setting a Benefit Review Conference), a seeking review of an MFDR decision may request a benefit review conference.

(B) At a benefit review conference, the parties to the dispute may not resolve the dispute by negotiating fees that are inconsistent with any applicable fee guidelines adopted by the commissioner.

(C) A party must file the request for a benefit review conference in accordance with Chapter 141 of this title and must include in the request a copy of the MFDR decision. Providing a copy of the MFDR decision satisfies the documentation requirements in §141.1(d) of this title. A first responder's request for a benefit review conference must be accelerated by the division and given priority in accordance with Labor Code §504.055. The first responder must provide notice to the division that the contested case involves a first responder.

(2) If the medical fee dispute remains unresolved after a benefit review conference, the parties may request arbitration as provided in Labor Code, Chapter 410, Subchapter C and Chapter 144 of this title (relating to Dispute Resolution). If arbitration is not elected, the party may appeal the MFDR decision by requesting a contested case hearing before the State Office of Administrative Hearings. A first responder's request for arbitration by the division or a contested case hearing before the State Office of Administrative Hearings must be accelerated by the division and given priority in accordance with Labor Code §504.055. The first responder must provide notice to the division that the contested case involves a first responder.

(A) To request a contested case hearing before State Office of Administrative Hearings, a party shall file a written request for a State Office of Administrative Hearings hearing with the Division's Chief Clerk of Proceedings not later than 20 days after conclusion of the benefit review conference in accordance with §148.3 of this title (relating to Requesting a Hearing).

(B) The party seeking review of the MFDR decision shall deliver a copy of its written request for a hearing to all other parties involved in the dispute at the same time the request for hearing is filed with the division.

(3) A party to a medical fee dispute who has exhausted all administrative remedies may seek judicial review of the decision of the Administrative Law Judge at the State Office of Administrative Hearings. The division and the department are not considered to be parties to the medical dispute pursuant to Labor Code §413.031(k-2) and §413.0312(f). Judicial review under this paragraph shall be conducted in the manner provided for judicial review of contested cases under Chapter 2001, Subchapter G Government Code, except that in the case of a medical fee dispute the party seeking judicial review must file suit not later than the 45th day after the date on which the State Office of Administrative Hearings mailed the party the notification of the deci-

sion. The mailing date is considered to be the fifth day after the date the decision was issued by the State Office of Administrative Hearings. A party seeking judicial review of the decision of the administrative law judge shall at the time the petition for judicial review is filed with the district court file a copy of the petition with the division's chief clerk of proceedings.

(h) Billing of the non-prevailing party. Except as otherwise provided by Labor Code §413.0312, the non-prevailing party shall reimburse the division for the costs for services provided by the State Office of Administrative Hearings and any interest required by law.

(1) The non-prevailing party shall remit payment to the division not later than the 30th day after the date of receiving a bill or statement from the division.

(2) In the event of a dismissal, the party requesting the hearing, other than the injured employee, shall reimburse the division for the costs for services provided by the State Office of Administrative Hearings unless otherwise agreed by the parties.

(3) If the injured employee is the non-prevailing party, the insurance carrier shall reimburse the division for the costs for services provided by the State Office of Administrative Hearings.

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 January 15, 2021.

TRD-202100232
Kara Mace
Deputy Commissioner of Legal Services
Texas Department of Insurance, Division of Workers' Compensation
Effective date: February 22, 2021
Proposal publication date: October 9, 2020
For further information, please call: (512) 804-4703

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

31 TAC §58.21

The Texas Parks and Wildlife Commission in a duly noticed meeting on November 10, 2020, adopted an amendment to 31 TAC §58.21, concerning Taking or Attempting to Take Oysters from Public Oyster Beds: General Rules, without changes to the proposed text as published in the September 25, 2020, issue of the *Texas Register* (45 TexReg 6752). The rules will not be republished.

The amendment prohibits the harvest of oysters for two years at six sites: three sites in Conditionally Approved Area TX-4 in upper Galveston Bay (Trinity Sanctuary Reef, Trinity Harvestable Reef 1, and Trinity Harvestable Reef 2; approximately 23.0, 16.9 and 16.9 acres, respectively), one site in Conditionally Approved Area TX-6 in Galveston Bay (Resignation Reef, 27.2 acres), one site in Conditionally Approved Area TX-1 in Galveston Bay (Pepper Grove Reef, 11.9 acres), and one site in Approved Area TX-30 in Aransas Bay (Grass Island Reef, 80 acres). The Texas Department of State Health Services (DSHS) regulates shellfish sanitation and designates specific areas where oysters may be harvested for human consumption. The designation of "Conditionally Approved" or "Approved" is determined by DSHS. The amendment corrects the name of a reef complex in subsection (c)(2)(A)(ii). The current rules refer to that area as South Redfish Reef. It is more commonly known as Pasadena Reef.

The temporary closures will allow for the planting of oyster cultch to repopulate in those areas and enough time for those oysters to reach legal size for harvest. Oyster cultch is the material to which oyster spat (juvenile oysters) attach in order to create an oyster bed.

Under Parks and Wildlife Code, §76.115, the department may close an area to the taking of oysters when the commission finds that the area is being overworked or damaged or the area is to be reseeded or restocked. Oyster reefs in Texas have been impacted due to drought, flooding, and hurricanes (Hurricane Ike, September 2008 and Hurricane Harvey, August 2017), as well as high harvest pressure. The department's oyster habitat restoration efforts to date have resulted in a total of approximately 1,720 acres of oyster habitat returned to productive habitat within these bays.

House Bill 51 (85th Legislature, 2017) included a requirement that certified oyster dealers re-deposit department-approved cultch materials in an amount equal to thirty percent of the total volume of oysters purchased in the previous license year. For the 2021 fiscal year, the department anticipates this requirement will result in the restoration of more than thirty acres. Funds generated from House Bill 51 were used to restore 4.5 acres on Pepper Grove Reef in 2019 and are expected to be used to restore up to 27.2 acres on Resignation Reef in 2020-2021.

Following Hurricane Harvey in 2017, the National Marine Fisheries Service (NMFS) awarded the Texas Parks and Wildlife Department over $13 million of fisheries disaster relief funding that was appropriated by Congress under the Bipartisan Budget Act of 2018 (P.L. 115-123). The notification to the governor of Texas from National Marine Fisheries Service (NMFS) stated that funds should be spent to "strengthen the long-term economic and environmental sustainability of the fishery", and over $4 million was dedicated specifically to oyster restoration activities. A portion of these funds, combined with funding generated by House Bill 51 (2017) and the Shell Recovery Program (Chapter 76.020, Senate Bill 932, 82nd Leg., 2011), will be used to restore oyster habitats within an 80-acre area on Grass Island reef in Aransas Bay. Oyster abundance on this reef has severely declined over time, and average oyster abundance on Grass Island is 75% less than the average oyster abundance on other reefs in Aransas Bay. The portion of the reef selected for restoration is characterized by degraded substrates. The restoration activities will focus on establishing stable substrate and providing suitable conditions for spat settlement and oyster bed development.

The upper Galveston Bay sites are located in the proximity of Beasley Reef near Trinity Bay and have been degraded due to a variety of stressors. The Nature Conservancy (TNC) secured funding through the National Fish and Wildlife Foundation (NFWF) Gulf Environmental Benefit Fund (GEBF) program to

restore oyster habitat. The three sites in upper Galveston Bay include two 16.9-acre sites that will be restored on a degraded oyster reef that is commercially- and recreationally-fished, and 23.0 acres that will serve as a sanctuary reef. The sanctuary reef will be constructed of cultch materials of a size that will limit commercial harvest activities and provide a source of oyster larvae that will colonize other oyster habitat in this bay system.

The department received no comments opposing adoption of the proposed rule.

The department received six comments supporting adoption of the proposed rule.

The Coastal Conservation Association, The Nature Conservancy - Texas, the Galveston Bay Foundation, and the Pew Charitable Trusts commented in favor of adoption of the proposed rule.

The amendment is adopted under Parks and Wildlife Code, §76.301, which authorizes the commission to regulate the taking, possession, purchase and sale of oysters, including prescribing the times, places, conditions, and means and manner of taking oysters.

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 January 14, 2021.

TRD-202100204
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: February 3, 2021
Proposal publication date: September 25, 2020
For further information, please call: (512) 389-4775

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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

The Texas Water Development Board (TWDB) adopts amendments to 31 Texas Administrative Code (TAC) §§363.1, 363.4, 363.12, 363.13, 363.15, 363.16, 363.31, 363.41, 363.42, 363.43, 363.1303, 363.1304, 363.1307, and 363.1309. The proposal is adopted without changes as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8739). The rules will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT

This rulemaking is adopted under the authority of the Texas Water Code §6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The rulemaking is adopted under the additional authority of Texas Water Code Chapter 15, Subchapters G and H, §16.342, and Chapter 17 Subchapters D, E and F, which provides the TWDB with the authority to which provides the TWDB with the authority to adopt rules necessary to carry out its duties.

The purpose of the rule is to implement legislative changes from the 86th Legislative Session and to clarify certain aspects of TWDB rules related to state-funded financial assistance programs. This rulemaking will implement legislative changes from House Bill 3339, 86th Texas Legislative Session (HB 3339), which standardized and consolidated water conservation plan requirements for TWDB financial assistance programs. The rule also makes non-substantive changes to the general provisions of Chapter 363 in order to conform with changes made to Subchapter D (related to Flood Financial Assistance), which implements Senate Bill 7, 86th Texas Legislative Session (SB 7). The rules include various minor changes to conform rule text with agency practice, including the addition of definitions of agency terms.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS

Subchapter A. General Provisions.

Division 1. Introductory Provisions.

Section 363.1. Scope of Subchapter.

Section 363.1 is amended to show that Chapter 363, Subchapter A applies to the newly created Flood Infrastructure Fund, which was created by SB 7.

Section 363.4. Activities Funded.

Section 363.4 is amended to clarify that the board may provide financial assistance under this chapter for the newly created Flood Infrastructure Fund, which was created by SB 7.

Division 2. General Application Procedures.

Section 363.12. General, Legal, and Fiscal Information.

The requirement in §363.12 that the applicant submit the application in writing is deleted in order to clarify that the applicant may submit the application via the TWDB's Online Loan Application. Section 363.12(2)(A)(vii) is amended to clarify that the source of repayment is only required in the application for financial assistance requiring repayment. Section 363.12(2)(A)(xii)(V) is added to require an applicant to attest that the applicant is or will become in compliance with all of its material contracts and §363.12(2)(A)(xii)(VI) is amended to require the applicant to attest that at the time of the applicant and for the duration of any financial assistance provided by the TWDB, the applicant will remain in compliance with all applicable state and federal laws, rules and regulations. Conforming changes are made to §363.12(2)(B) (see changes to §363.13).

Section 363.13. Preliminary Engineering Feasibility Report.

The heading of §363.13 is amended to reflect the correct title of the document mentioned in that section. Conforming changes are made throughout the Chapter.

Section 363.13 is also amended to require a general description of the existing system in the Preliminary Engineering Feasibility Report, which is consistent with TWDB practice.

Section 363.15. Required Water Conservation Plan.

Section 363.15 is amended to reflect legislative changes from HB 3339, including updating the citation to the new Water Code provision. Section 363.15 is also amended to state that only one

copy of the water conservation plan is required. The exceptions are amended to conform to the language of HB 3339.

Section 363.16. Pre-design Funding Option.

Section 363.16(b) is amended to allow for the pre-design funding option for flood projects funded from the Flood Infrastructure Fund. This change is made in order to allow the Board to commit to planning, acquisition, design, and construction phases for flood projects through the FIF. The Flood Infrastructure Fund program provides extensive requirements for cooperation among entities affected by each flood project and provides extensive design requirements in order to ensure projects are successful.

Section 363.16 is amended to state that the contracts for engineering services at this point may be submitted in draft form.

Section 363.16 is also amended to clarify that any required water conservation plan must be adopted prior to closing. This change is consistent with TWDB practice.

Conforming changes are made pursuant to amendments to §363.13.

Division 3. Formal Action by the Board.

Section 363.31. Board Consideration of Application.

Section 363.31 is amended to state that the TWDB will not duplicate funding from federal sources. This change is made to satisfy federal requirements and to ensure the public interest is served by TWDB funding.

Division 4. Prerequisites to Release of State Funds.

Section 363.41. Engineering Design Approvals.

Section 363.41 is amended to clarify that the contract documents discussed in this section may be submitted in draft form during this phase. Section 363.41 is also amended to clarify when and how applicants should send a copy of certain documents to the Texas Commission on Environmental Quality. Section 363.41(a)(4) is added to require a high-resolution digital, searchable copy of the plans and specifications in order to update rule text in accordance with agency practice and advancing technology. Section 363.41(b) is amended to state that the iron and steel requirements of that subsection may apply to flood projects and to clarify the heading for exemptions.

Section 363.42. Loan Closing.

Section 363.42 is amended to conform to legislative changes from HB 3339 related to the required water conservation plans.

Section 363.43. Release of Funds.

Section 363.43 is amended to conform to agency practice related to release of funds for multiple construction contracts. Conforming changes are made pursuant to amendments to §363.13.

Subchapter M. State Water Implementation Fund for Texas and State Water Implementation Revenue Fund for Texas.

Section 363.1303. Prioritization System.

Section 363.1303 is amended to state that an applicant who will submit a complete application must do so by the deadline established by the executive administrator, rather than within 30 days. This amendment reflects current practice and allows more flexibility.

Section 363.1304. Prioritization Criteria.

Section 363.1304 is amended to fix typographical errors. Section 363.1304(7) is amended to clarify that points will not be given for principal forgiveness or grants from the TWDB for the prioritization criteria related to local contributions to be made to the project.

Section 363.1307. Pre-design Funding Option.

Section 363.1307 is amended to state that contracts for engineering services may be in draft form during this phase. Section 363.1307 is also amended to clarify that any required water conservation plan must be adopted prior to closing. This change is consistent with TWDB practice. Conforming changes are made pursuant to amendments to §363.13.

Section 363.1309. Findings Required.

Section 363.1309 is amended to conform to legislative changes from HB 3339 related to the required water conservation plan.

REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to implement legislation and clarify TWDB rules.

Even if the adopted rule was a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather Texas Water Code §§15.439 and 16.4021. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The board evaluated this adopted rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to implement legislation and clarify requirements in TWDB rules in order to facilitate financial assistance for water, wastewater, and flood projects. The adopted rule would substantially advance this stated purpose by updating citations to new law, including requirements of new legislation, and updating language to con-

form to agency and industry practice. The adopted rule will also require borrowers of TWDB funds to attest that they are or will be in compliance with all of their material contracts and will require borrowers to remain in compliance with all applicable state and federal laws, rules, and regulations during the term of the financial assistance from the TWDB.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that administers financial assistance programs for water, wastewater, and flood projects.

Nevertheless, the board further evaluated this adopted rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule implements TWDB financial assistance programs that are voluntary for local governments to participate in. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS

The comment period ended on January 4, 2021. No comments were received and no changes were made.

DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §363.1, §363.4

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §§6.101, 15.439, 16.342, and 16.4021. Additionally, this rulemaking is adopted under the authority of Texas Water Code Chapter 15, Subchapters G and H, and Chapter 17, Subchapters D, E, and F.

Texas Water Code Chapters 15, 16, and 17 are affected by this rulemaking.

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 January 14, 2021.

TRD-202100207
Ashley Harden
General Counsel
Texas Water Development Board
Effective date: February 3, 2021
Proposal publication date: December 4, 2020
For further information, please call: (512) 463-7686

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DIVISION 2. GENERAL APPLICATION PROCEDURES

31 TAC §§363.12, 363.13, 363.15, 363.16

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §§6.101, 15.439, 16.342, and 16.4021. Additionally, this rulemaking is adopted under the authority of Texas Water Code Chapter 15, Subchapters G and H, and Chapter 17, Subchapters D, E, and F.

Texas Water Code Chapters 15, 16, and 17 are affected by this rulemaking.

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 January 14, 2021.

TRD-202100208
Ashley Harden
General Counsel
Texas Water Development Board
Effective date: February 3, 2021
Proposal publication date: December 4, 2020
For further information, please call: (512) 463-7686

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DIVISION 3. FORMAL ACTION BY THE BOARD

31 TAC §363.31

STATUTORY AUTHORITY.

This rulemaking is adopted under the authority of Texas Water Code §§6.101, 15.439, 16.342, and 16.4021. Additionally, this rulemaking is adopted under the authority of Texas Water Code Chapter 15, Subchapters G and H, and Chapter 17, Subchapters D, E, and F.

Texas Water Code Chapters 15, 16, and 17 are affected by this rulemaking.

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 January 14, 2021.

TRD-202100209
Ashley Harden
General Counsel
Texas Water Development Board
Effective date: February 3, 2021
Proposal publication date: December 4, 2020
For further information, please call: (512) 463-7686

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DIVISION 4. PREREQUISITES TO RELEASE OF STATE FUNDS

31 TAC §§363.41 - 363.43

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §§6.101, 15.439, 16.342, and 16.4021. Additionally, this rulemaking is adopted under the authority of Texas Water Code Chapter 15, Subchapters G and H, and Chapter 17, Subchapters D, E, and F.

Texas Water Code Chapters 15, 16, and 17 are affected by this rulemaking.

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 January 14, 2021.

TRD-202100212
Ashley Harden
General Counsel
Texas Water Development Board
Effective date: February 3, 2021
Proposal publication date: December 4, 2020
For further information, please call: (512) 463-7686

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SUBCHAPTER M. STATE WATER IMPLEMENTATION FUND FOR TEXAS AND STATE WATER IMPLEMENTATION REVENUE FUND FOR TEXAS

31 TAC §§363.1303, 363.1304, 363.1307, 363.1309

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §§6.101, 15.439, 16.342, and 16.4021. Additionally, this rulemaking is adopted under the authority of Texas Water Code Chapter 15, Subchapters G and H, and Chapter 17, Subchapters D, E, and F.

Texas Water Code Chapters 15, 16, and 17 are affected by this rulemaking.

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 January 14, 2021.

TRD-202100213
Ashley Harden
General Counsel
Texas Water Development Board
Effective date: February 3, 2021
Proposal publication date: December 4, 2020
For further information, please call: (512) 463-7686

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CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

SUBCHAPTER D. APPLICATION FOR ASSISTANCE

31 TAC §371.31

The Texas Water Development Board (TWDB) adopts an amendment to 31 TAC §371.31, concerning Timeliness of Application and Required Application Information. The proposal is adopted without changes as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8752). The rule will not be republished.

DISCUSSION OF THE ADOPTED AMENDMENTS

This amendment is proposed under the authority of the Texas Water Code § 6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The amendment is proposed under the additional authority of Texas Water Code § 15.605 which provides the TWDB with the authority to adopt rules necessary to carry out Chapter 15, Subchapter J.

The purpose of the proposed rule is to conform rule text with agency practice for the Drinking Water State Revolving Fund program administered by the TWDB.

TWDB REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the amendment in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the amendment is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the amendment is to strengthen application requirements in order to facilitate financial assistance for water projects.

Even if the amendment were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this amendment because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This amendment does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather is proposed under the authority of Texas Water Code § 15.605. Therefore, this amendment does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT

The board evaluated this amendment and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to strengthen application requirements in order to facilitate financial assistance for water projects. The amendment will advance this purpose by requiring borrowers of TWDB funds to attest that they are or will be in compliance with all of its material contracts. Further, the amendment requires borrowers of TWDB to remain in compliance with all applicable state and federal laws, rules, and regulations during the term of the financial assistance from the TWDB.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this amendment because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that administers financial assistance programs for water, wastewater, and flood projects.

Nevertheless, the board further evaluated this amendment and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this amendment would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS

The public comment period extended through January 4, 2021, and no comments were received.

STATUTORY AUTHORITY

The amendment is adopted under the authority of §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code § 15.605 which provides the TWDB with the authority to adopt rules necessary to carry out Chapter 15, Subchapter J.

Texas Water Code Chapter 15 is affected by this rulemaking.

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 January 14, 2021.

TRD-202100214

Ashley Harden
General Counsel
Texas Water Development Board
Effective date: February 3, 2021
Proposal publication date: December 4, 2020
For further information, please call: (512) 463-7686

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CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

SUBCHAPTER D. APPLICATION FOR ASSISTANCE

31 TAC §375.41

The Texas Water Development Board (TWDB) adopts 31 TAC §375.41. The proposal is adopted without changes as published in the December 4, 2020, issue of the *Texas Register* (45 TexReg 8755). The rule will not be republished.

DISCUSSION OF THE ADOPTED AMENDMENTS

This amendment is adopted under the authority of the Texas Water Code §6.101 which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State. The amendment is adopted under the additional authority of Texas Water Code §15.605 which provides the TWDB with the authority to adopt rules necessary to carry out Chapter 15, Subchapter J.

The purpose of the adopted rule is to conform rule text with agency practice for the Clean Water State Revolving Fund program administered by the TWDB.

TWDB REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the amendment in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the amendment is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the amendment is to strengthen application requirements in order to facilitate financial assistance for water projects.

Even if the amendment were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this amendment because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This amendment does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a

requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not adopted solely under the general powers of the agency, but rather is adopted under the authority of Texas Water Code §15.605. Therefore, this amendment does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT

The board evaluated this amendment and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to strengthen application requirements in order to facilitate financial assistance for water projects. The amendment will advance this purpose by requiring borrowers of TWDB funds to attest that they are or will be in compliance with all of its material contracts. Further, the amendment requires borrowers of TWDB to remain in compliance with all applicable state and federal laws, rules, and regulations during the term of the financial assistance from the TWDB.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this amendment because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that administers financial assistance programs for water, wastewater, and flood projects.

Nevertheless, the board further evaluated this amendment and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this amendment would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS

The public comment period extended through January 4, 2021 and no comments were received.

STATUTORY AUTHORITY

The amendment is adopted under the authority of §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code § 15.605 which provides the TWDB with the authority to adopt rules necessary to carry out Chapter 15, Subchapter J.

Texas Water Code Chapter 15 is affected by this rulemaking.

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 January 14, 2021.

TRD-202100215
Ashley Harden
General Counsel
Texas Water Development Board
Effective date: February 3, 2021
Proposal publication date: December 4, 2020
For further information, please call: (512) 463-7686

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES
SUBCHAPTER C. FORENSIC ANALYST LICENSING PROGRAM

37 TAC §651.209

The Texas Forensic Science Commission ("Commission") adopts an amendment to 37 Texas Administrative Code §651.209 without changes to the text as published in the November 20, 2020 issue of the *Texas Register* (45 Tex Reg 8287). The rules will not be republished. Section 651.209 describes the requirements for forensic analyst license reinstatement. The adopted amendments provide an exemption from elevated coursework requirements for license candidates who have an expired license and are reinstating the license after an indefinite period of absence from employment at an accredited laboratory. Candidates must be employed at an accredited laboratory to be eligible for licensure. Under the current rules, if a person departs employment from an accredited laboratory and his or her license expires, the candidate may be subject to elevated college coursework and other requirements that did not exist when the candidate was initially licensed. The amendments are necessary to reflect adoptions made by the Commission at its October 23, 2020 quarterly meeting. The adoption is made in accordance with the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Article 38.01 §4-a, which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license and the Commission's rulemaking authority under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure Article 38.01.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-a(d), which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license.

Cross reference to statute. The adoption affects 37 Texas Administrative Code §651.209.

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 January 12, 2021.

TRD-202100175
Leigh Tomlin
Associate General Counsel
Texas Forensic Science Commission
Effective date: February 1, 2021
Proposal publication date: November 20, 2020
For further information, please call: (512) 784-0037

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37 TAC §651.216

The Texas Forensic Science Commission ("Commission") adopts an amendment to 37 Texas Administrative Code §651.216 without changes to the text as published in the November 20, 2020, issue of the *Texas Register* (45 TexReg 8289) which describes disciplinary actions the Commission may take against a license holder or applicant for a license. The rules will not be republished. The adopted amendments specify factors the Commission may consider in determining whether to take adverse action against a license holder or applicant. The amendments are necessary to reflect adoptions made by the Commission at its October 23, 2020, quarterly meeting. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Article 38.01 §4-a, which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license and the Commission's rulemaking authority under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure Article 38.01.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-a(d), which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license.

Cross reference to statute. The adoption affects 37 Texas Administrative Code §651.216.

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 January 12, 2021.

TRD-202100176
Leigh Tomlin
Associate General Counsel
Texas Forensic Science Commission
Effective date: February 1, 2021
Proposal publication date: November 20, 2020
For further information, please call: (512) 784-0037

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37 TAC §651.221

The Texas Forensic Science Commission ("Commission") adopts an amendment to 37 Texas Administrative Code §651.221 without changes to the text as published in the November 20, 2020, issue of the *Texas Register* (45 TexReg 8291). The rules will not be republished. §651.221 describes the requirements for a laboratory license issued for purposes of ensuring the availability of uncommon forensic analysis, timeliness of forensic analysis, and/or service to counties with limited access to forensic analysis. Under the current rule, a laboratory (and its employed analysts) may qualify for licensure under this provision where either (1) a Texas customer requests a type of forensic analysis that is not widely available in accredited forensic laboratories; or (2) the request is necessary to ensure the availability of timely forensic analyses in counties for which access to forensic analyses is limited. The Commission amends the provision to remove qualifying provision (2), because the provision is no longer necessary due to prior rule revisions addressing the same issue. The Commission offers a *De Minimis* Texas Casework license program (37 Texas Administrative Code §651.220) that became effective August 24, 2020, for laboratories that may have otherwise qualified under this provision. The Commission also offers a Temporary License (37 Texas Administrative Code §651.211) for forensic analysts who may have otherwise qualified for licensure under this category. The amendments are necessary to reflect adoptions made by the Commission at its October 23, 2020, quarterly meeting. The amendments are made in accordance with the Commission's forensic analyst licensing authority under Code of Criminal Procedure, Article 38.01 §4-a, which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license and the Commission's rulemaking authority under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure Article 38.01.

Summary of Comments. No comments were received regarding the amendments to this section.

Statutory Authority. The amendments are adopted under Code of Criminal Procedure, Article 38.01 §3-a, which directs the Commission to adopt rules necessary to implement Article 38.01, and Article 38.01 §4-a(d), which directs the Commission to adopt rules to establish the qualifications for a forensic analyst license.

Cross reference to statute. The adoption affects 37 Texas Administrative Code §651.221.

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 January 12, 2021.

TRD-202100177
Leigh Tomlin
Associate General Counsel
Texas Forensic Science Commission
Effective date: February 1, 2021
Proposal publication date: November 20, 2020
For further information, please call: (512) 784-0037

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

The Department of Family and Protective Services (DFPS) adopts amendments to §700.332 and §700.1013 in Title 40, Texas Administrative Code (TAC), Chapter 700, relating to Child Protective Services, in Subchapters C, relating to Eligibility for Child Protective Services and J, relating to Assistance Programs for Relatives and Other Caregivers. The rules are adopted with grammatical corrections and adding a reference to TAC to the proposed text published in the November 6, 2020 issue of the *Texas Register* (45 TexReg 7992). The rules will be republished.

BACKGROUND AND JUSTIFICATION

Currently, the Texas Administrative Code allows the Department to authorize funding for day care (also referred to as child care) for a child in a foster care placement or in a relative or other designated caregiver placement if certain criteria are met. The rules currently provide that the Assistant Commissioner for Child Protective Services (CPS) may grant a good cause waiver of some of the requirements if the Assistant Commissioner determines that the child's placement cannot be or is unlikely to be sustained if the caregiver cannot receive day care, there is no reasonable alternative to the provision of day care, and the day care is only authorized for the periods of time the caregiver must be outside the home for employment.

However, although a request for day care services may be initiated by Child Protective Investigations (CPI) staff, the current rules do not address the authority of the Associate Commissioner for CPI to grant a waiver as the CPI Associate Commissioner position was only recently created in 2017 to oversee the newly created Investigations division of DFPS which includes child abuse and neglect investigations formerly under the CPS program. The current rules also do not allow for delegation of waiver decisions. This can lead to delays in the granting of waivers when an Associate Commissioner is unavailable. For foster or relative caregivers with a critical need for day care services for a child placed with them, a delay in receiving day care could lead to a placement breakdown and a loss of stability for the child.

Accordingly, the proposed amendments to the rules have three main purposes: (1) updating terminology, including changing Assistant Commissioner to Associate Commissioner to accurately reflect position titles; (2) allowing the Associate Commissioner for CPI to grant a good cause waiver of certain requirements related to payment for day care services for a child in the Department's conservatorship; and (3) allowing the CPI and CPS Associate Commissioners to delegate the authority for granting the waiver.

COMMENTS

The 30-day comment period ended December 6, 2020. During this period, DFPS did not receive any comments regarding the proposed rules.

SUBCHAPTER C. ELIGIBILITY FOR CHILD PROTECTIVE SERVICES

40 TAC §700.332

STATUTORY AUTHORITY

The amendments are adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall adopt rules for the operation and provision of services by the Department.

Section 700.332 implements Texas Family Code Sec. 264.124, which authorizes the Department, in accordance with Department rules, to implement a process to verify that each foster parent who is seeking monetary assistance from the department for day care for a foster child has attempted to find appropriate day care services for the foster child through community services, including Head Start programs, prekindergarten classes, and early education programs offered in public schools.

The statute requires the Department to specify the documentation the foster parent must provide to the Department to demonstrate compliance with the requirements established under the law. The Department may not provide monetary assistance to a foster parent for day care for a foster child without the required verification unless the Department determines the verification would prevent an emergency placement that is in the child's best interest.

§700.332. Eligibility for Foster Care Day Care Services.

(a) In this subchapter, the following terms have the following meanings:

(1) "Day care" means the assessment, care, training, education, custody, treatment, or supervision of a foster child by a person other than the child's foster parent for less than 24 hours a day, but at least two hours a day, three or more days a week.

(2) "Emergency placement that is in the child's best interest" means that despite the exercise of reasonable diligence, compliance with the Department's verification process regarding the availability of community day care resources would interfere with a placement that is in the child's best interest.

(3) "School-aged child" means a child who has reached the age of 6 by September 1 of the current year or who enrolls in school and reaches the age of 6 during the school year.

(b) To the extent funds are available and in accordance with any priority system established under subsection (e) of this section, DFPS may provide day care for authorized purposes to a foster parent if:

(1) the child is 13 years or younger and either:

(A) placed in a foster family home or foster group home where each foster parent in the home works outside the home 40 hours per week or more; or

(B) the child of a parent who is a minor in foster care if the child:

(i) is not in the conservatorship of DFPS;

(ii) resides with the child's minor parent in a foster home where all caregivers are employed full-time;

(iii) receives primary care from the minor parent outside of school hours;

(iv) needs day care to allow the minor parent to remain in school and complete the minor parent's educational goals; and

(v) has a minor parent who is unable to access child care through a Texas Workforce Commission work or training program or through a school-based operation.

(2) the foster parent is a resident of Texas;

(3) the child's service level is basic;

(4) the child is in DFPS' managing conservatorship and not in an adoptive placement; and

(5) there is no other available type of day care provided by the community, and the foster parent verifies in writing that the foster parent has attempted to find appropriate day care services for the child through community services, including:

(A) Head Start programs;

(B) Prekindergarten classes;

(C) Early education programs offered in public schools; and

(D) Any other available and appropriate resources in the foster parent's community.

(c) Day care for foster parents is authorized for the purpose of providing daily supervision:

(1) during the foster parents' work hours; or

(2) while the foster parents are attending judicial reviews, case conferences, or foster parent training.

(d) Day care for foster parents is not authorized for the following:

(1) full-time day care during school holidays;

(2) teacher in-service days;

(3) inclement-weather days;

(4) short breaks between semesters in a year-round school program;

(5) part-time care; or

(6) after-school care for school-aged children.

(e) To monitor the spending of funds, a priority system among foster parents will also be established in policy. The priority system will be based upon need, but at a minimum will require:

(1) a determination by DFPS that the provision of day care is critical to maintaining the placement of the child with the foster parent; and

(2) at least one child placed by DFPS:

(A) is under six years of age; or

(B) has a developmental delay (including physical, emotional, and cognitive or language) or physical disability.

(f) Notwithstanding any other provision of this section, if DFPS determines that requiring the written verification of a foster parent's attempts to find appropriate community day care services would prevent an emergency placement in the child's best interest, DFPS may waive the submission of the written verification of the foster parent's attempts. DFPS is authorized to require the submission of the written verification at any point following the initial authorization of day care services.

(g) The Associate Commissioner for Child Protective Services, the Associate Commissioner for Child Protective Investigations, or the Associate Commissioners' designees, may grant a good cause waiver of any of the requirements in subsection (b) or (d) of this section, if that person determines that:

(1) the placement cannot be sustained or is unlikely to be sustained if the foster parent cannot receive day care;

(2) there is no reasonable alternative to the provision of day care, such as a change in working hours; and

(3) day care services are only authorized in increments that are commensurate with the hours and days the foster parent and caregivers must be outside the home for employment.

(h) For a child who becomes ineligible during the term of a prior authorization, DFPS may in its discretion permit day care to continue through the end of the previously authorized period.

(i) DFPS pays for day care only in licensed child care centers and registered child care homes that are contracted through the local child care management service agency, unless care is self-arranged and DFPS gives prior approval to pay day care in the arrangement.

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 January 13, 2021.

TRD-202100190
Tiffany Roper
General Counsel
Department of Family and Protective Services
Effective date: February 2, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 438-3397

SUBCHAPTER J. ASSISTANCE PROGRAMS FOR RELATIVES AND OTHER CAREGIVERS
DIVISION 1. RELATIVE AND OTHER DESIGNATED CAREGIVER PROGRAM

40 TAC §700.1013

Section 700.1013 implements Texas Family Code Sec. 264.775 which authorizes the Department, in accordance with Department rules, to implement a process to verify that each relative and designated caregiver who is seeking monetary assistance from the department for day care for a child in their care has attempted to find appropriate day care services for the child through community services, including Head Start programs, prekindergarten classes, and early education programs offered in public schools.

The statute requires the Department to specify the documentation the relative or other designated caregiver must provide to the Department to demonstrate compliance with the requirements established under the law. The Department may not provide monetary assistance to a relative or other designated caregiver for day care for a child without the required verification unless the Department determines the verification would prevent an emergency placement that is in the child's best interest.

§700.1013. Who is eligible for child care services?

(a) In this section, the following terms have the following meanings:

(1) "Child care services" has the same meaning as "day care."

(2) "Day care" means the assessment, care, training, education, custody, treatment, or supervision of a child in DFPS conservatorship by a person other than the child's caregiver for less than 24 hours a day, but at least two hours a day, three or more days a week.

(3) Emergency placement that is in the child's best interest" means that despite the exercise of reasonable diligence, compliance with the Department's verification process regarding the availability of community day care resources would interfere with a placement that is in the child's best interest.

(b) To the extent funds are available, and in accordance with any priority system established under subsection (e) of this section, DFPS may provide child care services to a caregiver who meets the requirements in §700.1003 of this title (relating to What are the eligibility requirements for caregiver assistance?) if:

(1) all appropriate caregivers work outside the home 40 hours per week or more;

(2) the caregiver is a resident of Texas;

(3) the child is in DFPS' managing conservatorship;

(4) the child is 13 years old or younger, or is younger than 18 years old if the child has a developmental delay or a physical disability;

(5) the child is not receiving adoption assistance; and

(6) the caregiver verifies in writing that the caregiver has attempted to find appropriate day care services for the child through community services, including:

(A) Head Start programs;

(B) Prekindergarten classes;

(C) Early education programs offered in public schools; and

(D) Any other available and appropriate resources in the caregiver's community.

(c) Day care for caregivers is authorized for the purpose of providing daily supervision:

(1) during the caregivers' work hours; or

(2) while the caregivers are attending judicial reviews, case conferences, or kinship caregiver training.

(d) To the extent funds are available, day care may also be authorized for the following:

(1) full-time day care during spring break and summer vacation for children who attend school full-time; and

(2) after-school day care.

(e) To monitor the spending of funds, a priority system among caregivers will also be established in policy. The priority system will be based upon need, but at a minimum will require:

(1) a determination by DFPS that the provision of day care is critical to maintaining the placement of the child with the caregiver; and

(2) at least one child placed by DFPS is:

(A) under six years of age or over six years of age but in day care during a scheduled break in the public school system; or

(B) at least one child placed by DFPS has a developmental delay (including physical, emotional, and cognitive or language) or physical disability.

(f) Notwithstanding any other provision of this section, if DFPS determines that requiring the written verification of a caregiver's attempts to find appropriate community day care services would prevent an emergency placement in the child's best interest, DFPS may waive the submission of the written verification of the caregiver's attempts. DFPS is authorized to require the submission of the written verification at any point following the initial authorization of day care services.

(g) The Associate Commissioner for Child Protective Services, the Associate Commissioner for Child Protective Investigations, or the Associate Commissioners' designees, may grant a good cause waiver of any of the requirements in subsection (b) of this section if that person determines that:

(1) the placement cannot be sustained or is unlikely to be sustained if the caregivers cannot receive day care;

(2) there is no reasonable alternative to the provision of day care, such as a change in working hours; and

(3) day care services are only authorized in increments that are commensurate with the hours and days the relative caregiver must be outside the home for employment.

(h) DFPS pays for day care only in licensed child care centers and registered child care homes that are contracted through the local child care management service agency, unless care is self-arranged and DFPS gives prior approval to pay day care in the arrangement.

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 January 13, 2021.

TRD-202100191
Tiffany Roper
General Counsel
Department of Family and Protective Services
Effective date: February 2, 2021
Proposal publication date: November 6, 2020
For further information, please call: (512) 438-3397

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CHAPTER 702. GENERAL ADMINISTRATION SUBCHAPTER H. TRAUMA AND TRAUMA-INFORMED CARE

40 TAC §702.701

The Department of Family and Protective Services (DFPS) adopts §702.701 in new Subchapter H. Trauma and Trauma-Informed Care in Title 40, Texas Administrative Code (TAC), Chapter 702, relating to General Administration. The rule is adopted without changes to the proposed text published in the October 16, 2020 issue of the *Texas Register* (45 TexReg 7403). The rule will not be republished.

BACKGROUND AND JUSTIFICATION

Currently, the Texas Family Code, Government Code, and Human Resources Codes (in addition to other Texas Codes) include requirements that refer to a child in the state's child welfare system experiencing "trauma", and to certain training, programs, or services being "trauma-informed", but provide no definition or description of the terms. See for example: Texas Family Code Sec. 264.015 regarding Training and Sec. 266.012 Comprehensive Assessments; Texas Government Code Sec. 533.0052 Star Health Program: Trauma-Informed Care Training; Texas Human Resources Code Sec. 40.043 Child Safety and Runaway Prevention Procedures, Sec. 40.079 Strategic State Plan to Implement Community-Based Care and Foster Care Prevention Services, Sec. 42.0531 Secure Agency Foster Homes, and Sec. 42.252. Proposed Operational Plan; Licensing Procedures.

In 2017, the Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families ("Children's Commission") formed the Statewide Collaborative on Trauma-Informed Care (SCTIC) comprised of child welfare professionals and stakeholders, including DFPS. In February 2019, the Children's Commission published a document containing the recommendations of the SCTIC entitled "Building a Trauma-Informed Child Welfare System: A Blueprint." The stated purpose of the Trauma Blueprint is to provide a roadmap for the Texas child welfare system to become more trauma-informed and trauma-responsive.

In July 2019, the Children's Commission formed the SCTIC Implementation Task Force to implement the strategies set forth in the Trauma Blueprint. Strategy 1.1 calls for definitions of "trauma" and "trauma-informed care" to be adopted through a formal process to create a common understanding of the terminology used to create and ensure Texas has a trauma-informed and trauma-responsive child welfare system. To achieve Strategy 1.1, the SCTIC Implementation Task Force charged its Policy and Practice Workgroup with drafting and providing recommended definitions to be voted on by the SCTIC Implementation Task Force and submitted to DFPS to initiate its formal rulemaking process. The definitions were approved by a majority vote during the SCTIC Implementation Task Force meeting held on Friday, February 28, 2020 and were submitted to DFPS.

The Department of Family and Protective Services (DFPS) proposes to adopt into rule the definitions of "trauma" and "trauma-informed" recommended by the SCTIC. DFPS intends for these definitions to apply to the Prevention and Early Intervention (PEI), Child Protective Investigations (CPI), and Child Protective Services (CPS) divisions of DFPS.

COMMENTS

The 30-day comment period ended November 15, 2020. During this period, DFPS received one comment regarding the adoption of these rules, a letter in support of the rule adoption from the Texas Alliance of Child and Family Services. No response is required and no changes were made to the proposed rule.

STATUTORY AUTHORITY

The rule is adopted under Human Resources Code (HRC) §40.027, which provides that the DFPS commissioner shall adopt rules for the operation and provision of services by the department.

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 January 14, 2021.

TRD-202100211
Tiffany Roper
General Counsel
Department of Family and Protective Services
Effective date: February 3, 2021
Proposal publication date: October 16, 2020
For further information, please call: (512) 438-3397

CHAPTER 732. CONTRACTED SERVICES
SUBCHAPTER A. DISPUTE RESOLUTION

40 TAC §§732.101, 732.103, 732.105, 732.107, 732.109, 732.111, 732.113, 732.115, 732.117, 732.119, 732.121, 732.123, 732.125, 732.127, 732.129, 732.131, 732.133

The Department of Family and Protective Services (DFPS), adopts new §§732.101, 732.103, 732.105, 732.107, 732.109, 732.111, 732.113, 732.115, 732.117, 732.119, 732.121, 732.123, 732.125, 732.127, 732.129, 732.131 and 732.133 in Title 40, Texas Administrative Code (TAC), new Chapter 732, relating to Contracted Services. Sections 732.101, 732.105, 732.107, 732.113, 732.117, 732.119, 732.123, 732.127, and 732.131 are adopted without changes to the proposed text published in the August 28, 2020, issue of the *Texas Register* (45 TexReg 6062) and will not be republished. Sections 732.103, 732.109, 732.111, 732.115, 732.121, 732.125, 732.129 and 732.133 are adopted with changes and will be republished. The changes only reflect non-substantive variations from the proposed rules, and as such do not create any new duties or powers, nor affect new persons or entities, other than those given notice.

BACKGROUND AND JUSTIFICATION

The purpose of this rulemaking is to re-implement repealed TAC rules related to contracting at DFPS. Health and Human Services Commission (HHSC) repealed DFPS Title 40 TAC Chapter 732 (procurement) on or around June 2015 when DFPS' procurement function and associated legal staff were consolidated under HHSC. HHSC procurement and contracting ethics rules are located at Title 1 TAC, Part 15, Chapters 391, relating to Purchase of Goods and Services by the Texas Health and Human Services Commission & 392, relating to Purchase of Good and Services for Specific Health and Human Services Commission Programs.

With DFPS becoming a stand-alone agency in September 2017, DFPS needs to provide clarity for its procurement function by re-implementing statutorily required rules for contracting practices. In this case, the rules being adopted are required by Texas Government Code Chapter 2260, which explains how DFPS addresses contract disputes. It is determined that DFPS needs to implement these rules even though HHSC carries out some DFPS procurement process steps. If there is ever a dispute involving a contract, the final decision about performance under the contract will be DFPS' responsibility.

COMMENTS

The 30-day comment period ended on September 27, 2020. During this period, DFPS did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The new rules are adopted under Human Resources Code (HRC) §40.027, which provides that the DFPS commissioner shall adopt rules for the operation and provision of services by the department.

The newly adopted sections implement requirements found in Texas Government Code Chapter 2260, regarding an agency's procedures for handling and resolving contract disputes.

No other statutes, articles, or codes are affected by the adopted rules.

§732.103. Definitions.

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

(1) Claim--a demand for damages by the Contractor based upon the Department's alleged breach of contract;

(2) Contractor--as defined by § 2260.001(2), Texas Government Code;

(3) Commissioner--the chief administrative officer of the Department;

(4) Counterclaim--a claim by the Department against the Contractor based upon the same contract as that of the Contractor's claim;

(5) Day--a calendar day. If an act is required to occur on a date falling on a Saturday, Sunday, or holiday, the first working day following one of these days is the date to be counted as the required day for the act;

(6) Department--the Texas Department of Family and Protective Services;

(7) Event--an act or omission or a series of acts or omissions giving rise to a claim;

(8) Negotiation--a consensual bargaining process in which the parties attempt to resolve a claim and counterclaim;

(9) Parties--the Department and the Contractor that have entered into the contract that is the subject of the claim; and

(10) SOAH--State Office of Administrative Hearings.

§732.109. Requirements for Notice of Claim of Breach of Contract.

(a) A Contractor asserting a claim of breach of contract under Chapter 2260 of the Texas Government Code must file notice of the claim as provided in this section.

(b) The notice of the claim must be:

(1) in writing and signed by the Contractor or the Contractor's authorized representative; and

(2) delivered by hand, certified mail return receipt requested, or other verifiable delivery service, to the:

(A) contract signatory for the Department of the region or state office division which signed the contract;

(B) The person designated in the contract as the appropriate receiver of legal notice; or

(C) the Commissioner of the Department.

(c) The notice must state in detail:

(1) the nature of the alleged breach of contract, including the date of the event that the Contractor asserts as the basis of the claim and each contractual provision allegedly breached;

(2) a description of damages that are recoverable under §2260.003 of the Texas Government Code that the Contractor asserts resulted from the alleged breach, including the amount and method used to calculate those damages; and

(3) the legal theory of recovery, including the relationship between the alleged breach and the damages claimed.

(d) The notice of claim must be delivered no later than the 180th Day after the date of the event that the Contractor asserts as the basis of the claim.

§732.111. Department Counterclaims.

(a) The Department may assert a counterclaim under Chapter 2260 of the Government Code, as provided in this section. The counterclaim must be:

(1) in writing; and

(2) delivered by hand, certified mail return receipt requested, or other verifiable delivery service to the Contractor or the representative of the Contractor who signed the notice of claim of breach of contract.

(b) The notice must state in detail:

(1) the nature of the counterclaim;

(2) a description of damages or offsets sought, including the amount and method used to calculate those damages or offsets; and

(3) the legal theory supporting the counterclaim.

(c) The notice of counterclaim must be delivered to the Contractor no later than the 60th Day after the Department's receipt of the Contractor's notice of claim.

(d) Nothing in this subchapter precludes the Department from initiating a lawsuit for damages against the Contractor in a court of competent jurisdiction.

§732.115. Negotiation Timetable.

(a) Following receipt of a Contractor's notice of claim, the Commissioner or another Department officer designated in the contract will review the Contractor's claim and the Department's counterclaim, if any, and initiate negotiations with the Contractor in an attempt to resolve the claim and counterclaim.

(b) The parties will begin negotiations within a reasonable period of time, not to exceed 120 Days following the date the Department receives the Contractor's notice of claim.

(c) The parties may conduct negotiations according to an agreed upon schedule as long as they complete the negotiations no later than the 270th Day after the Department receives the Contractor's notice of claim, subject to one or more extensions agreed upon by the parties.

(d) The parties may agree in writing on or before the 270th Day after the Department receives the Contractor's notice of claim to extend the time for negotiations. The agreement must be signed by representatives of the parties with authority to bind each respective party and must provide for the extension of the statutory negotiation period. The parties may enter into a series of written extension agreements that comply with the requirements of this section.

(e) The Contractor may request a contested case hearing before the State Office of Administrative Hearings on or before the 270th Day after the Department receives the Contractor's notice of claim, or the expiration of any extension agreed to by the parties.

(f) The parties may agree to mediate the dispute at any time before the 270th Day after the Department receives the Contractor's notice of claim or before the expiration of any extension agreed to by the parties.

§732.121. Settlement Agreement.

(a) A settlement agreement may resolve an entire claim or any designated portion of a claim.

(b) To be enforceable, a settlement agreement must be in writing and signed by representatives of the Contractor and the Department who have authority to bind each respective party.

(c) A partial settlement does not waive a party's rights under the Government Code, Chapter 2260, as to the parts of the claim or counterclaim that are not resolved.

§732.125. Contractor Contested Case Hearings.

(a) If a claim for breach of contract is not resolved in its entirety on or before the 270th Day after the Department receives the notice of claim, or after the expiration of any extension, the Contractor may file a request with the Department for a contested case hearing before SOAH in accordance with §2260.102 of the Texas Government Code.

(b) A request for a contested case hearing must state the legal and factual basis for the claim, request that the claim be referred to SOAH for a contested case hearing, and must be delivered within 30 Days after the 270th Day, or the expiration of any agreed extensions, to the Commissioner of the Department or the person designated in the contract to receive notice.

(c) If the parties reach an impasse in the negotiations and proceed to a contested case hearing because it would serve the interests of justice, the parties may agree to submit the case to SOAH before the 270th Day after the notice of claim is received by the Department to the extent that the claim or counterclaim, if any, remains unsolved.

§732.129. Mediation.

(a) A mediator may not impose his or her own judgment on the issues for that of the parties. The mediator must be acceptable to both parties.

(b) The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Government Code, Chapter 2009.

(c) The term "mediation" is assigned the meaning set forth in the Civil Practice and Remedies Code §154.023.

(d) To facilitate a meaningful opportunity for settlement, the parties will, to the extent possible, select representatives who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

§732.133. Mediation Settlement Agreements.

(a) A settlement agreement reached during, or as a result of, mediation that resolves an entire claim, or any designated and severable portion of a claim, or counterclaim, if any, must be in writing and signed by representatives of the Contractor and the Department who have authority to bind each respective party.

(b) If the settlement agreement does not resolve all issues raised by the claim or counterclaim, if any, the agreement must identify the issues that are not resolved.

(c) A partial settlement does not waive a Contractor's rights under the Texas Government Code, Chapter 2260, as to the parts of the claim that are not resolved, nor does it waive the Department's rights as to parts of the counterclaim that are not resolved.

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 January 13, 2021.

TRD-202100193
Tiffany Roper
General Counsel
Department of Family and Protective Services
Effective date: February 2, 2021
Proposal publication date: August 28, 2020
For further information, please call: (512) 438-3397

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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 Department of Agriculture

Title 4, Part 1

The Texas Agricultural Finance Authority (TAFA), a public authority within the Texas Department of Agriculture, files this notice of intent to review Texas Administrative Code, Title 4, Part 1, Chapter 28, comprised of §§28.1 - 28.63. This review is being conducted in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules).

TAFA will consider whether the initial factual, legal, and policy reasons for adopting each rule continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

Written comments pertaining to this rule review may be submitted by mail to Mindy Weth Fryer, Director for Contracts and Grants, at Texas Department of Agriculture, P.O. Box 12847, Austin, TX 78711-2847 or by email at Mindy.Fryer@TexasAgriculture.gov.

The deadline for comments is 30 days after publication of this notice in the *Texas Register.* Proposed changes to any of these rules as a result of the rule review will be published as separate rulemaking proceedings in the Proposed Rules section of the *Texas Register* at a later date. Any proposed rule changes will be open for public comment prior to amendment or repeal, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

TRD-202100274
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Filed: January 20, 2021

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EXIT

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: 26 TAC §553.47(e)

Facility Type	New or Conversion: Single story	New or Conversion: Multiple story	Addition or Remodeling	Alzheimer's Certification
Small Type A (4 to 16 beds)	$900	$1,100	2% of construction cost Minimum: $350 Maximum: 50% of the plan review fee for a new facility of the same type	Not applicable
Large Type A (17 or more beds)	17-80 beds: $1,100	17-80 beds: $1,650	2% of construction cost Minimum: $400 Maximum: 50% of the plan review fee for a new facility of the same type	Not applicable
	81-120 beds: $1,650	81-120 beds: $2,150		
	121+ beds: $14 per bed	121+ beds: $18 per bed		
Small Type B (4 to 16 beds)	$1,100	$1,650	2% of construction cost Minimum: $350 Maximum: 50% of the plan review fee for a new facility of the same type	$350 additional fee

Large Type B (17 or more beds)	17-80 beds: $1,600	17-80 beds: $2,100	2% of construction cost Minimum: $500 Maximum: 50% of the plan review fee for a new facility of the same type	$550 additional fee
	81-120 beds: $2,150	81-120 beds: $2,650		
	121+ beds: $18 per bed	121+ beds: $22 per bed		

Figure: 26 TAC §553.47(g)(2)

Expedited Inspection Type	**Base Fee for All Facility Types**	**Additional Fee for More than 16 Beds**	**Additional Flat Fee for Type B**	**Additional Flat Fee for Alzheimer's Certified**	**Additional Flat Fee for Multi-Story**
LSC inspection for a new license or license renewal	$2000	$50 per Bed	$500	$750	$1000
Health inspection for a new license	$4500	N/A	N/A	N/A	N/A
Health inspection for license renewal	$9000	N/A	N/A	N/A	N/A

Figure: 26 TAC §553.267(d)(3)

Texas Health and Human Services Commission (HHSC)

Information Regarding Authorized Electronic Monitoring

A resident, or the resident's guardian or legal representative, is entitled to conduct authorized electronic monitoring (AEM) under Health and Safety Code, Chapter 247 §247.003. To request AEM, you, your guardian or your legal representative, must:

1) complete the Request for Authorized Electronic Monitoring form (available from the facility);

2) obtain the consent of other residents, if any, in your room, using the Consent to Authorized Electronic Monitoring form (available from the facility); and

3) give the form(s) to the facility manager or designee.

Who may request AEM?

1) The resident, if the resident has capacity to request AEM and has not been judicially declared to lack the required capacity.

2) The guardian of the resident, if the resident has been judicially declared to lack the required capacity.

3) The legal representative of the resident, if the resident does not have capacity to request AEM and has not been judicially declared to lack the required capacity.

Who determines if the resident does not have the capacity to request AEM?

The resident's physician will make the determination regarding the capacity to request AEM. When the resident's physician has determined the resident lacks capacity to request AEM, a person from the following list, in order of priority, may act as the resident's legal representative for the limited purpose of requesting AEM:

1) a person named in the resident's medical power of attorney or another advance directive;

2) the resident's spouse;

3) an adult child of the resident who has the waiver and consent of all other qualified adult children of the resident to act as the sole decision-maker;

4) a majority of the resident's reasonably available adult children;

5) the resident's parents; or

6) the individual clearly identified to act for the resident by the resident before the resident became incapacitated or the resident's nearest living relative.

Who may consent to AEM?

Figure: 26 TAC §553.267(d)(3)

1) The other resident(s) in the room.

2) The guardian of the other resident, if the resident has been judicially declared to lack the required capacity.

3) The legal representative of the other resident, if the resident does not have capacity to sign the form but has not been judicially declared to lack the required capacity. The legal representative is determined by following the procedure for determining a legal representative, as stated above, under "Who determines if the resident does not have the capacity to request AEM?"

Can a resident be discharged or refused admittance for requesting AEM?

A facility may not refuse to admit an individual and may not discharge a resident because of a request to conduct AEM. If either of these situations occur, you should report the occurrence to the local office of Long Term Care-Regulatory, HHSC.

What about covert electronic monitoring?

A facility may not discharge a resident because covert electronic monitoring is being conducted by or on behalf of a resident. A facility attempting to discharge a resident because of covert electronic monitoring should be reported to the local office of Long-term Care-Regulation, HHSC.

What is required if a covert electronic monitoring device is discovered?

If a covert electronic monitoring device is discovered by a facility and is no longer covert as defined in §553.3 of this chapter (relating to Definitions), the resident must meet all requirements for AEM before monitoring is allowed to continue.

Is notice of AEM required?

Anyone conducting AEM must post and maintain a conspicuous notice at the entrance to the resident's room. The notice must state that an electronic monitoring device is monitoring the room.

What is required for the installation of monitoring equipment?

The resident, or the resident's guardian or legal representative, must pay for all costs associated with conducting AEM, including installation in compliance with life safety and electrical codes, maintenance, removal of the equipment, posting and removal of the notice, or repair following removal of the equipment and notice, other than the cost of electricity.

A facility may require an electronic monitoring device to be installed in a manner that is safe for residents, employees, or visitors who may be moving about the room. A facility may also require that AEM be conducted in plain view.

The facility must make reasonable physical accommodation for AEM, which includes providing:

Figure: 26 TAC §553.267(d)(3)

1) a reasonably secure place to mount the video surveillance camera or other electronic monitoring device; and

2) access to power sources for the video surveillance camera or other electronic monitoring device.

If the facility refuses to permit AEM or fails to make reasonable physical accommodations for AEM, you should report the facility's refusal to the local office of Long-term Care Regulation, HHSC.

Are facilities subject to administrative penalties for violations of the electronic monitoring rules?

Yes. HHSC may assess an administrative penalty (see §553.751 of this chapter (relating to Administrative Penalties)) against a facility for each instance in which the facility:

1) refuses to permit a resident, or the resident's guardian or legal representative, to conduct AEM;

2) refuses to admit an individual or discharges a resident because of a request to conduct AEM;

3) discharges a resident because covert electronic monitoring is being conducted by or on behalf of the resident; or

4) violates any other provision related to AEM.

How does AEM affect the reporting of abuse and neglect?

Section 553.273 of this chapter (relating to Abuse, Neglect, or Exploitation Reportable to HHSC by Facilities), requires facility staff to report abuse or neglect. If abuse or neglect has occurred, the most important thing is to report it. Abuse and neglect cannot be addressed unless reported.

For purposes of the duty to report abuse or neglect, the following apply:

1) A person who is conducting electronic monitoring on behalf of a resident is considered to have viewed or listened to a recording made by the electronic monitoring device on or before the 14th day after the date the recording is made.

2) If a resident, who has capacity to determine that the resident has been abused or neglected and who is conducting electronic monitoring, gives a recording made by the electronic monitoring device to a person and directs the person to view or listen to the recording to determine whether abuse or neglect has occurred, the person to whom the resident gives the recording is considered to have viewed or listened to the recording on or before the seventh day after the date the person receives the recording.

3) A person is required to report abuse based on the person's viewing of or listening to a recording only if an incident of abuse is indicated on the recording. A person is required to report neglect based on the person's viewing of or listening to a recording only if it is clear from viewing or listening to the recording that neglect has occurred.

Figure: 26 TAC §553.267(d)(3)

4) If abuse or neglect of the resident is reported to the facility and the facility requests a copy of any relevant recording made by an electronic monitoring device, the person who possesses the recording must provide the facility with a copy at the facility's expense. The cost of the copy cannot exceed the community standard.

5) A person who sends more than one recording to DHS must identify each recording on which the person believes an incident of abuse or evidence of neglect may be found. Tapes or recordings should identify the place on the recording that an incident of abuse or evidence of neglect may be found.

What is required for the use of a recording by an agency or court?

a) Subject to applicable rules of evidence and procedure, a recording created through the use of covert monitoring or AEM may be admitted into evidence in a civil or criminal court action or administrative proceeding.

b) A court or administrative agency may not admit into evidence a recording created through the use of covert monitoring or AEM or take or authorize action based on the recording unless:

1) the recording shows the time and date the events on the recording occurred, if the recording is a video recording;

2) the contents of the recording have not been edited or artificially enhanced; and

3) any transfer of the contents of the recording was done by a qualified professional and the contents were not altered, if the contents have been transferred from the original format to another technological format.

Are there additional provisions of the law?

A person who places an electronic monitoring device in the room of a resident or who uses or discloses a other recording made by the device may be civilly liable for any unlawful violation of the privacy rights of another.

A person who covertly places an electronic monitoring device in the room of a resident or who consents to or acquiesces in the covert placement of the device in the room of a resident has waived any privacy right the person may have had in connection with images or sounds that may be acquired by the device.

_____ _____

Signature of Resident/Person Signing of Behalf of Resident Date

Figure: 26 TAC §553.751(d)

SEVERITY	Isolated	Pattern	Widespread
Immediate threat	$1500-3000 J	$2000-4000 K	$2500-5000 L
Actual harm	$250-1000 G	$500-1500 H	$1000-2500 I
No actual harm with a potential for more than minimal harm	$100-300 D	$100-400 E	$200-500 F
No actual harm with a potential for minimal harm	$0 A	$0 B	$0 C

SCOPE

Note: To assist in using the scope and severity chart, the following example is provided: HHSC assesses an administrative penalty in the amount of $2500-5000, as shown in box "L," against a license holder cited for a violation that is an immediate threat to the health and safety of residents and is widespread in scope.

Figure: 30 TAC §115.175(b)

True Vapor Pressure	Storage Capacity in gallons (gal)	Control Requirements
≥ 1.5 psia and < 11 psia	> 1,000 gal and ≤ 40,000 gal	Submerged fill pipe or closed vent system routed to control device
≥ 1.5 psia and < 11 psia	> 40,000 gal	Internal floating roof or external floating roof with primary seal (any type) and secondary seal or closed vent system routed to control device
≥ 11 psia	> 1,000 gal and ≤ 40,000 gal	Submerged fill pipe or closed vent system routed to control device
≥ 11 psia	> 40,000 gal	Submerged fill pipe and closed vent system routed to control device

Figure: 30 TAC §115.177(b)(4)

Operating time (percent operated of total hours in a year)	Monthly monitoring reduced frequencies	Quarterly monitoring reduced frequencies	Semiannually monitoring reduced frequencies
Quarterly	Quarterly	Annually	Annually
Quarterly	Quarterly	Semiannually	Annually
Every two months	Every two months	Three quarters per year	Semiannually
Monthly	Monthly	Quarterly	Semiannually

Figure: 30 TAC §115.179(c)(1)

Equation 1.

$$E_i = K2 * Ci * Mp * Qi$$

$$E_o = K2 * Co * Mp * Qo$$

Where:

E_i = Mass rate of volatile organic compound (VOC) at the inlet of the control device, on a dry basis, kilograms per hour.

E_o = Mass rate of VOC at the outlet of the control device, on a dry basis, kilograms per hour.

K2 = Constant, 2.494×10^{-6} parts per million (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature is 20°Celsius.

Ci = Concentration of VOC, as propane, of the gas stream as measured by the United States Environmental Protection Agency (EPA) Method 25A in 40 Code of Federal Regulations (CFR) Part 60, Appendix A-7, at the inlet of the control device, on a dry basis, parts per million by volume (ppmv).

Co = Concentration of VOC, as propane, of the gas stream as measured by EPA Method 25A in 40 CFR Part 60, Appendix A-7 at the outlet of the control device, on a dry basis, ppmv.

Mp = Molecular weight of propane, 44.1 gram/gram-mole.

Qi = Flowrate of gas stream at the inlet of the control device, dry standard cubic meter per minute.

Qo = Flowrate of gas stream at the outlet of the control device, dry standard cubic meter per minute.

Equation 2.

$$R_{cd} = \frac{(E_i - E_o)}{E_i} * 100\%$$

Where:

R_{cd} = Control efficiency of control device, percent.

E_i = Mass rate of VOC at the inlet to the control device as calculated in kilograms per hour from the equation for E_i in this table.

E_o = Mass rate of VOC at the outlet of the control device, as calculated in kilograms per hour from the equation for E_o in this table.

Figure: 30 TAC §115.179(c)(2)(B)

$$C_c = C_m * \left(\frac{17.9}{(20.9 - \%O_2)} \right)$$

Where:

Cc = Total Organic Compounds (TOC) concentration, as propane, corrected to 3 percent oxygen, parts per million by volume (ppmv) on a wet basis.

Cm = TOC concentration, as propane, ppmv on a wet basis.

$\%O_2$ = Concentration of oxygen, percent by volume as measured, wet.

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.

Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - December 2020

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period December 2020 is $28.46 per barrel for the three-month period beginning on September 1, 2020, and ending November 30, 2020. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of December 2020, from a qualified low-producing oil lease, is eligible for a 25% credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period December 2020 is $1.25 per mcf for the three-month period beginning on September 1, 2020, and ending November 30, 2020. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of December 2020, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of December 2020 is $47.07 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of December 2020, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of December 2020 is $3.87 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of December 2020, from a qualified low-producing gas well.

This agency hereby certifies that legal counsel has reviewed this notice and found it to be within the agency's authority to publish.

TRD-202100247
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: January 15, 2021

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Notice of Hearing on the Proposed Repeal of §5.36 and Amendments to §5.46, and Extension of Public Comment Period

The Comptroller of Public Accounts received a request by an interested party to hold a public hearing pursuant to Government Code, §2001.029(b)(3) on the proposed repeal of §5.36, concerning deductions for paying membership fees to certain law enforcement employee organizations, and amendments to §5.46, concerning deductions for paying membership fees to employee organizations. These rules are found in Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter D. The proposed repeal and amendments were published in the November 27, 2020, issue of the *Texas Register* (45 TexReg 8490).

The comptroller will hold a virtual public hearing to take public comments on Thursday, February 18, 2021, at 9:00 a.m., Central Standard Time. The hearing is structured for the receipt of oral comments only. Individuals may present oral comments when called upon in order of registration. Depending on the number of individuals who register to present oral comments, individuals may be asked to limit their oral comments to a prescribed amount of time. Organizations, associations, or groups are encouraged to present their commonly held views or similar comments through a representative member where possible.

The public may view the virtual public hearing at no cost at: https://txcpa.webex.com/txcpa/onstage/g.php?MTID=e2ebd334151adce045d394709511a6f49

Individuals who want to provide oral comments during the hearing or want to register their attendance on the record must submit the following registration information to Rob Coleman, Director, Fiscal Management Division, at rob.coleman@cpa.texas.gov or at P.O. Box 13528 Austin, Texas 78711: your name, your email address, whether or not you plan to provide oral comments during the hearing, and whether you will represent yourself or an entity during the hearing (if you will represent an entity, please state the name of the entity). Registration information must be received by Friday, February 12, 2021. Late registration could result in your missing the opportunity to comment on this proposal.

If you are in need of an accommodation, please contact our human resources department by email at human.resources@cpa.texas.gov or by phone at (512) 475-3560 or 1-800-RELAY-TX (TDD) to register. Accommodation requests should be made as far in advance as possible.

The comptroller has extended the deadline for receipt of written comments on the proposal. Comments on the proposal may be submitted to Rob Coleman, Director, Fiscal Management Division, at rob.coleman@cpa.texas.gov or at P.O. Box 13528 Austin, Texas 78711. Comments must be received by Tuesday, February 23, 2021.

This agency hereby certifies that the notice has been reviewed by legal counsel and found to be within the agency's authority to file.

TRD-202100273
Don Neal
General Counsel
Comptroller of Public Accounts
Filed: January 20, 2021

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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, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/25/21 - 01/31/21 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 01/25/21 - 01/31/21 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 02/01/21 - 02/28/21 is 5.00% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 02/01/21 - 02/28/21 is 5.00% for commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-202100259
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 19, 2021

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Credit Union Department

Application to Expand Field of Membership

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration.

An application was received from Brazos Star Credit Union, College Station, Texas, to expand its field of membership. The proposal would permit persons who live, work, attend school, or worship in and businesses located in Brazos, Burleson, Madison, Leon, and Robertson 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-202100272
John J. Kolhoff
Commissioner
Credit Union Department
Filed: January 20, 2021

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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

GECU, El Paso, Texas - See *Texas Register* issue dated October 23, 2020.

EECU, #1, Fort Worth, Texas - See *Texas Register* issue dated October 23, 2020.

EECU, #2, Fort Worth, Texas - See *Texas Register* issue dated October 23, 2020.

TRD-202100271
John J. Kolhoff
Commissioner
Credit Union Department
Filed: January 20, 2021

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code, (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the 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 **March 3, 2021.** 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 **March 3, 2021.** 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: Aqua Texas, Incorporated; DOCKET NUMBER: 2020-1035-MWD-E; IDENTIFIER: RN101515179; LOCATION: Montgomery, Montgomery County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014018001, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of untreated wastewater into or adjacent to any water in the state; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: City of Dickinson; DOCKET NUMBER: 2020-1074-WQ-E; IDENTIFIER: RN105576581; LOCATION: Dickinson, Galveston County; TYPE OF FACILITY: small municipal separate storm sewer system; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge stormwater under Texas Pollutant Discharge Elimination System

General Permit for municipal separate storm sewer systems, and failing to submit a Notice of Intent and a Stormwater Management Plan by the permit application deadline of July 23, 2019; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: City of Hill Country Village; DOCKET NUMBER: 2020-1073-WQ-E; IDENTIFIER: RN105532006; LOCATION: Hill Country Village, Bexar County; TYPE OF FACILITY: small municipal separate storm sewer system; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge stormwater under Texas Pollutant Discharge Elimination System General Permit for municipal separate storm sewer systems, and failing to submit a waiver request by the application deadline of July 23, 2019; PENALTY: $5,625; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: City of Manvel; DOCKET NUMBER: 2020-1097-PWS-E; IDENTIFIER: RN101418044; LOCATION: Manvel, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(e)(4)(B) and Texas Health and Safety Code, §341.033(a), by failing to use a water works operator who holds a Class C or higher groundwater license; PENALTY: $750; ENFORCEMENT COORDINATOR: Miles Wehner, (512) 239-2813; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: City of Wichita Falls; DOCKET NUMBER: 2020-0854-MWD-E; IDENTIFIER: RN101611275; LOCATION: Wichita Falls, Wichita County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010509001, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of sewage into or adjacent to any water in the state; PENALTY: $11,250; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: Harris County Municipal Utility District Number 221; DOCKET NUMBER: 2020-0792-MWD-E; IDENTIFIER: RN102944360; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0012470001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; ENFORCEMENT COORDINATOR: Katelyn Tubbs, (512) 239-2512; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Holiday Acres Victoria Property, LLC; DOCKET NUMBER: 2020-0829-WQ-E; IDENTIFIER: RN109837690; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: collection system; RULES VIOLATED: 30 TAC §317.3(e)(5), by failing to provide an audiovisual alarm for the lift station; TWC, §26.039(b), by failing to notify the TCEQ as soon as possible but not later than 24 hours after the occurrence of a spill or discharge; and TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of untreated wastewater into or adjacent to any water in the state; PENALTY: $8,005; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(8) COMPANY: Island Star Food Business, Incorporated dba Star Food Store; DOCKET NUMBER: 2020-1011-PST-E; IDENTIFIER: RN102226578; LOCATION: Galveston, Galveston 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; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the UST for releases at a frequency of at least once every 30 days; and 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator, Class A, Class B, and Class C; PENALTY: $9,263; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 756-3994; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Lucite International, Incorporated; DOCKET NUMBER: 2020-1063-AIR-E; IDENTIFIER: RN102736089; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permit Numbers 19005 and PSDTX753, Special Conditions Number 1, Federal Operating Permit Number O1959, General Terms and Conditions and Special Terms and Conditions Number 14, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(10) COMPANY: MILLER GROVE WATER SUPPLY CORPORATION; DOCKET NUMBER: 2020-1022-PWS-E; IDENTIFIER: RN101456978; LOCATION: Cumby, Hopkins 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 or total trihalomethanes based on the locational running annual average; PENALTY: $2,385; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: Natgasoline LLC; DOCKET NUMBER: 2019-1219-AIR-E; IDENTIFIER: RN106586795; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: methanol manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review (NSR) Permit Numbers 107764 and PSDTX1340, Special Conditions (SC) Numbers 1 and 8.C, Federal Operating Permit (FOP) Number O3963, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 16, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rates and the concentration limit; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 107764 and PSDTX1340, SC Number 1, Prevention of Significant Deterioration Permit for Greenhouse Gas Emissions Permit Number GHGPSDTX54, II. Annual Emissions Limits, FOP Number O3963, GTC and STC Number 16, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; PENALTY: $109,193; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $43,677; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: Perry Auten Construction, LLC; DOCKET NUMBER: 2020-1088-WQ-E; IDENTIFIER: RN110930757; LOCATION:

Whitney, Hill County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: $2,625; ENFORCEMENT COORDINATOR: Stephanie Frederick, (512) 239-1001; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: Sandra R. Barbey dba Denton Estates Mobile Home Park; DOCKET NUMBER: 2020-1072-PWS-E; IDENTIFIER: RN101174894; LOCATION: Krum, Denton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay annual Public Health Service fees and/or any associated late fees for TCEQ Financial Administration Account Number 90610016 for Fiscal Years 2017 through 2020; 30 TAC §290.106(e), by failing to provide the results of cyanide sampling to the executive director (ED) for the January 1, 2018 - December 31, 2018, monitoring period; 30 TAC §290.106(e), by failing to provide the results of nitrite sampling to the ED for the January 1, 2019 - December 31, 2019, monitoring period; 30 TAC §290.108(e), by failing to provide the results of radionuclides sampling to the ED for the January 1, 2013 - December 31, 2018, monitoring period; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfection Level Quarterly Operating Report to the ED by the tenth day of the month following the end of each quarter for the third quarter of 2019 through the first quarter of 2020; PENALTY: $1,388; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Sulphur River Exploration, Incorporated; DOCKET NUMBER: 2020-0400-AIR-E; IDENTIFIER: RN106502636; LOCATION: Hallettsville, Lavaca County; TYPE OF FACILITY: oil and gas production plant; RULES VIOLATED: 30 TAC §§101.20(1), 116.615(2) and (9), and 116.620(a)(12), 40 Code of Federal Regulations §60.18(c)(2), Standard Permit Registration Number 105609, and Texas Health and Safety Code (THSC), §382.085(b), by failing to operate the flare with a flame present at all times; 30 TAC §106.359(c)(2) and THSC, §382.085(b), by failing to establish, implement, and update a program to maintain and repair facilities; 30 TAC §116.110(a) and §116.615(2), Standard Permit Registration Number 105609, and THSC, §382.0518(a) and §382.085(b), by failing to comply with the standard permit representations; 30 TAC §116.115(b)(2)(G) and §116.615(2) and (9), Standard Permit Registration Number 105609, and THSC, §382.085(b), by failing to prevent unauthorized emissions, and failing to maintain all air pollution emission capture and abatement equipment in good working order and operating properly during normal plant operations; and 30 TAC §116.615(2), Standard Permit Registration Number 105609, and THSC, §382.085(b), by failing to comply with the standard permit representations; PENALTY: $16,875; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(15) COMPANY: TEXAS CITY BUZZ, LLC dba Buzzy Bee; DOCKET NUMBER: 2020-0707-PST-E; IDENTIFIER: RN101755536; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,375; ENFORCEMENT COORDINATOR: John Fennell, (512) 756-3995; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-202100254

Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: January 19, 2021

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Enforcement Orders

An agreed order was adopted regarding KAMORA, INC. dba Quik Save 1, Docket No. 2018-1000-PST-E on January 19, 2021 assessing $4,879 in administrative penalties with $975 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, 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 Saint Jo, Docket No. 2019-1265-PWS-E on January 19, 2021 assessing $888 in administrative penalties with $177 deferred. Information concerning any aspect of this order 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.

An agreed order was adopted regarding M & B CONSTRUCTION LLC, Docket No. 2019-1592-WQ-E on January 19, 2021 assessing $3,281 in administrative penalties with $656 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 Diego Cardenas and Saira P. Cardenas, Docket No. 2019-1560-IHW-E on January 19, 2021 assessing $3,937 in administrative penalties with $787 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 Paul Fairbrook dba Randolph Plaza Apartments, Docket No. 2019-1679-WQ-E on January 19, 2021 assessing $2,650 in administrative penalties with $530 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 LA MIRADA COUNTRY ESTATES, INC., Docket No. 2019-1801-PWS-E on January 19, 2021 assessing $339 in administrative penalties with $67 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 Live Oak County, Docket No. 2020-0081-MSW-E on January 19, 2021 assessing $4,813 in administrative penalties with $962 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 Superior Silica Sands LLC, Docket No. 2020-0327-WQ-E on January 19, 2021 assessing $1,213 in administrative penalties with $242 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 NKJ ENTERPRISE, INC. dba N K Texaco, Docket No. 2020-0439-PST-E on January 19, 2021 assessing $5,315 in administrative penalties with $1,063 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 Occidental Permian Ltd., Docket No. 2020-0472-AIR-E on January 19, 2021 assessing $2,551 in administrative penalties with $510 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding LUCKEY2 BUSINESS LLC dba Stop-N-Pik, Docket No. 2020-0491-PST-E on January 19, 2021 assessing $2,645 in administrative penalties with $529 deferred. Information concerning any aspect of this order may be obtained by contacting Alain Elegbe, 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 Elvira Zavala-Patton, Docket No. 2020-0506-MSW-E on January 19, 2021 assessing $3,937 in administrative penalties with $787 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 Hudspeth County Water Control and Improvement District No. 1, Docket No. 2020-0519-PWS-E on January 19, 2021 assessing $1,800 in administrative penalties with $360 deferred. 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 VALLEY WATER SUPPLY CORPORATION, Docket No. 2020-0652-PWS-E on January 19, 2021 assessing $864 in administrative penalties with $172 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 Floyd Randolph dba TEMPE WATER SUPPLY CORPORATION, John Muzny dba TEMPE WATER SUPPLY CORPORATION, and Cindy Walzel dba TEMPE WATER SUPPLY CORPORATION, Docket No. 2020-0690-PWS-E on January 19, 2021 assessing $1,985 in administrative penalties with $397 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 RANCH COUNTRY OF TEXAS, INC., Docket No. 2020-0771-UTL-E on January 19, 2021 assessing $267 in administrative penalties with $53 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 COUNTRY TERRACE WATER COMPANY, INC., Docket No. 2020-0885-PWS-E on January 19, 2021 assessing $100 in administrative penalties with $20 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 New Horizons Ranch and Center, Inc., Docket No. 2020-0886-MWD-E on January 19, 2021 assessing $1,175 in administrative penalties with $235 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 Lone Star NGL Fractionators LLC, Docket No. 2020-0921-PWS-E on January 19, 2021 assessing $1,150 in administrative penalties with $230 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.

TRD-202100267
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 20, 2021

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Notice of District Petition

Notice issued January 15, 2021

TCEQ Internal Control No. D-10072020-017; McComb Realty I, Ltd., and Peggy Lee Cooper (Petitioners) filed a petition for creation of Montgomery County Municipal Utility District No. 183 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 393.93 acres located within Montgomery County, Texas; and (4) all of the land within the proposed District is within the extraterritorial jurisdiction of the City of Conroe and is in the process of being annexed into the corporate limits of the City of Conroe. By Resolution No. 4513-20, passed and approved on September 24, 2020, the City of Conroe, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, extend and maintain and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate, and amend local storm waters or other harmful excesses of water; (2) purchase interests in land and purchase, construct, acquire, improve, extend, maintain, and operate improvements, facilities, and equipment for the purpose of providing recreational facilities; (3) establish, finance, provide, operate, and maintain a fire department and/or fire-fighting services within the District subject to approval of the Texas Commission on Environmental Quality pursuant to its rules and Chapter 49 of the Texas Water Code, as amended, as and if required; and (4) exercise road powers and authority pursuant to

applicable law. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $76,500,000 ($45,150,000 for water, wastewater, and drainage plus $5,250,000 for recreation plus $26,100,000 for roads)

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202100249
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 17, 2021

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Notice of District Petition

Notice issued January 15, 2021

TCEQ Internal Control No. D-10272020-042; Toreador Ranch, LLC, a Texas Limited Liability Company (the Petitioner), filed a petition for creation of South Burnet County Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 450.102 acres located within Burnet County; and (4) a portion of the proposed District is within the extraterritorial jurisdiction of the City of Double Horn, Texas. No portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2020-RES011, passed and approved on June 24, 2020, the City of Double Horn gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately $46,400,000 ($25,400,000 for water, sewer, and drainage plus $21,000,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202100250
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 15, 2021

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Notice of District Petition

Notice issued January 15, 2021

TCEQ Internal Control No. D-12222020-035; BRYSON RANCH, L.P., a Texas limited partnership, (Petitioner) filed a petition for creation of Bryson Ranch Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 1,047.506 acres located within Denton County, Texas; and (4) the land within the proposed District is wholly within the extraterritorial jurisdiction of the City of Pilot Point. By Resolution No. 2020-06-488, passed and adopted on August 10, 2020, the City of Pilot Point, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016.

The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; (2) collect, transport, process, dispose of and control domestic and commercial wastes; (3) gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and (5) purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately $110,225,000 ($60,675,000 for water, wastewater, and drainage plus $49,550,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202100251
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 17, 2021

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Notice of District Petition

Notice issued January 15, 2021

TCEQ Internal Control No. D-10272020-043; Toreador Ranch, LLC, a Texas Limited Liability Company (the Petitioner), filed a petition for creation of South Burnet County Municipal Utility District No. 2 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 301.213 acres located within Burnet County; and (4) a portion of the proposed District is within the extraterritorial jurisdiction of the City of Double Horn, Texas. No portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2020-RES012, passed and approved on June 24, 2020, the City of Double Horn gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately $18,700,000 ($8,300,000 for water, sewer, and drainage plus $10,400,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our website at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the website, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our website at www.tceq.texas.gov.

TRD-202100252
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 15, 2021

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Notice of District Petition

Notice issued January 15, 2021

TCEQ Internal Control No. D-10272020-044; Toreador Ranch, LLC, a Texas Limited Liability Company (the Petitioner), filed a petition for creation of South Burnet County Municipal Utility District No. 3 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 610.522 acres located within Burnet County; and (4) a portion of the proposed District is within the extraterritorial jurisdiction of the City of Double Horn, Texas. No portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2020-RES013, passed and approved on June 24, 2020, the City of Double Horn gave its consent to the creation of the proposed District, pursuant to Texas Water Code § 54.016. The petition further states that the proposed District will: (1) purchase, design, construct, acquire, maintain, own, operate, repair, improve, and extend a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, maintain, own, operate, repair, improve, and extend such additional facilities, including roads, systems, plants, and enterprises as shall be consonant with all of the purposes for which the proposed District is created.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately $43,900,000 ($18,200,000 for water, sewer, and drainage plus $25,700,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-202100253
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 17, 2021

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Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring

the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is 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 **March 3, 2021.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 3, 2021.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing.**

(1) COMPANY: Amanda Hahn; DOCKET NUMBER: 2019-1401-MSW-E; TCEQ ID NUMBER: RN110491065; LOCATION: 15329 Ben Wiggins Road, Conroe, Trinity County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: $1,250; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202100256
Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: January 19, 2021

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

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 3, 2021.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 3, 2021.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Caroline E. Morales and Claudia E. Morales dba Quail Run Mobile Home Park; DOCKET NUMBER: 2019-1345-PWS-E; TCEQ ID NUMBER: RN101274736; LOCATION: 12850 Montana Avenue, El Paso, El Paso County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106(e) and §290.107(e), by failing to provide the results of nitrate, volatile organic chemical contaminants, and synthetic organic chemical Group 5 contaminants sample to the executive director (ED) for the January 1, 2018 - December 31, 2018, monitoring period; 30 TAC §290.117(c)(2)(C), (h), and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, to have the samples analyzed, and to report the results to the ED for the January 1, 2016 - December 31, 2018, monitoring period; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification, and to submit a copy of the public notification to the ED, regarding the failure to collect lead and copper tap samples at the required sample sites, to have the samples analyzed, and to report the results to the ED for the January 1, 2014 - December 31, 2014, monitoring period; PENALTY: $367; STAFF ATTORNEY: John S. Merculief II, Litigation, MC 175, (512) 239-6944; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(2) COMPANY: Clarksville Quick Corporation dba Quick Track #23; DOCKET NUMBER: 2019-1615-PST-E; TCEQ ID NUMBER: RN104772934; LOCATION: 500 South 1st Street, Talco, Titus County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system - specifically, the rectifier was not operational; PENALTY: $2,438; STAFF ATTORNEY: Christopher Mullins, Litigation, MC 175, (512) 239-0141; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: Starr Transportation Corp.; DOCKET NUMBER: 2020-0296-MSW-E; TCEQ ID NUMBER: RN110848280; LOCATION: near Spur 557 and Farm-to-Market Road 148, Terrell, Kaufman County; TYPE OF FACILITY: trucking company; RULE VIOLATED: 30 TAC §327.5(c), by failing to submit written information, describing the details of the discharge or spill and supporting the adequacy of the response action with 30 working days of the discovery of the reportable discharge or spill; PENALTY: $1,312; STAFF ATTORNEY: Taylor Pearson, Litigation, MC 175, (512) 239-5937; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-202100255

Charmaine Backens
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: January 19, 2021

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Notice of Public Hearing and Comment on Proposed Revisions to 30 TAC Chapter 115 and to the State Implementation Plan

The Texas Commission on Environmental Quality (TCEQ or commission) will offer a virtual public hearing on **February 23, 2021, at 10:00 a.m. Central Standard Time.**

The hearing is offered to receive testimony regarding proposed revisions to 30 Texas Administrative Code Chapter 115, Control of Air Pollution from Volatile Organic Compounds, amended §§115.111, 115.112, 115.119, 115.121, and 115.357 and new §§115.170 - 115.181, and 115.183; and corresponding revisions to the State Implementation Plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed rulemaking would implement Federal Clean Air Act reasonably available control technology for all volatile organic compounds emission sources addressed in the United States Environmental Protection Agency's *Control Techniques Guidelines for the Oil and Natural Gas Industry* and would apply to the Dallas-Fort Worth (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) and Houston-Galveston-Brazoria (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) nonattainment areas for the 2008 eight-hour ozone National Ambient Air Quality Standard.

The virtual hearing is structured for the receipt of oral comments only. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the virtual hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

The public may view the virtual public hearing at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_MGUyZDA2MzQtMTAyOS00MDVmLWJjOTctNjBlOWIwNGJkN2Qy%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%220ab3b264-6a49-48c6-afc8-8225e4a7b0ac%22%2c%22IsBroadcastMeeting%22%3atrue%7d.

Registration. The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments or want your attendance on record must **register by Friday, February 19, 2021.** To register for the hearing, please email *Rules@tceq.texas.gov* and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on February 22, 2021 to those who registered for the hearing. Late registration could result in your missing the opportunity to comment on this project.

Persons who do not have internet access or who have special communication or other accommodation needs who plan to attend the hearing should contact Sandy Wong, General Law Division at (512) 239-1802 or (800) RELAY-TX (TDD) to register. Accommodation requests should be made as far in advance as possible.

Written Comments. Please choose one of the methods provided to submit your written comments. Electronic comments may be submitted at: *https://www6.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the *eComments* system. Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, *or* faxed to *fax4808@tceq.texas.gov.* All comments should reference **Rule Project No. 2020-038-115-AI. The comment period closes on March 2, 2021.**

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Joseph Thomas, Air Quality Planning Section, (512) 239-3934.

TRD-202100227
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 14, 2021

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Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment: Proposed Limited Scope Amendment to Permit No. 1898

Application. U.S. Department of the Army, US Highway 82 West, Texarkana, in Bowie County, Texas, 75505-9101, a former military installation, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to authorize revisions to the final closure plan to improve various aspects of the final cover system and to yield a more constructible design, revisions to the groundwater sampling and analysis plan, revisions to the landfill gas monitoring plan, and replacement of the final permit closure drawings. The facility is located at the address listed above. The TCEQ received this application on December 11, 2020. The permit application is available for viewing and copying at the Texarkana Public Library, 600 West 3rd Street, Texarkana, Bowie County, Texas 75501, and may be viewed online at https://dcsg9.army.mil/BRAC/. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://arcg.is/0C4vHr. For exact location, refer to application.

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly

referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid, Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments 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. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from U.S. Department of the Army at the address stated above or by calling Mr. John Medlock III, Commander's Representative at (903) 255-2857.

TRD-202100266
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 20, 2021

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Notice of Water Quality Application

The following notices were issued between December 04, 2020, thru January 13, 2021.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN 30 DAYS OF THIS NOTICE ISSUED IN THE TEXAS REGISTER.

INFORMATION SECTION

Greenwood Utility District has applied for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0011061001 to authorize the addition of an Interim II phase at an annual average flow not to exceed 1,175,000 gallons per day (gpm). The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,250,000 gpm. The facility is located at 11702 Tidwell Road in Harris, County, Texas 77044.

The Texas Commission on Environmental Quality has initiated a minor amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0000467000 issued to CITGO Refining and Chemicals Company L.P., which operates Corpus Christi Refinery, a petroleum refinery complex that produces petroleum products (gasoline, fuel oils) and petrochemical products (cyclohexane, cumene, benzene, toluene, xylene), to include water quality-based effluent limitations for total copper, free cyanide, and total zinc at Outfall 003. The existing permit authorizes discharge of treated process wastewater, utility wastewater, hydrostatic test water, wastewater from firefighting activities, vapor suppression waters, and stormwater via Outfall 001; treated process wastewater, utility wastewater, domestic wastewater, hydrostatic test water, wastewater from firefighting activities, and stormwater via Outfall 002; stormwater commingled with minimal quantities of cooling tower blowdown, hydrostatic test water, utility wastewater, and miscellaneous non-stormwater flows via Outfall 003; and non-process area stormwater commingled with minimal quantities of hydrostatic test water, utility wastewater, and miscellaneous non-stormwater flows via Outfalls 004, 005, 006, 007 and 008. The facility consists of the East Plant located at 1801 Nueces Bay Boulevard and the West Plant located at 7350 Interstate Highway 37, in the City of Corpus Christi, Nueces County, Texas 78407 (East Plant) and 78409 (West Plant).

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

Cabot Corporation, which operates Cabot Pampa Plant, a carbon black production facility, has applied for a minor amendment to TCEQ Permit No. WQ0001442000 to reinstate shower graywater as an autho-

rized wastestream. Shower graywater was inadvertently omitted in the existing permit. The existing permit authorizes the disposal of process wastewater (quench water, process area and equipment wash down water, scrubber wastewater, hydrostatic testing water, truck wash bay water, stormwater from process areas, stormwater from the feedstock secondary containment, stormwater from the secondary urea containment area, urea from incidental piping leaks, neutralized nitric acid wastewater, and electric heater knockout water) and stormwater via evaporation. This permit will not authorize discharge of pollutants into water in the state. The facility and evaporation ponds are located north of U.S. Highway 60 and the Burlington Northern Santa Fe Railroad tracks; three miles west of the City of Pampa, Gray County, Texas 79065.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202100265
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 20, 2021

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Notice of Water Rights Application

APPLICATION NO. 13627; Armand J. Colaninni and Ellen Colaninni, Applicants, 4951 Oak Knoll Lane, Frisco, Texas 75034, have applied for a Water Use Permit to authorize the maintenance of a dam and 477-acre-foot capacity reservoir on an unnamed tributary of West Farmers Creek, Red River Basin for recreation, wildlife, domestic and livestock purposes in Montague County. More information on the application and how to participate in the permitting process is given below. The application and fees were received on August 14, 2019. Additional information was received on September 17, November 5, November 27 and December 2, 2019. The application was declared administratively complete and filed with the Office of the Chief Clerk on December 20, 2019. Additional technical information was received on April 30, and May 2, 2020.

The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include a special condition requiring the Permittees to pass inflows if needed, for downstream senior and superior water rights. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[*I/we*] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/ by entering WRPERM 13627 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.

APPLICATION NO. 18-2026C; Curtis J. and Christina Wheatcraft, Applicants, 6133 Highway 27, Center Point, Texas 78010, seek to amend Certificate of Adjudication No. 18-2026 to add mining purposes of use and two diversion points on the Guadalupe River, Guadalupe River Basin in Kerr County. The application does not request a new appropriation of water. The application was received on November 3, 2015. Additional information and fees were received on May 11, June 6 and July 21, 2017, May 21, 2018. The application was declared administratively complete and filed with the Office of the Chief Clerk on June 22, 2018. Additional information was received on August 1, 2019, August 4, and November 13, 2020.

The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions, including, but not limited to, maintenance of an Upstream Diversion Contract with the Guadalupe Blanco River Authority for 100 acre-feet of the authorized water. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: www.tceq.texas.gov/permitting/water_rights/wr-permitting/wr-apps-pub-notice. Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by February 02, 2021. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by February 02, 2021. The Executive Director may approve the application unless a written request for a contested case hearing is filed by February 02, 2021.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve

the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[*I/we*] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/by entering ADJ 2026 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address.

For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.

TRD-202100243
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: January 15, 2021

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Long Acting Reversible Contraceptives (LARCs) Fee Review

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 5, 2021, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the Long Acting Reversible Contraceptives (LARCs) Fee Review updates.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only.

Please register for the HHSC Public Rate Hearing for the Long Acting Reversible Contraceptives (LARCs) Fee Review updates to be held on February 5, 2021 9:00 a.m. CST at:

https://attendee.gotowebinar.com/register/8996719121083795470

After registering, you will receive a confirmation email containing information about joining the webinar.

The meeting will be archived and can be accessed on demand at *https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings.* The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the LARCs Fee Review are proposed to be effective April 1, 2021.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8441, which addresses the reimbursement methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps);

§355.8581, which addresses the reimbursement methodology for Family Planning Services; and

§355.8641, which addresses the reimbursement methodology for the Women's Health Program.

Briefing Packet. A briefing packet describing the proposed payments rates will be available at *https://rad.hhs.texas.gov/rate-packets* on or after January 26, 2021. Interested parties may obtain a copy of the briefing packet prior to the hearing by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at *RADAcuteCare@hhsc.state.tx.us.* The briefing packet will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to *RADAcuteCare@hhsc.state.tx.us.* In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202100269
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: January 20, 2021

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Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Transportation Program (MTP) Fee Review

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 5, 2021, at 9:00 a.m., to receive comment on proposed Medicaid payment rates for the MTP Fee Review updates.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only.

Please register for the HHSC Public Rate Hearing for the MTP Fee Review updates to be held on February 5, 2021, 9:00 a.m. CST, at:

https://attendee.gotowebinar.com/register/8996719121083795470

After registering, you will receive a confirmation email containing information about joining the webinar.

The meeting will be archived and can be accessed on demand at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings. The hearing will be held in compliance with Texas

Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the MTP Fee Review are proposed to be effective January 1, 2021.

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1, Texas Administrative Code, §355.8561, which addresses the reimbursement methodology for the Medical Transportation Program.

Briefing Packet. A briefing packet describing the proposed payments rates will be available at https://rad.hhs.texas.gov/rate-packets on or after January 26, 2021. Interested parties may obtain a copy of the briefing packet prior to the hearing by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing packet will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202100268
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: January 20, 2021

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Notice of Public Hearing on Proposed Payment Rates for HCBS - Adult Mental Health Supported Home Living and YES Waiver In-Home Respite

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 17, 2021, at 9:00 a.m., to receive public comments on the proposed payment rates for Home and Community-Based Services - Adult Mental Health (HCBS-AMH) Supported Home Living (SHL) and Youth Empowerment Services (YES) Waiver In-Home Respite.

Due to the declared state of disaster stemming from COVID-19, this hearing will be conducted online only. Physical entry to the hearing will not be permitted. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

https://attendee.gotowebinar.com/register/8087644007720282127.

After registering, you will receive a confirmation email containing information about joining the hearing. You can also dial in using your phone at (415) 655-0052, access code 345-849-076.

If you are new to GoToWebinar, please download the GoToMeeting app at https://global.gotomeeting.com/install/626873213 before the hearing starts.

The hearing will be held in compliance with Texas Human Resources Code §32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements. HHSC will archive the public hearing; the archive can be accessed on demand after the hearing at https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings.

Proposal. HHSC proposes to convert the HCBS-AMH SHL hourly payment rate to a 15-minute rate of $5.60, effective April 1, 2021, and convert the YES Waiver In-Home Respite rate to a 15-minute rate of $5.22. Transitioning of the HCBS-AMH SHL and YES Waiver In-home Respite rates to 15 minutes is necessary to implement electronic visit verification.

Methodology and Justification. The proposed payment rate for HCBS-AMH SHL was developed in compliance with HHSC's established rate methodology in Title 1 of the Texas Administrative Code (1 TAC) §355.9070, relating to Reimbursement Methodology for Home and Community-Based Services - Adult Mental Health Program. The proposed payment rate for YES Waiver was developed in compliance with HHSC's established rate methodology in 1 TAC §355.9060, relating to Reimbursement Methodology for the Youth Empowerment Services Waiver Program.

Briefing Packet. A briefing packet describing the proposed payment rates will be available at https://rad.hhs.texas.gov/proposed-rate-packets on or after January 22, 2021. Interested parties may obtain a copy of the briefing packet before the hearing by contacting the HHSC Provider Finance Department by telephone at (512) 424-6637; by fax at (512) 730-7475; or by e-mail at RAD-LTSS@hhsc.state.tx.us.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by email to RAD-LTSS@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar Blvd., Austin, Texas 78751.

Preferred Communication. During the current state of disaster due to COVID-19, physical forms of communication are checked with less frequency than during normal business operations. For the quickest response, please use email or phone, if possible, for communication with HHSC related to this public hearing.

TRD-202100270
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: January 20, 2021

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Public Notice - Texas State Plan for Medical Assistance Amendment Effective February 1, 2021

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The amendment is proposed to be effective February 1, 2021.

The proposed amendment will remove language related to the assignment of a rate for a new Federally Qualified Health Center that was added effective September 1, 2020.

As this proposal represents a clarification in methodology rather than rates, there is no estimated fiscal impact.

Copy of Proposed Amendment. Interested parties may obtain a copy of the proposed amendment and/or additional information about the amendment by contacting Cynthia Henderson, State Plan Coordinator, by mail at the Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 428-1932; by facsimile at (512) 730-7472; or by email at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendment will be available for review at the local county offices of HHSC, (which were formerly the local offices of the Department of Aging and Disability Services).

Written Comments. Written comments about the proposed amendment and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax or email:

U.S. Mail:

Texas Health and Human Services Commission

Attention: Provider Finance Department, Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery:

Texas Health and Human Services Commission

Attention: Provider Finance Department, Mail Code H-400 Brown-Heatly Building

4900 North Lamar Blvd.

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax: Attention: Provider Finance Department at (512) 730-7475

Email: cristina.melendez@hhs.texas.gov

TRD-202100285
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: January 20, 2021

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Department of State Health Services

Certification Limited Liability Report

The Hospital Survey Program in the Center for Health Statistics, Texas Department of State Health Services, has completed its analysis of hospital data for the purpose of certifying nonprofit hospitals or hospital systems for limited liability in accordance with Texas Health and Safety Code, §311.0456. Twenty-three hospitals requested certification in accordance with §311.0456, each of the requesting hospitals will be notified, by mail, on the determination of whether certification requirements were met. The certification issued under Texas Health and Safety Code, §311.0456, to a nonprofit hospital or hospital system takes effect on December 31, 2020, and expires on the anniversary of that date.

Certified:

One non-profit hospital system (6 hospitals) and twelve nonprofit hospitals were determined to be eligible for certification based on information that they provided i.e., charity care in an amount equal to or greater than 8 percent of their net patient revenue and that they provided 40 percent or more of the charity care in their counties.

Seton Healthcare System (Travis County only)

Ascension Seton Medical Center in Travis

Ascension Seton Northwest in Travis

Ascension Seton Shoal Creek in Travis

Ascension Seton Southwest in Travis

Dell Children's Medical Center in Travis

Dell Seton Medical Center at the University of Texas in Travis

CHRISTUS Spohn Hospital Beeville in Bee County

Ascension Seton Edgar B Davis in Caldwell

Christus Good Shepherd Medical Center - Marshall in Harrison County

Ascension Seton Hays in Hays

CHRISTUS Mother Frances Hospital - Sulphur Springs in Hopkins County

CHRISTUS Southeast Texas - Jasper Memorial in Jasper County

CHRISTUS Southeast Texas - St. Elizabeth & St. Mary in Jefferson County

CHRISTUS Spohn Hospital Alice in Jim Wells County

CHRISTUS Spohn Hospital Kleberg in Kleberg County

CHRISTUS Spohn Hospital Shoreline Corpus Christi in Nueces County

United Regional Health Care System in Wichita County

CHRISTUS Mother Frances Hospital-Winnsboro in Wood County

Not Certified:

Five nonprofit hospitals were not certified because, based on their survey data, they did not provide charity care in an amount equal to or greater than 8 percent of their net patient revenue nor did they provide 40 percent of the charity care in their counties.

Ascension Seton Smithville in Bastrop County

CHRISTUS St. Michael Health System in Bowie County

Ascension Seton Highland Lakes in Burnet County

Ascension Providence in McLennan County

Ascension Seton Williamson in Williamson County

For further information about this report, please contact Dwayne Collins at or Andria Orbach at Andria.Orbach@dshs.texas.gov in the Center for Health Statistics at (512) 776-7261.

TRD-202100286
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: January 20, 2021

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Decision Order Regarding the Modification of the Definition of Tetrahydrocannabinols in Schedule I of the Schedules of Controlled Substances

On August 21, 2020, the Acting Administrator of the Drug Enforcement Administration (DEA) issued an interim final rule making four

conforming changes to DEA's existing scheduling regulations. The interim final rule was published in the *Federal Register,* Volume 85, Number 163, pages 51639-51645 and was effective August 21, 2020. Pursuant to Section 481.034(g), as amended by the 75th Legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, the commissioner may object during the 30-day period beginning on the day after the date of publication in the *Federal Register* of a final order designating a substance as controlled or deleting a substance from the schedules.

The interim final rule modifies 21 CFR 1308.11(d)(31) by adding language stating that the definition of "Tetrahydrocannabinols" does not include "any material, compound, mixture or preparation that falls within the definition of hemp set forth in 7 U.S.C 1639o."

The interim final rule modifies 21 CFR 1308.11(d)(58) by stating that the definition of "Marihuana Extract" is limited to extracts "containing greater than 0.3 percent delta-9-tetrahydrocannabinol on a dry weight basis."

In the capacity as Commissioner of the Texas Department of State Health Services, John Hellerstedt, M.D., objected to the modifications of the two definitions to the extent that the definitions allow for the presence or addition of tetrahydrocannabinols aside from the presence of delta-9-tetrahydrocannabinol. Multiple tetrahydrocannabinol isomers and variants may have pharmacological or psychoactive properties.

On September 18, 2020, the Commissioner notified the public of his objection. Pursuant to Section 481.034(g), on October 6, 2020, the Commissioner held a hearing to allow public comment with respect to the objection. Zero comments were received during the hearing and zero written comments were received by October 8, 2020.

Decision: The modifications of the two definitions above are not adopted.

John Hellerstedt, M.D., Commissioner, signed this order on November 17, 2020.

TRD-202100284
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: January 20, 2021

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Texas Lottery Commission

Scratch Ticket Game Number 2291 "WILLY WONKA GOLDEN TICKET™"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2291 is "WILLY WONKA GOLDEN TICKET™". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 2291 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2291.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 5X SYMBOL, 10X SYMBOL, $5.00, $10.00, $20.00, $25.00, $50.00, $100, $500, $1,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2291 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
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
20	TWY
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
5X SYMBOL	WINX5
10X SYMBOL	WINX10
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$25.00	TWFV$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$1,000	ONTH
$100,000	100TH

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 (2291), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 2291-0000001-001.

H. Pack - A Pack of "WILLY WONKA GOLDEN TICKET™" Scratch Ticket Game contains 075 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - A Texas Lottery "WILLY WONKA GOLDEN TICKET™" Scratch Ticket Game No. 2291.

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 "WILLY WONKA GOLDEN TICKET™" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) 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 "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. 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 forty-five (45) 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 forty-five (45) 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 forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-five (45) 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.

A. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 20 and $20).

D. KEY NUMBER MATCH: No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. KEY NUMBER MATCH: No matching WINNING NUMBERS Play Symbols on a Ticket.

F. KEY NUMBER MATCH: A non-winning Prize Symbol will never match a winning Prize Symbol.

G. KEY NUMBER MATCH: A Ticket may have up to three (3) matching non-winning Prize Symbols, unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "5X" (WINX5) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

I. KEY NUMBER MATCH: The "10X" (WINX10) Play Symbol will only appear on intended winning Tickets, as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "WILLY WONKA GOLDEN TICKET™" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WILLY WONKA GOLDEN TICKET™" Scratch Ticket Game prize of $1,000 or $100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WILLY WONKA GOLDEN TICKET™" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

F. If a person is indebted or owes delinquent taxes to the State, and is selected as a winner in a promotional second-chance drawing, the debt to the State must be paid within 14 days of notification or the prize will be awarded to an Alternate.

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 "WILLY WONKA GOLDEN TICKET™" 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 "WILLY WONKA GOLDEN TICKET™" 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 Game 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.

2.9 Promotional Second-Chance Drawings. Any Non-Winning "WILLY WONKA GOLDEN TICKET™" Scratch Ticket may be

entered into one (1) of four (4) promotional drawings for a chance to win a promotional second-chance drawing prize. See instructions on the back of the Scratch Ticket for information on eligibility and entry requirements.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 12,000,000 Scratch Tickets in the Scratch Ticket Game No. 2291. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2291 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5.00	1,120,000	10.71
$10.00	960,000	12.50
$20.00	560,000	21.43
$50.00	240,000	50.00
$100	10,500	1,142.86
$500	1,050	11,428.57
$1,000	350	34,285.71
$100,000	4	3,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.15. 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. 2291 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the 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. 2291, 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-202100198
Bob Biard
General Counsel
Texas Lottery Commission
Filed: January 14, 2021

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Panhandle Regional Planning Commission

Region 1 Canadian-Upper Red Regional Flood Planning Group Request for Qualifications - 2023 Regional Flood Plan

The Region 1 Canadian-Upper Red Regional Flood Planning Group (RFPG) acting through the Panhandle Regional Planning Commission (PRPC) is seeking proposals to provide professional services to assist in the development of the region's first-ever Regional Water Plan by January 2023 for the Canadian-Upper Red flood planning region (FPR). The successful firm(s) will demonstrate knowledge of large-scale flood planning in general, the specific requirements of flood planning as defined by 31 TAC Chapters 361 and 362.

The Canadian-Upper Red flood planning region (FPR) is one of fifteen across the state of Texas. It is comprised of 44 counties including the entirety of Armstrong, Briscoe, Carson, Childress, Collingsworth, Cottle, Dallam, Deaf Smith, Donley, Foard, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Motely, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Wheeler, Wichita, and Wilbarger and partially includes Archer, Baylor, Castro, Clay, Cooke, Crosby, Dickens, Floyd, Hale, King, Knox, Montague, Parmer, Swisher, and Young.

I. Statement of Qualifications - The Canadian-Upper Red RFPG, through the PRPC, is seeking to contract with a competent firm(s) or individual(s), with the necessary credentials and qualifications, that has specific experience and knowledge in providing technical services including research, analysis, and documentation in the field of large- scale flood planning. Please provide with your statement of qualifications including the approach to executing the work associated with this project, a list of at least five (5) projects with a similar scope of work, resumes for team members associated with the project should you receive the contract award, and a list of proposed sub-consultants or team members who are or may be involved in your proposal.

II. Scope of Services - Regional Flood Plan Development

1. Consultant will provide all required planning services in accordance with the developed Scope of Work for the Regional Flood Plan except those services that have been specifically exempted. The Scope of Work may be viewed here: https://www.twdb.texas.gov/flood/planning/planningdocu/2023/index.asp

2. Consultant will provide, at a minimum, monthly reporting to the Region 1 Canadian- Upper Red RFPG on the progress of the regional flood planning effort.

3. Consultant will assist with the adoption of the Regional Flood Plan.

4. Consultant will ensure the Regional Flood Plan adheres to the guidance principles and requirements as defined by 31 TAC Chapters 361 and 362.

III. Submission

1. Proposals will only be accepted from firms or individuals having requested an RFQ package. RFQ Packages are available by written request from the PRPC, contact information below. Faxed (806-373-3268) or emailed (dmeyer@theprpc.org) requests will be accepted; however, the requesting entity must verify receipt. All inquiries and requests must be directed to the attention of Dustin Meyer (806-372- 3381).

2. The deadline for responses to this request is **5:00 P.M., Thursday, February 18, 2021.** One (1) electronic copy in PDF format and seven (7) hardcopies, which shall include six (6) bound copies and one (1) unbound copy by U.S. mail or FedEx/UPS of each submittal shall be delivered to:

Panhandle Regional Planning Commission Attn: Dustin Meyer

P.O. Box 9257

Amarillo, TX 79105

Physical Address: 415 SW 8th Ave. Amarillo, TX 79101

Proposals received after the stated deadline will not be considered.

The Canadian-Upper Red RFPG reserves the right to negotiate with any and all individuals and firms that submit proposals and to award more than one contract or to award no contracts. All potential contracts and tasks arising from this RFQ are subject to approval by the Texas Water Development Board and are contingent upon receiving funding from the Texas Water Development Board for the approved tasks.

TRD-202100257
Dustin Meyer
Local Government Services Director
Panhandle Regional Planning Commission
Filed: January 19, 2021

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Public Utility Commission of Texas

Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 6, 2021, for designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of Gtek Computers & Wireless, LLC for Designation as an Eligible Telecommunications Carrier, Docket Number 51689.

The Application: Gtek Computers & Wireless, LLC seeks designation as an eligible telecommunications carrier (ETC) under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Gtek Computers & Wireless seeks an ETC designation for the purpose of being eligible to receive federal universal service support from the Federal Communications Commission's Rural Digital Opportunity Fund.

Persons wishing to file a motion to intervene or comments on the application should contact the commission no later than February 23, 2021, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51689.

TRD-202100168
Theresa Walker
Assistant Rules Coordinator
Public Utility Commission of Texas
Filed: January 12, 2021

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Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on January 14, 2021, for designation as an eligible telecommunications carrier (ETC) in the State of Texas under 47 U.S.C. §214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of 4 IP Technology and Media, LLC dba Nexstream for Designation as an Eligible Telecommunications Carrier, Docket Number 51716.

The Application: Nexstream seeks designation as an eligible telecommunications carrier (ETC) under 47 U.S.C. §214(e) and 16 Texas Administrative Code §26.418.

Nexstream seeks an ETC designation for the purpose of qualifying to receive federal support the deployment of broadband and related advanced services in unserved and underserved areas in the United States.

Persons wishing to file a motion to intervene or comments on the application should contact the commission no later than February 18, 2021, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51716.

TRD-202100264
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: January 20, 2021

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Notice of Application for True-Up of 2018 Federal Universal Service Fund Impacts to the Texas Universal Service Fund

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on December 15, 2020, for true-up of 2018 Federal Universal Service Fund (FUSF) Impacts to the Texas Universal Service Fund (TUSF).

Docket Style and Number: Application of Blossom Telephone Company for True Up of 2018 Federal Universal Service Fund Impacts to the Texas Universal Service Fund, Docket Number 51626.

The Application: Blossom Telephone Company filed a true-up in accordance with findings of fact numbers 19 and 20 of the final Order in Docket No. 50220. In that docket, the Commission determined that the Federal Communications Commission's actions were reasonably projected to reduce the amount that Blossom Telephone received in Federal Universal Service Fund (FUSF) revenue by $193,113 for calendar year 2018. Based on the data, calculations, supporting documentation and affidavits included with the application, Blossom Telephone asserts that it did not fully recover the impacted FUSF as a result of the Order in Docket No. 50220 and requests to recover an additional $719 from the TUSF.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 51626.

TRD-202100228
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: January 15, 2021

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South East Texas Regional Planning Commission

Regionally Coordinated Transportation Plan Request for Proposals

Background

The South East Texas Regional Planning Commission (SETRPC) is a voluntary association of local governments that serves the area composed of Hardin, Jefferson, and Orange counties. The SETRPC resolves area-wide problems by promoting intergovernmental cooperation and coordination, by conducting comprehensive regional planning, and by providing a forum for the discussion and study of area issues. The SETRPC also conducts comprehensive planning services in community development, transportation, and environmental resources. The SETRPC is the designated Lead Agency in the southeast Texas region for regional public transportation coordination and cooperation with the Texas Department of Transportation for compliance with Chapter 461 of House Bill 3588 (eliminate waste, generate efficiencies, and reduce air pollution), in developing a coordinated public transit-human services transportation plan as required by the Fixing America's Surface Transportation Act (FAST Act). This plan is called the Regional Public Transportation Coordination Plan (RPTCP) and was completed in July 2017. The RPTCP for the southeast Texas Region identifies efforts for regional service coordination, creates a transportation coordination plan, and creates an action plan for priority projects.

Public transportation in the southeast Texas region includes primarily demand-response service, with two localities managing fixed-route systems. The SETRPC has been proceeding with planning efforts to implement projects in the region to provide seamless transportation within the region for the users of public transportation.

Objective

The SETRPC is seeking consultant services to assist in completing an updated, comprehensive regionally coordinated transportation plan and in participating in public involvement outreach. In addition, consultant services will involve performing transportation planning to develop implementation strategies for enhancing regional transportation services that lead to seamless public transportation throughout the southeast Texas region. It is anticipated that the requested services would be performed between March 18, 2021 and February 29, 2022. Proposals are being requested from qualified firms or individuals with specific experience to perform this assignment.

If your firm is interested and qualified to complete Regionally Coordinated Transportation Planning for the southeast Texas region, please contact our office to express your interest:

Bob Dickinson

Director

Transportation and Environmental Resources

South East Texas Regional Planning Commission

2210 Eastex Freeway

Beaumont, Texas 77703

Fax: (409) 729-6511

Email: bdickinson@setrpc.org

All responding firms will receive a complete Request for Proposal package.

Final proposals will be due by 3:00 noon CST on February 26, 2021.

TRD-202100230
Bob Dickinson
Director
South East Texas Regional Planning Commission
Filed: January 15, 2021

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Texas Workforce Commission

Correction of Error

The Texas Workforce Commission filed the withdrawal of the emergency amendments to 40 TAC §§815.1, 815.170 - 815.172, and 815.174; and the emergency repeal of §815.173 on September 22, 2020, for publication in the October 9, 2020, issue of the *Texas Register* (45 TexReg 7236).

Due to a publication error the effective date for the withdrawal was incorrect. The correct effective date for the withdrawal date is October 12, 2020.

TRD-202100248

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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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